REPORT ON ACTIVITIES OF THE COALITION FOR EQUALITY

2015 – 2016

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

Published with the financial support of the Open Society Georgia Foundation. The views, opinions and statements expressed by the authors and those providing comments are theirs only and do not necessarily reflect the position of the Foundation. Therefore, the Open Society Georgia Foundation is not responsible for the content of the information material.

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April 2015 – October 2016

2017

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Introduction

This document is the second report of the Coalition for Equality (hereafter the Coalition), an alliance of nongovernmental organisations. It reflects the Coalition's activities carried out over the period from 1 April 2015 to 1 October 2016. It provides a detailed review of cases submitted by the Coalition to the operating equality mechanisms - the Public Defender and the courts. The analysis of these cases provides an assessment of the situation of the rights of discriminated groups and the efficiency of these mechanisms.

The adoption of the Law on the Elimination of All Forms of Discrimination in 2014 was a significant step forward in the fight against discrimination. However, the mandate, competences and procedures of the equality mechanisms, the Public Defender and courts, are not sufficiently effective. As such, the enforcement of the new mechanisms failed to ensure the achievement of significant positive changes in terms of equality. The mandate of the Public Defender in examining cases involving discrimination by private persons is quite limited while the fulfilment of decisions made and recommendations issued by the Public Defender is not guaranteed through effective legal instruments. The level of knowledge and the degree of sensitivity of judges in the area of discrimination are low thereby undermining the reasoning of decisions taken by them. Despite repeated statements from the Public Defender and public pledges given by members of parliament, the Law on the Elimination of All Forms of Discrimination has not yet been amended so as to provide effective institutional and procedural guarantees for the equality mechanisms.

After the adoption of the antidiscrimination law, the executive branch has not developed a positive system-wide policy of promoting equality which would, inter alia, ensure the revision of codes of ethics and internal regulatory acts, the prohibition of hate speech and discrimination and the creation of guarantees for observing religious neutrality. Moreover, the government has not planned a sustained information and education policy to promote equality.

Ineffective investigation of hate crimes and the absence of a strategy to prevent such crimes remain a serious challenge. Ineffective investigation of hate crimes encourages impunity in society and a hostile environment towards non-dominant groups. Despite the recommendations of international organisations, law enforcement entities still lack a common strategy for combatting hate crime, institutional guarantees (including specialised police services), retraining programmes and a policy oriented on the protection of victims and confidence. Increased instances of the use of hate speech by politicians as well as xenophobic, homophobic political initiatives encourage hate-driven violence and create a hostile environment towards discriminated groups.

Despite intensive public debates about violence against women as well as the declared support of the government for women's political participation, steps taken towards ensuring women's equality are weak and haphazard. The LGBT community is the most marginalised group in the country: with politicians politicising LGBT rights, a clearly hostile and homophobic environments has been formed towards the community. The situation of the rights of religious groups has deteriorated over the past years and this trend continued into 2016. The non-secular and discriminatory policy of the government isolates non-dominant religious groups from the political and social scene and often deprives them of the opportunity to exercise the freedom of religion. The last few years have seen a weakening of the process of integration of ethnic minorities. With the far right groups mobilising and radicalising, instances of extreme violence and discrimination on the ground of ethnicity and race have been observed in the reporting period. Although certain measures were undertaken to promote the equality of socially vulnerable groups, including children, persons with disabilities, homeless persons, the launched reforms are weak and sporadic. The oppression of these groups is invisible and does not represent a priority on the political agenda.

Brief Overview of the Report

The Coalition for Equality is an informal alliance established in 2014 with the support of Open Society Georgia Foundation. It unites seven nongovernmental organisations. The members of Coalition are: Human Rights Education and Monitoring Centre (EMC); Identoba; Article 42 of the Constitution; Union Sapari (Sapari); Georgian Young Lawyers' Association (GYLA); Women's Initiatives Supporting Group (WISG) and Partnership for Human Rights (PHR). In 2016, EMC was the chair organisation of the Coalition. The Coalition has a strategy for its activity, a charter and rules and procedure of its membership. Since its inception, the activity of the Coalition has been supported by Open Society Georgia Foundation, which simultaneously acts as the Coalition's secretariat.

It is worth noting that the Coalition was established in 2014, during the process of the adoption of the Law on the Elimination of All Forms of Discrimination. Its essential goal is to enhance the mandate and competences of anti-discrimination mechanisms and to support the effective fight against discrimination. The adoption of the Law on the Elimination of All Forms of Discrimination set new objectives for the Coalition and the Coalition is mainly oriented on the development of progressive court practice on discrimination cases and the detection and improvement of systemic shortcomings in the activities of equality mechanisms.

Defending the interests of vulnerable groups at the Public Defender's Office and courts has become a major direction of the Coalition's member organisations. Given the experience and expertise of member organisations of Coalition and their close communication with target groups, each member organisation focuses on various grounds of discrimination; this enables them to carry out specialised and systemic research and analysis on concrete topics. In particular, within the framework of Coalition, GYLA works on discrimination on the ground of race and ethnicity; Article 42 of the Constitution specialises in political ground; EMC works on the grounds of disability, lack of living place and religion; Sapari is focused on the ground of gender; WISG and Identoba specialise in the grounds of sexual orientation and gender identity; while PHR is focused on the ground of disability and discrimination against children.

On the basis of the antidiscrimination law, the Coalition member organisations prepared applications/complaints on 36 cases in the reporting period (Sapari – seven cases; GYLA – two cases; EMC – nine cases; Identoba – one case; Article 42 of the Constitution – 10 cases; and PHR – seven cases). Sixteen applications were submitted to the Public Defender's Office (Sapari – four cases; EMC – four cases: Identoba – one case; and PHR – seven cases). Twenty-six complaints were filed with courts (Sapari – three cases; Article 42 of the Constitution – 10 cases; EMC – four cases; GYLA – two cases; and PHR – seven cases)[1].

This report provides a detailed overview of 36 cases handled by member organisations within the scope of the Coalition[2]. During the reporting period, members of the Coalition worked on cases of discrimination committed on the grounds of disability (seven cases), citizenship (three cases), race (one case), place of residence (four cases), political or other views (10 cases), health (one case), property status (one case), gender (four cases), sexual orientation and gender identity (four cases) and religion (one case).

1 Several cases are being considered both in the courts and the Public Defender's Office.

2 To protect personal data, several complainants are not identified in the report, but referred to by their initials alone (first letters of names and surnames). In the chapter on sexual orientation and gender identity, the names and surnames of complainants are pseudonyms. Several complainants agreed to be identified.

At the beginning of the reporting period, the lower courts were considering 14 cases while the higher courts and the Supreme Court were considering two cases each. The court established discrimination in two cases and the final judgments were enforced. In one case, the court reinstated a person to his position, but did not establish discrimination.

The Public Defender issued seven recommendations/general proposals on cases handled by the Coalition and terminated the proceedings of four cases.

Three cases concerning the conformity of acts with Article 14 of the Constitution are being considered by the Constitutional Court.

In the reporting period, the Coalition organised trainings for judges and journalists as well as informational meetings with representatives of various vulnerable groups.

The Coalition held regular working and information meetings with the Public Defender and actively participated in the drafting of a legislative proposal initiated by the Public Defender and committee hearings of this proposal. It also prepared research documents and reports, which will be presented in the spring of 2017.

The stages of proceedings on cases are given in the table below.

The proceeding is underway at the lower court	The proceeding is underway at the Court of Appeals	The proceeding is underway at the Supreme Court	The proceeding is underway at the Constitutional Court	Discrimination was established in the case and the decision entered into force
1. D.Kh. v. Ministry of Internal Affairs of Georgia	1. A.L. v. the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and the Government of Georgia	1. Nino Andriadze v. Tbilisi Mayor's Office	1. Examining constitutionality of the absence of the right to parental leave for a men	1. K.N. v. Batumi Dolphinarium
2. S.K. v. Government of Georgia	2. K.N. v. Tbilisi Municipality City Council	2. Giorgi Khaburzania v. Tbilisi Mayor's Office	2. V.Ch. v. Parliament of Georgia, Ministry of Labour, Health and Social Affairs	2. Irakli Kvaratskhelia v. Tbilisi Mayor's Office
3. Citizens of Georgia v. Ministry of Labour, Health and Social Affairs	3. L.B. v. L.G.		3. Citizen of Georgia Tamar Tandashvili v. Government of Georgia	
4. L.T. v. Tbilisi City Council				
5. G.B. v. one of Tbilisi kindergartens				
6. N.B. v. Tbilisi's Kindergarten Management Agency				

7. P.Ch. v. Tbilisi's Kindergarten Management Agency				
8. T.U. v. one of Tbilisi kindergartens				
9. T.M. v. Hermesi LLC				
10. G.Ts. v. Tbilisi Municipality's Council				
11. T.S. v. Sh.R.				
12. T.T. v. Ministry of Internal Affairs of Georgia				
13. M.Ch. v. Tbilisi Public School No. 130				
14. T.Ch. v. Isani Executive Body (Gamgeoba) of Tbilisi				

Public Defender's Office issued recommendation / general proposal	The proceeding is underway at the Public Defender's Office	Public Defender's Office terminated the proceeding
1. GYLA v. City Council of Batumi Municipality	1. The Union Sapari v. Tabula TV Company	1. Sh.G. v. Ertsulovneba TV of the Patriarchate of Georgia
2. T.G. v. Ministry of Education and Science of Georgia	2. Discrimination against the personnel of the vegan café Kiwi	2. Taxi company Taxicallercenter
3. Discriminatory advertisement of CCloan		3. Shota Kiknadze v. Ministry of Internal Affairs of Georgia, Mental Department of Otar Ghudushauri Clinic and a Taxi Driver
4. Art Palace		4. The case of Vedzatkhevi village residents
5. D.Kh. v. Ministry of Internal Affairs of Georgia		
6. G.B. v. L.G.		
7. Discriminatory treatment towards a gay couple at the nightclub		

The claim was partially satisfied though the court did not establish discrimination
Shalva Gogoladze v. Akhaltsikhe Municipality's City Council

Discrimination on the Ground of Disability

Georgian national legislation and the international human rights treaties to which the country is bound prohibit discrimination on the ground of disability.

Disability is not explicitly included among the grounds of discrimination in Article 14 of the Constitution of Georgia. In the case of *Irakli Kemoklidze and Davit Kharadze v. the Parliament of Georgia*, the Constitutional Court of Georgia noted that because 'disability as a possible ground of differentiation is not included in the list provided in Article 14 of the Constitution of Georgia, it cannot be considered as a classical ground of differentiation under Article 14 of the Constitution.' However, following from the explanation provided by the court in the given case, people with disabilities may be considered a 'social group' that, for its part, constitutes a classical ground of discrimination.

According to Articles 2 and 5 of the Convention on the Rights of Persons with Disabilities, the prohibition of discrimination on the basis of disability is one of the basic principles of the Convention.

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination explicitly includes disability as one of the grounds of discrimination.

D.Kh. v. Ministry of Internal Affairs of Georgia

The case concerns a disabled person using a wheelchair who was prevented by police officers from taking the wheelchair out of the boot of his car.

The case was prepared by PHR.

The circumstances of the case: D.Kh. is a person with a disability who uses a wheelchair. D.Kh., along with his three friends, was travelling in a car. Patrol police officers stopped the car to test the driver for alcohol. D.Kh.'s friends got out of the car and D.Kh. also wanted to get out of the car but the patrol police officers prevented him from doing so. The patrol police officers did not allow D.Kh.'s friends to take the wheelchair out of the boot of the car either. Since D.Kh. was not allowed to leave the car, he had no other way but to satisfy his physiological need in the car. D.Kh. had to stay in wet pants for several hours.

Date of application to court: 14 September 2016.

Legal reasoning: The applicant believes that his right to equality, guaranteed under Article 14 of the Constitution of Georgia, was violated. In particular, the patrol police officers, by preventing him from getting out of the car like the other passengers, did not allow the applicant to satisfy his physiological need. The patrol police officers also violated the applicant's constitutional right to respect for his dignity. The fact itself that the satisfaction of a basic need of an individual depends on other individuals, in this particular case the patrol officers, is humiliating and infringes on his dignity. Besides the applicant's right to dignity, his right to free development of personality was also violated. The right to free development of personality protects the freedom of behaviour and personal autonomy of a person. Moreover, by restricting the possibility of movement, patrol police officers violated the right to freedom of movement, which is guaranteed in Article 22 of the Constitution.

Thus, the applicant believes that in this particular case he was discriminated against on the ground of disability.

Claim: D.Kh. filed a complaint with a court in which he demanded that the fact of discriminatory treatment be established and moral damages be compensated in the amount of 7 000 GEL.

Outcome: The case is being heard by a lower court. The Public Defender issued a recommendation concerning this case. The Public Defender established that there was direct discrimination on the ground of disability.

G.B v. L.G.

The case concerns the termination of a rent agreement on the ground of disability.

The case was prepared by PHR.

The circumstances of the case: G.B. is a disabled child. G.B.'s mother rented a flat. The rent was covered by the Nadzaladevi Gamgeoba. When renting the flat, the owner of the flat was informed about the disability of the child. The owner did not have any objections to that. On the day that they moved into the flat, the child cried as it proved difficult for him to adjust to a new environment. This repeated on the next day. On the sixth day in the new flat, the owner told the mother that she no longer intended to listen to the child crying and would return the rent and demanded that they immediately vacate the space. When the mother refused to vacate the flat, the owner forced them to leave. Calling the child sick, the owner insisted that the sick child leave the flat.

This fact was witnessed by a close friend of the complainant, who contacted the Public Defender's Office, the media and nongovernmental organisations to get protection from the expressed aggression and discrimination. To diffuse the situation, a patrol police crew was called in too. This conflict agitated G.B. and provoked self-harming behaviour. The termination of the rent agreement on the ground of discrimination negatively impacted the health of the disabled child.

Legal reasoning: The complainant believes that her right to equality, guaranteed under Article 14 of the Constitution of Georgia and the Law of Georgia on the Elimination of All Forms of Discrimination, was violated by the termination of the rent agreement. In particular, terminating the rent agreement, signed with the complainant's mother, because G.B. has autism spectrum disorder constitutes direct discrimination. According to the Civil Procedures Code, the owner can terminate a rent agreement for a living space only on the basis of a justifiable reason. In this case, there was no justifiable reason as the owner terminated the rent agreement because of the disability of the child.

Date of application to court: 5 January 2016.

Claim: To establish discrimination and receive compensation for material and moral damages caused by the defendant.

Outcome: The lower court partially satisfied the claim. The court observed that the defendant terminated the agreement on the ground of discrimination. The court rejected the opinion that an autistic child may damage the property as a legitimate ground for different treatment. The court ordered the defendant to pay 1 000 GEL in moral damages to the complainant. This was the first case ever considered against a private person after the introduction of the anti-discriminatory mechanism in Georgia. Regarding this case, the organisation also applied to the Public Defender. The Public Defender's Office studied the circumstances of the case, established that there was discrimination and issued a recommendation to the owner of the flat.

K.N. v. Batumi Mayor's Office and the Black Sea Flora and Fauna Scientific Research Centre LLC

The case concerns the establishment of a different price for disabled persons by the Batumi Dolphinarium.

The case was prepared by PHR.

The circumstances of the case: The Batumi Dolphinarium, which belongs to the Batumi Mayor's Office, created different price schemes for people to interact with dolphins. According to information displayed on the price board, the cost of interacting with dolphins for persons above 16 years of age was 150 GEL while it was 160 GEL for persons with disabilities.

Legal reasoning: Article 14 of the Constitution of Georgia and the Law of Georgia on the Elimination of All Forms of Discrimination prohibit any discrimination and ensure equality in exercising the rights enshrined in Georgian legislation. Article 1 of the Law on the Elimination of All Forms of Discrimination lists the grounds of possible discrimination, including disability. According to Paragraph 2 of Article 5 of the UN Convention on the Rights of Persons with Disabilities, States Parties shall prohibit all discrimination on the basis of disability and guarantee to PWDs equal and effective legal protection against discrimination on all grounds. Georgia, as a state party to the UN Convention on the Rights of Persons with Disabilities shall support, protect and ensure PWDs fully enjoy all human rights and fundamental freedoms on an equal basis with others and their dignity be respected.

In the given case, by setting different rates, the state did not ensure the right of PWDs to receive service on an equal basis with others.

Date of application to court: 4 August 2015.

Claim: To establish and eliminate discrimination.

Outcome: The court fully satisfied the claim, recognising the difference in rates for PWDs as discriminatory and observing that different treatment had no reasonable justification. The defendant did not appeal the court decision and it entered into force. At present, the rates have been adjusted and are now the same.

S.K. v. Government of Georgia

The case concerns the lack of relevant public service for a disabled child as discrimination.

The case was prepared by PHR.

The circumstances of the case: S.K. is a disabled child. The country lacks rehabilitation services tailored to the child's needs and therefore, the child has to live in isolation. Since the mother of S.K., who is a single parent, has to conduct round-the-clock supervision of the child, she lost her job and the family found itself in a grave material state. The absence of relevant services places the child at risk of being permanently placed in an institution.

Date of application to court: 20 June 2016.

Legal reasoning: S.K.'s rights to health care and free development of personality, guaranteed under the Constitution of Georgia, have been violated on the ground of disability. The complainant believes that S.K.'s right to education is violated and the child is not given an opportunity to engage in public life. Moreover, isolating the child from society is infringing upon the child's dignity. Article 14 of the Constitution of Georgia and the Law of Georgia on the Elimination of All Forms of Discrimination prohibit discrimination of a person on the ground of disability. According to Paragraph 2 of Article 5 of the UN Convention on the Rights of Persons with Disabilities, States Parties shall prohibit all discrimination on the basis of disability and guarantee to PWDs equal and effective legal protection against discrimination on all grounds.

The organisation applied to the Public Defender with the request to submit an amicus brief with regard to this case.

Claim: To establish discrimination, develop a new programme and compensate moral damages sustained due to the violation of the rights to health care, education and free development of personality.

Outcome: The complaint is being considered in the court.

Citizens of Georgia (…..) v. Ministry of Labour, Health and Social Affairs

The case concerns the availability of official webpages of the Ministry of Health and the Social Service Agency for visually impaired/blind persons.

The case was prepared by EMC.

The circumstances of the case: The official webpages of the Ministry of Labour, Health and Social Affairs and the Social Service Agency are not adapted to visually impaired/blind persons. Such persons are therefore restricted from accessing these websites in contrast to those people who do not suffer from impaired vision/blindness. One of the complainants is blind while another is visually impaired. According to their explanations,

considering minor differences between the webpages, they are not adapted to their needs. According to public information provided by the defendant, however, the text and spectrum of colours of the webpages are perceivable for visually impaired. In reality, these webpages still fall short of the priority requirements of international standards (A). Special screen readers allow for the entire text to be read, but not its submenus. The defendant did not undertake corresponding measures to improve the webpage texts to make them more accessible.

Legal reasoning: The webpage of the Ministry of Labour, Health and Social Affairs is not adapted to blind/visually impaired persons thereby violating the right to equality under Article 14 of the Constitution of Georgia. Visually impaired/blind persons are restricted from accessing the mentioned website and this constitutes differential treatment. By its inaction, the defendant discriminates against the mentioned group of persons. The different treatment violates the rights to receive information, personal self-realisation, dignity, labour, health care and social security. In submitting the complaint, the complainants rely on Paragraph 2 of Article 24 of the Administrative Procedure Code, which creates a legal basis for a complaint to be filed about the fulfilment of an action by an administrative body. The complainants refer to Subparagraph A of Paragraph 3 of Article 3631 of the Civil Procedure Code, which provides the ground for a person to request termination of the discriminating action and/or elimination of the consequences of such action. With regard to complaints concerning continuous discrimination, the court shall not delimit the period stipulated by the law as complainants continue to experience the adverse effects of inaction on a daily basis.

Date of application to court: 20 June 2016.

Claim: To adapt webpages for visually impaired/blind persons and compensate moral damages.

Outcome: After the complaint had been filed, the Administrative Cases Panel of Tbilisi City Court considered the issue of jurisdiction of the case and forwarded the entire case to the Civil Cases Panel of Tbilisi City Court for consideration. The case is under consideration and the decision has not been delivered yet.

M.K. v. Taxicallcentre LLC

The case concerns the refusal to provide taxi service to a person with a disability in a wheelchair.

The case was prepared by EMC.

The circumstances of the case: For over a year (from spring 2013 to autumn 2014), M.K., who is confined to a wheelchair, was, in most cases (eight times out of 10), denied transportation services by Taxicallcentre LLC after the latter learned about his disability. In an attempt to avoid the anticipated refusal from the service provider, the complainant waited to mention his disability only after the operator received the order. In those cases, the order was either cancelled due to the lack of cars within the vicinity and a very busy schedule or the phone conversation was interrupted for no reason. When the complainant suggested that he could wait for a reasonable time (some 20-30 minutes) until a car became available, the operator always rejected this offer and the phone conversation abruptly terminated.

When moving, M.K. was always accompanied by his mother and therefore never needed additional assistance from anyone else.

Date of filing the complaint with the Public Defender: 13 March 2015.

Legal substantiation: The complainant believes that he received unfavourable treatment. In particular, during the period specified in the complaint, he was unable to use a service offered to the public, which impeded him from exercising the rights recognised by Georgian legislation, including the right to an independent life and to participation in public life, to free development of personality and to private life. The practice applied to the complainant was unfavourable compared to other persons in comparable situation (in particular, compared to any person who is not confined to a wheelchair). His unfavourable treatment was due to his disability and there was no reasonable or objective justification for his treatment.

The complainant refers to the Convention on the Rights of Persons with Disabilities and General Comment No. 2 of the Committee on the Rights of Persons with Disabilities, which, in the context of accessibility, recognises the obligation of public and private entities to provide services offered to the public without discrimination. Furthermore, the complainant notes that the form of discrimination applied to him was extremely restrictive because, given the inadaptability of transport in the city, a taxi is the only means for persons confined to a wheelchair to move and participate in public life.

Claim: The complainant requests the Public Defender to establish that the Taxicallcentre LLC continuously applied a discriminatory practice towards him and, in order to prevent similar incidents, to draw up a recommendation to Taxicallcentre LLC and a general proposal for providers of taxi services on the elimination of discrimination against PWDs.

Outcome: On 18 May 2015, employees of the Public Defender's Office visited the defendant taxi company office where they interviewed the director of the company and an operator. On 19 June 2015, the Public Defender held an oral hearing of the case. The parties received explanations about the option of settling the dispute, but the settlement did not take place. According to the Public Defender, the applicant failed to provide evidence that would prove that the taxi company discriminated against him by not providing service or forcing him to pay an unreasonably high rate for service.

Art Palace

The case concerns the possibility for PWDs to attend Paata Burchuladze's anniversary event held in the Sports Palace.

The case was prepared by EMC.

The circumstances of the case: On 12 February 2015, Paata Burchuladze's anniversary event was held in Tbilisi Sports Palace. PWDs were not able to attend. The Public Defender began to study the case at his own initiative. Based on media reports, EMC submitted a request to get involved in the case as a third party and the request was accepted. EMC submitted its opinion concerning this case.

Date of submission of the opinion to the Public Defender: 11 March 2015.

Legal reasoning: According to EMC's opinion, PWDs were discriminated against on 12 February 2015. The defendant's failure to properly render service and the restriction of complainant's basic human rights and freedoms constituted unfavourable treatment. The interference with the exercise of basic rights and freedoms took place and the following rights were violated: to access, independent life and participation in public life, participation in cultural life on an equal basis with others, free development of personality. In the given case the treatment was unfavourable as compared to that of other groups (e.g. any person not using a wheelchair). The differential treatment in this case lacked a reasonable or objective justification or legitimate aim. Moreover, the standard of accessibility was violated.

Outcome: The Public Defender agreed to EMC's arguments and issued a recommendation to Art Palace.

Discrimination on the Basis of Race and Skin Colour

Article 14 of the Constitution of Georgia explicitly prohibits discrimination on the basis of race and skin colour. Consequently, race constitutes a classical ground of discrimination. In case of differential treatment on the account of race, the Constitutional Court of Georgia will apply a 'strict scrutiny' test (a defendant has the burden of proving that the differential treatment is necessary to achieve a compelling state interest), even if the intensity of differential treatment among equals is not high.

Article 14 of the European Convention on Human Rights as well as Article 1 of Protocol 12 to the Convention prohibits discrimination on the basis of race and colour. The European Court of Human Rights (ECHR) placed a special emphasis on the area of race. In the case *Nachova and Others v. Bulgaria*, the ECHR considered racial discrimination to be a particularly alarming form of discrimination. Therefore, if differential treatment is applied on this ground, the margin of appreciation of the state is narrow. The ECHR made a distinction between racial and ethnic grounds. With regard to race, the ECHR, in the case *Sejdić and Finci v. Bosnia and Herzegovina*, stated: 'the notion of race is rooted in the idea of biological classification of human beings into subspecies on the basis of morphological features such as skin colour or facial characteristics.'

Georgia ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination on 16 April 1999. Pursuant to Subparagraph B of Paragraph 1 of Article 2 of the Convention, Georgia assumes the obligation not to sponsor, defend or support racial discrimination by any persons or organisations. Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination specifies race as one of the grounds of discrimination.

M.Ch. v. Tbilisi Public School No. 130

The case concerns the use of racist terms towards a dark-skinned pupil on the territory of the school and the lack of response by the school administration.

The case was prepared by Sapari.

The circumstances of the case: M.Ch. was a tenth grade pupil of School No. 130. She was often subject to racist oppression from classmates and other pupils of the school. A classmate called her a 'nigger.' The head teacher of M.Ch.'s class was aware of that. She made attempts to reconcile the pupils but these attempts were unsuccessful. The head teacher failed to explain to pupils the essence and harm of racism. Instead, she focused on M.Ch.'s Georgian origins and her famous ancestor. Classmates often called M.Ch. racist terms. In 2015, during a conflict, a classmate told M.Ch. to go to Africa as there was no place for her in civilisation. The conflict was witnessed by a teacher who, instead of settling the conflict, sent both pupils out of the classroom. Neither the school administration nor the teachers took measures against the fact of racial oppression. Eventually, M.Ch. was forced to leave the school as she realised that she could not continue her studies in such a hostile environment. After M.Ch.'s mother, R.A., demanded explanations from the school, the school administration focused on M.Ch.'s academic performance and denied the responsibility of the administration for the facts of oppression.

Date of application to court: 8 February 2016.

Legal reasoning: The complainant believes that she was discriminated against on the ground of race and the principle of equality guaranteed in the Constitution of Georgia was violated. Race and skin colour are specified in Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination as grounds of discrimination. This law stipulates that Georgian legislation prohibits any form of discrimination. The complainant believes that the oppression against her impeded her from exercising her right to education and that articles of the Law of Georgia on General Education were violated.

Claim: To compensate for moral damages.

Outcome: The main session was held on the case and the decision will be delivered at the following session.

Discrimination on the Ground of Citizenship

Article 14 of the Constitution of Georgia does not explicitly include citizenship as a ground of discrimination. Nevertheless, Article 14 applies to the state even when the differentiation is made on a ground that is not covered by Article 14. In case of differential treatment on the basis of citizenship, the state applies a 'strict scrutiny' test when the intensity of differential treatment is high. If persons differentiated on the basis of citizenship do not starkly differ from one another in terms of opportunities of equal participation in a legal relationship, the Constitutional Court applies a rational basis review test.

L.T. v. Tbilisi City Council

The case concerns the refusal to place a child in a programme for children with autism spectrum disorder on the ground of citizenship.

The case was prepared by PHR.

The circumstances of the case: L.T. is a disabled child suffering from autism spectrum disorder. L.T. and his family members are citizens of Azerbaijan though permanently live in Georgia and have residence permits. Moreover, L.T. is registered in Tbilisi Municipality. The child's mother applied to the health care and social service of Tbilisi Municipality with the request to place her child in the programme for rehabilitation of children with autism spectrum disorder. However, the request was denied because L.T. is not a citizen of Georgia. In particular, as of 1 July 2015, according to the city council ordinance, the programme for rehabilitation of children with autism spectrum disorder was available for citizens of Georgia between the ages of 2 and 15, who were registered in Tbilisi Municipality.

Date of application to court: 14 June 2015.

Legal reasoning: The complainant believes that the city council ordinance violates the right to equality specified in Article 14 of the Constitution of Georgia and discriminates against disabled children on the ground of citizenship. In particular, in exercising the rights specified in Georgian legislation, the ordinance puts L.T. at a disadvantage as compared to other children with autism spectrum disorder who are citizens of Georgia. The disputed norm violates L.T.'s right to health care as Article 37 of the Constitution of Georgia guarantees everyone the right to enjoy health insurance as a means of accessible medical aid. Moreover, pursuant to the Law of Georgia on the Legal Status of Aliens and Stateless Persons, foreign citizens enjoy the right to health care on an equal basis with citizens of Georgia. Consequently, Georgian legislation ensures basic rights for every person within the territory of Georgia, especially the right to health care, on an equal basis. The right to health care is also guaranteed by the UN Convention on the Rights of Persons with Disabilities. The importance of protecting children's right to health care is especially emphasised in the UN Convention on the Rights of the Child, which sets a principle of universality for children, namely, that every child, no matter where they are, shall freely enjoy all the rights and freedoms, without distinction of any kind.

Consequently, the Tbilisi City Council ordinance contains a discriminatory norm regarding citizenship.

The organisation applied to the Public Defender with the request to submit an amicus brief in regards to this case.

Claim: To establish discrimination, rescind the norm in the administrative normative act and compensate for moral damage.

Outcome: The proceeding is underway in the court.

GYLA v. City Council of Batumi Municipality

The case concerns a normative act adopted by the City Council of Batumi Municipality, establishing different entrance fees to the Botanical Garden of Batumi for Georgian citizens and foreigners.

The case was prepared by GYLA.

The circumstances of the case: According to Subparagraph A of Paragraph 1 of Decree No. 76 of the Batumi City Council on amending Decree No. 309 of the City Council, dated 23 December 2011, the entrance fee to the Botanical Garden was set at GEL three (3) for citizens of Georgia and GEL eight (8) for citizens of other countries.

Date of appeal to the Public Defender's Office: 13 March 2015.

Legal reasoning: The above-mentioned legal act is discriminatory because the differential treatment lacks objective and reasonable substantiation. In assessing differentiation, the Public Defender shall use the strict scrutiny test because the rates set for Georgian nationals and foreign nationals significantly differ and, consequently, foreigners have no opportunity to change those conditions that gave rise to differential treatment. If this tariff policy pursues the aim of increasing revenues, it cannot be qualified as a compelling state interest. Moreover, differential treatment may not meet the requirement of the rational link test if the differentiation is based on the fallacious opinion that foreigners, compared to Georgians, are better off and therefore foreigners can afford to pay a higher amount to use cultural and recreational facilities. This is a prejudicial opinion, which lacks any objective justification. Both citizens of Georgia and other countries may be better off or economically disadvantaged.

Claim: The Public Defender should send a recommendation to the City Council of Batumi Municipality regarding a partial abolition of Decree No. 76.

Outcome: On 3 April 2015, the Public Defender sent a letter to the Batumi City Council, requesting information about the specific reasons behind the establishment of differentiated rates for foreign and Georgian citizens. The recommendation was issued with regard to the case: the Public Defender fully agreed with the circumstances

specified in the complaint. The Public Defender established the direct discrimination against foreign citizens. The recommendation noted that the visibility of the garden and environmental education may be promoted among the local population through equal rates too. The Public Defender supported the recommendation with the Law of Georgia on the Elimination of All Forms of Discrimination and applied the Law on the Legal Status of Aliens and Stateless Persons and the case law of the European Court of Human Rights and the Constitutional Court. The Public Defender issued the recommendation five months after the application was submitted. In the recommendation, the Public Defender demanded that the city council amend the ordinance. The Batumi City Council sent the Public Defender a response saying that the recommendation was sent to Batumi City Hall. Batumi City Hall, in turn, promised to fulfil the recommendation. With the final administrative act, the equal rate of 8 GEL was set both for foreigners and Georgian citizens.

A.L. v. the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and the Government of Georgia

The case concerns the refusal to assess the application for the provision of housing made by an internally displaced person with dual citizenship.

The case was prepared by GYLA.

The circumstances of the case: A.L. is an internally displaced person from Abkhazia who, alongside citizenship of a foreign country, was granted Georgian citizenship. According to the rule established by the legislation, A.L. completed a special application, which is a precondition for providing permanent housing to a refugee family.

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia informed A.L. in writing that his application was not considered because he has both Georgian and foreign citizenship. On 13 March 2015, GYLA filed a complaint with the Tbilisi City Court. The defendants in the case are the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and the Government of Georgia.

Legal substantiation: Governmental Decree No. 127, dated 4 February 2015, on the approval of the 2015-2016 action plan for the implementation of the state strategy towards internally displaced persons and refugees, as well as Order No. 320 as of 2013 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia are discriminatory as they exclude individuals who are citizens of another country (as well as holders of dual citizenship) who were displaced from Georgia's occupied territories from being eligible for housing. The complainant believes that he has been discriminated against on the grounds of citizenship. The differentiations should be assessed through the strict scrutiny test because a holder of dual citizenship is completely excluded from the legal relationship. The above-mentioned governmental acts fall short of the requirement of compelling state interest as the interest to save budgetary monies, as well as the administrative difficulty of verifying whether or not this person has housing in the country of his/her second citizenship cannot be qualified as such.

Claim: To partially rescind the Governmental Decree No. 127 of 4 February 2015, to rescind the individual legal act and to compensate for moral damages in the amount of 5 000 GEL. The claim on the compensation of damage was based on the assumption that the establishment of the discrimination is a sufficient ground for the compensation of moral damage.

Outcome: After the submission of the claim, the Government of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia amended the disputed articles of the normative act. With the amendments made to the disputed normative acts, the discriminative provision was eliminated. After making amendments, the Ministry considered and assessed the application of A.L. for living space (after the assessment A.L. got an apartment). Consequently, the claims related to the elimination of discrimination were withdrawn from court. The dispute continued only on the compensation of moral damage sustained as a result of discriminatory treatment. The lower court did not satisfy the complaint. The court explained that the court cannot satisfy the claim for the compensation of moral damage as the partial rescindment of normative acts indicated in initial claims is no longer a subject of the claim. The court also noted in the decision that the existence of damage was not proven by the evidence in the case. The decision was appealed. The court of appeal did not overturn the decision of the lower court, but the reasoned decision is not available yet.

Discrimination on the Ground of Place of Residence

Georgian national legislation and the international treaties to which the country is bound prevent discrimination on the basis of place of residence.

Place of residence is not explicitly indicated among the grounds of discrimination listed in Article 14 of the Constitution of Georgia.

Although the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do not name place of residence as a ground of discrimination, the practice of supervisory bodies working in the human rights sphere under the aegis of the United Nations shows that discrimination may be exercised on the ground of place of residence. General Comment №20 of the Committee on Economic, Social and Cultural Rights (Non-discrimination in Economic, Social and Cultural Rights) reads: 'The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence.'

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination explicitly includes place of residence as a ground of discrimination.

G.Ts. v. Tbilisi Municipality's Council

The case concerns the refusal to place a child in a programme for children with autism spectrum disorder on the ground of place of registration.

The case was prepared by PHR.

The circumstances of the case: G.Ts. is a child with autism spectrum disorder. The child's father applied to the health care and social service of Tbilisi Municipality with the request to place her child in the programme for rehabilitation of children with autism spectrum disorder. However, the request was denied since, as of 1 July 2015, G.Ts. was not registered in Tbilisi Municipality. In particular, the programme for rehabilitation of children with autism spectrum disorder, which was approved by the ordinance of the Tbilisi City Council, was available for citizens of Georgia between the ages of 2 and 15, who had been registered in the territory of Tbilisi Municipality before 1 July 2015. However, G.Ts. was registered in Tbilisi since October 2015 whereas before that he lived and was registered in Kutaisi. Since such a programme was implemented in Tbilisi Municipality, the family had no other option but to move to Tbilisi.

Date of application to court: June 2016.

Legal reasoning: The complainant believes that the city council ordinance violates the right to equality specified in Article 14 of the Constitution of Georgia and discriminates against disabled children on the ground of place of registration. In particular, in exercising the rights specified in Georgian legislation, the ordinance puts G.Ts. at a disadvantage as compared to other children with autism spectrum disorder who have been registered in

Tbilisi since the specific time even though Article 37 of the Constitution of Georgia guarantees equal access to medical services to everyone. Moreover, one should also take into consideration that the special rehabilitation service for children with autism spectrum disorder is provided only in the municipalities of Tbilisi and Zugdidi. Access to health services for everyone is ensured both under national and international legislations. In particular, according to the UN Convention on the Rights of Persons with Disabilities and the national legislation, every person with a disability shall freely access relevant services throughout the country. Moreover, the registration in a concrete municipality is not required for several municipal services (for example, kindergartens), which means that there are instances when registration and, consequently, residence in Tbilisi is not a necessary requirement to receive municipal services. Therefore, the complainant believes that the criteria set by the city council contain signs of direct discrimination and unjustifiably restrict the exercise of a basic right, the right to health care, on the ground of place of registration. This is the ground to rescind the normative act.

Claim: To establish discrimination and rescind a concrete norm of administrative normative act of Tbilisi city council.

Outcome: The case is under consideration by the court.

The case of Vedzatkhevi village residents

The case concerns the alleged discrimination of residents of Vedzatkhevi village on the ground of place of residence.

The case was prepared by EMC.

The circumstances of the case: For about 10 years now, the families of Vedzatkhevi village in Dusheti District have been living in a situation that is detrimental to their lives and health because of natural disasters. The village has suffered an irreversible landslide of a complex nature. According to a geological conclusion, any counter-landslide measure to protect the village would be very costly and, at the same time, would bring no tangible results. The access road to the village is badly damaged and the village, for the majority of the year, is isolated from the rest of the world. The residences are so badly damaged that they are not fit for living. Due to the absence of a road, villagers have no access to medical institutions, pharmacies, educational institution, shops for food and essential goods, security services, cultural or social institutions or other services. The village is not supplied with natural gas whilst electricity is supplied with interruptions. As it is impossible to obtain an education and to have access to educational institutions in the village, children are sent out and parents rarely see them; consequently, parents do not participate in their upbringing.

Date of filing the complaint with the Public Defender: 24 February 2015.

Legal substantiation: Unfavourable treatment is applied to the villagers because they cannot exercise a number of rights recognised by Georgian legislation, in particular, the right to life, dignity, inviolability of privacy and family life, education, to adequate living standards and adequate housing, to health care and other rights. All this happens because of the place of residence of complainants. The differential treatment has no objective justification and therefore amounts to discrimination.

Date of appeal to the court: 24 February 2015

Claim: The complainants (10 families) applied for housing to the Regulatory Commission on the Resettlement of Families Affected by Natural Disasters and Subject to Displacement (hereinafter – the Commission). The complainants whose demand was not met (three families) applied to the Public Defender's Office with a request to establish the fact of discrimination and, in order to eliminate this discrimination, to draw up a recommendation about measures to be implemented by public entities. The Public Defender was also asked to compose a general proposal on the elimination of discrimination on the ground of place of residence against persons living in settlements isolated from the rest of the world.

Outcome: The commission provided alternative living space to six families from the village of Vedzatkhevi and one family from the village of Okruani, Dusheti district (the state will purchase for each family residential houses worth up to 20 000 GEL). In conducting the proceeding of the case and taking a decision, the Public Defender relied on materials and documentation provided in the application and took a corresponding decision. The Public Defender offered settlement to the parties, however, the case did not end in settlement. Upon the Public Defender's decision, the proceeding was terminated because discrimination against the applicants on the ground of place of residence was not established. According to the Public Defender, the basic rights of applicants were not restricted by the action of the defendant, but by a natural calamity – the landslide. Moreover, the decision of the Commission about the refusal to satisfy the applicants' request for the resettlement was based not on the place of residence but on the fact that they had alternative living space and this, in the Public Defender's view, rules out discrimination on the ground of place of residence.

V.Ch. v. Parliament of Georgia, Ministry of Labour, Health and Social Affairs

The case concerns a blanket restriction on registering in the database of socially vulnerable families for a person without a permanent place of residence.

The case was prepared by EMC.

The circumstances of the case: The complainant V.Ch. is a person who does not have a permanent place of residence and therefore cannot register in the database of socially vulnerable families and receive a subsistence allowance. The regulations indicated as disputed norms in the constitutional complaint clearly specify that only those families with permanent places of residence can be registered in the database of socially vulnerable families and receive a subsistence allowance as well as any other benefit arising from registration in the database. The disputed norms are: Paragraph Q of Article 4 and paragraphs 1 and 2 of Article 7 of the Law on Social Assistance; first sentence of Paragraph B of Article 2, Article 4, Paragraph 2 of Article 5 of Georgian Governmental Ordinance No. 126 of 24 April 2010 on Poverty Reduction and Improving Measures for Social Protection of the Population; Paragraph 1 of Article 2, Paragraph 1 of Article 5 of Georgian Governmental Ordinance No. 145 of 28 July 2006 on Social Assistance; Paragraph 1 of Article 4, Subparagraph A of Paragraph 1 of Article 3, Paragraphs 2 and 5 of Article 3, Subparagraph D of Paragraph 1 of Article 15 of Order No. 225/n of 22 August 2006 of the Minister of Labour, Health and Social Affairs of Georgia on the Approval of the Rule of Granting and Issuing Targeted Social Assistance.

Date of application to court: 26 October 2016.

Legal reasoning: The legislation regulating the registration in the common database and issuance of a subsistence allowance grants this right to only those families that have permanent places of residence. Consequently, the complainant believes that he is in a different situation as compared to an essentially equal group of persons, namely, persons who do not have permanent places of residence and are homeless or constantly change their residential places compared to those who have permanent places of residence. According to the complainant, the difference in treatment of essentially equal persons is apparent because both the families with permanent residence, who after being assessed receive sufficient rating scores to register in the database, and persons without permanent residence are equally in need of those state benefits that can be obtained only by registering in the database. The disputed norms grant these rights to only one of the mentioned groups, thus treating the complainant and persons in similar conditions differently. Differentiation is made on the ground of place of residence as the lack of a place of permanent residence constitutes the ground of different regulations towards them. This trait is a classical ground specified in the Constitution. Consequently, given the practice of the Constitutional Court, it must be tested by applying the strict scrutiny standard, which means reviewing the constitutionality of the disputed norms through a proportionality test.

The complainant believes that the legitimate aim of the restrictions specified in the disputed norms is the potential for budget savings and the difficulty of administration, but although both these causes are plausible, this argument, given the practice of the Constitutional Court, cannot be used as the only ground for the restriction of basic rights and freedoms guaranteed under the Constitution. Therefore, the complainant believes that the restriction provided in the disputed norms is not justifiable and is discriminatory. Apart from Article 14 of the Constitution, the complainant challenges the disputed norms against the rights to life and dignity and believes that it runs counter to the rights to social safety and security which can be read from Article 39 of the Constitution, as well as to the right to apply to court.

Outcome: The case is at the initial stage of constitutional proceeding and the court has yet to deliver its judgment. At this stage, the Public Defender has not yet submitted his amicus brief.

Citizen of Georgia Tamar Tandashvili v. Government of Georgia

The case concerns denying a person the opportunity to register in the database of socially vulnerable families because of the place of residence.

The case was prepared by EMC.

The circumstances of the case: Persons who broke into and occupied state property after 17 May 2013 cannot get registration in the common database of socially vulnerable families while the families that were registered before the enactment of this regulation maintain the registration. This provision is stipulated in Paragraph 5 of Article 5 of Georgian Governmental Ordinance No. 126 of 24 April 2010 on Poverty Reduction and Improving Measures for Social Protection of the Population. 'An application for the registration in the database shall not

be accepted if a seeker of registration illegally occupies a space which belongs to the state and the legal owner of this space disapproves of this fact and this disapproval has become known to the Agency through an application of the legal owner.'

Date of application to court: 3 August 2015.

Legal reasoning: Paragraph 5 of Article 5 of Georgian Governmental Ordinance No. 126, which is a disputed norm, stipulates that an application for registration in the database of socially vulnerable families shall not be accepted if an applicant illegally occupies a state-owned space and the legal owner of this space disapproves of this fact. This regulation restricts the right of persons living in state-owned property to register in the common database and thus puts them in a different situation compared to, on the one hand, those families who do not live in state-owned spaces and on the other hand, those families who do live in the state-owned property but applied to the Social Service Agency for the registration in the database before 1 June 2013. The complainant, therefore, considers this regulation to be discriminatory.

Claim: To declare the legal norm unconstitutional.

Outcome: The case is being considered by the Constitutional Court. The Public Defender submitted an amicus brief in regards to this case. The Public Defender believes that the disputed norm violates the right to equality guaranteed under Article 14 of the Constitution. The Public Defender agreed to the part of the complaint that says that the disputed norm offends the complainant's dignity and noted that the blanket restriction on the access of people to social assistance may be qualified as the restriction of the right to dignity. The Public Defender believes that the norm not only interferes in the right to receive social assistance but also totally restricts the mentioned right of the complainant and legitimate aim may justify the restriction of such intensity. The Public Defender believes that there is a logical link between an identifiable aim and a measure restricting the right.

Discrimination on the Ground of Political Opinions

The Constitution of Georgia as well as the European Convention on Human Rights considers political and other opinions to be protected rights. Like other spheres of the European Convention on Human Rights, 'political or other opinion' is also protected by virtue of freedom of expression established by Article 10 of the Convention

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination includes 'political and other opinions' as a ground of discrimination.

Shalva Gogoladze v. Akhaltsikhe Municipality's City Council

The case concerns the dismissal of a person on the ground of political views.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: The complainant is a member of the Free Democrats political association. After the leader of the Free Democrats, Irakli Alasania, on 5 November 2014, made a public statement about leaving the Georgian Dream coalition, representatives of the Georgian Dream faction of Akhaltsikhe City Council, on 18 November 2014, demanded that an ad hoc meeting be convened. The demand for the meeting was made without a compulsory justification as required under the city council regulation, in breach of imperative requirements of the regulation. The agenda of the ad hoc meeting contained only one issue – the dismissal of the complainant from his post. Despite the violations, the demand of the Georgian Dream faction members of the Akhaltsikhe City Council was satisfied and the meeting was held on 21 November 2014. With a majority of votes (10 to 5), the complainant was dismissed from his post while in December 2014, the complainant filed a complaint with the Akhaltsikhe district court alleging discrimination on political grounds.

Date of application to court: December 2014.

Legal reasoning: The complainant believes that he was discriminated against on political grounds. The Akhaltsikhe City Council dismissed him from his post in breach of procedure as it did not substantiate the necessity for convening the meeting. Moreover, the development of events in this case clearly revealed discriminatory treatment on political grounds. The only reason for his dismissal was that the political party Free Democrats left the majority and went into the opposition. It proved unacceptable for the city council's Georgian Dream faction to allow a representative of the opposition to hold a leading position. The applicant believes that such attitude contradicts the principle of equality before the law and is a discriminatory action violating his labour rights.

Claim: In December 2014, the applicant filed a complaint with the Akhaltsikhe district court. He demanded the cancellation of the decree on his dismissal, reinstatement to his position, reimbursement of back pay and, if discrimination is established, compensation for moral damages in the amount of 3 000 GEL.

Outcome: With its decision of 16 March 2015, the Akhaltsikhe district court partially satisfied Shalva Gogoladze's complaint. The court ordered the reinstatement of Shalva Gogoladze to his position and the reimbursement of back pay. The court deliberated on discrimination but did not establish it and consequently, rejected the part of the complaint concerning the claim for moral damages. The lower court decision was appealed at a higher court. The court of appeal did not satisfy the appeal, leaving the decision of the lower court in force. The courts noted that a city council is a representative body and naturally, it takes political decisions that are acceptable for one party but are unacceptable for another. The lower court emphasised that the majority could have even substantiated the dismissal of Shalva Gogoladze because of a difference in his views after moving into the opposition. The decision of the appeal court was appealed by the rule of cassation. The Supreme Court found the complaint admissible, but agreed with the reasoning of lower courts and did not consider Shalva Gogoladze's dismissal because of his membership in the political opposition to be discriminatory treatment.

Teona Chalidze v. Isani Executive Body (Gamgeoba) of Tbilisi

The case concerns the dismissal of the complainant from her job on the grounds of political opinion.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: The complainant is a supporter of the political union the United National Movement. The complainant worked as the head of Navtlughi District Department of the Isani territorial unit of Tbilisi Municipality. Because of her political opinions, the complainant, assumedly, appeared unacceptable to the new leadership of the Isani Executive Body, which took over the Executive Body after the local self-government elections in June 2014. Although the practice established in that period of dismissing civil servants by suggesting they tender their resignations voluntarily was not applied towards her, the management of the Executive Body spared no effort to create the preconditions necessary to fire her.

The complainant's job duties were increased to a degree that would be impossible to perform during the short time period specified by the management of the Executive Body. For the first failure, the management applied a disciplinary sanction against the complainant in the form of a warning. Then, on 20 October 2014, the complainant was dismissed from her job by the decree of the head of the Executive Body. The decree cited the conclusion of the municipality's internal audit and monitoring service as the grounds of dismissal, which said that the complainant grossly violated her official duties.

Date of application to court: 17 November 2014.

Legal substantiation: The complainant believes that she was discriminated against because of her political opinions and the only reason for her dismissal was her differing political opinion. In addition, the application of a disciplinary sanction against her constituted infringement on the freedom of expression because that sanction was imposed on her because of various public statements she made to media outlets about the employer's breach of rights. Consequently, it was a violation of labour rights and freedom of expression as a result of discrimination on the grounds of freedom of expression and political opinions.

Claim: On 29 October 2014, in accordance with the Law of Georgia on the Elimination of All Forms of Discrimination, the complainant applied to the Public Defender of Georgia. On 17 November 2014, she also applied to the court and demanded that the decrees on the imposition of disciplinary sanction on her and her dismissal from the job be declared null and void, she be reinstated to her position, be remunerated for the period she was absent from work and, should the allegations of discrimination be upheld, a payment of GEL 3 000 in the form of moral damages be imposed on the defendant.

Outcome: The complaint was filed with the administrative cases panel. The administrative cases panel raised the issue of jurisdiction and sent the part of the case that concerned the establishment of discrimination to the civil cases panel. The civil cases panel considered that the part of the case concerning the establishment of discrimination was incorrectly sent to it as this issue was to be considered by the administrative cases panel. The Supreme Court of Georgia assigned the jurisdiction of the establishment of discrimination and hence, compensation of moral damage to the administrative cases panel. The case is still under consideration in the lower court.

Irakli Kvaratskhelia v. Tbilisi Mayor's Office

The case concerns the dismissal of the complainant from his job on the grounds of political opinion.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: Since 5 August 2014, the complainant was subject to alleged discriminatory treatment from the new head and the deputy head of the municipal supervision service of the Tbilisi Mayor's Office, appointed after the June 2014 local self-government elections. On 18 August 2014, the same officials summoned the complainant to tell him that since he was a supporter of the political team of the United National Movement, he had to tender his resignation because Irakli Kvaratskhelia was unacceptable for the new political team. The complainant refused to do so. He was told that he would be forced to leave his position in one way or another. On 18 October 2014, via Rustavi 2 TV channel, the complainant released secret audio recordings showing the persecution and pressure on him. The complainant said in his TV comment that the Vice-Mayor of Tbilisi was leading the on-going process of dismissal of employees. On 20 October 2014, the internal audit and monitoring service of the Mayor's Office launched an inquiry into this statement and on the very next day issued a conclusion saying that the statement made against the Vice-Mayor of Tbilisi was defamation and tarnished the reputation of the Vice-Mayor of Tbilisi and Tbilisi Mayor's Office, which was a gross violation of official duties. Citing this as the ground, the complainant was dismissed from his job by the decree of the Tbilisi Mayor on 22 October 2014.

Date of appeal to the court: 20 November 2014.

Legal substantiation: The complainant believes that he was subject to discriminatory treatment and oppression on political grounds. A secret audio recording attached to the complaint, statistical information about a mass dismissal of civil servants, a public statement of the Tbilisi Mayor about the 'cleansing' of the municipality system of the majority of the personnel left over from the United National Movement, created doubt about

discriminatory action. According to the complainant, the statement he made about the Vice-Mayor constituted freedom of expression, which is protected under the Law of Georgia on Freedom of Expression. The same law protects him as a whistleblower. With his public statement, the complainant contributed to high public interest about the illegal acts of the representatives of the executive authorities. Therefore, actions undertaken against him amounted to discrimination on the ground of freedom of expression and political opinion, unjustified restriction of the freedom of expression and the breach of labour rights. On 10 November 2014, pursuant to the Law of Georgia on the Elimination of All Forms of Discrimination, the complainant applied to the Public Defender's Office, but applied to court within several days in order to keep with the period of limitation.

Claim: The decree on the dismissal of the complainant from his job be declared null and void, he be remunerated for the time during which he was absent from work and, should the allegations of discrimination be upheld, a payment of GEL 5 000 in the form of moral damages be imposed on the defendant.

Outcome: The Equality Department of the Public Defender's Office suspended the proceeding because the applicant simultaneously applied to a court. The lower court partially satisfied the complaint. Based on Paragraph 4 of Article 32 of the Administrative Procedure Code, the court, without resolving the dispute, returned the case to the city hall for a comprehensive inquiry into the circumstances of the case and issuance of a new act. The court did not establish discrimination. The decision was appealed. The court of appeal overturned the decision of the lower court and delivered a new ruling. The court ordered the defendant to pay compensation for moral damage in the amount of 500 GEL. The complainant and the defendant appealed the decision by the rule of cassation. The Supreme Court deemed the cassation appeals of the victim of discrimination and the Tbilisi city hall inadmissible.

Giorgi Khaburzania v. Tbilisi Mayor's Office

The case concerns the dismissal of a person on the ground of political views.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: Since 1 September 2009, Giorgi Khaburzania worked as a chief specialist at the Isani-Samgori district of the Inspection Department of Tbilisi Mayor's Office's supervision service. He started to work during the government of the political organisation, United National Movement. On 15 December 2014, under Ordinance No. 2323 of Tbilisi Mayor, Giorgi Khaburzania was dismissed from his job. His dismissal was preceded by discriminatory treatment and oppression against him for his political views. The grounds of oppression and discrimination were the belief and attitudes of his superiors and employer that Khaburzania was from the United National Movement team and that working with representatives of 'other teams' was unacceptable for the new management of Tbilisi Mayor's Office. Khaburzania's managers warned him that he would be prevented from passing the attestation. An official who was higher in rank and directly discriminated against Khaburzania was on the attestation commission. The victim of discrimination refused to sit the attestation and this was used as a formal ground of his dismissal.

Date of application to court: April 2015.

Legal reasoning: The applicant believes that he was discriminated against and oppressed on political grounds. The evidence of the case, including secret audio recordings, shows a high likelihood that discrimination was the motive behind his dismissal. The employer entertained an unsubstantiated opinion that people employed during the rule of the United National Movement would sabotage the new government and therefore, he dismissed the complainant from the job.

Claim: To compensate moral damages in the amount of 3 000 GEL.

Outcome: The lower court did not establish discrimination. When taking a decision on the complaint, the court treated the refusal of the complainant to sit the attestation as the central issue. The court noted that it would have been reasonable to deliberate on discrimination had the complainant passed the attestation. Since the requirements of the law regarding attestation was not formally observed, the court deemed the dismissal as a lawful act. The decision was appealed at the higher court. The court of appeal rescinded the decision of the lower court and delivered a new ruling. The Tbilisi court of appeal did not share the opinions of the lower court. The appeal panel observed that the decision on the dismissal of the complainant was preceded by discriminatory treatment. Consequently, even in case of a lawful dismissal, the dismissal from the job could not be considered lawful because the complainant was subject to discriminatory treatment before that. The court observed that the refusal to sit attestation was only a formal ground of the dismissal while the central issue for resolving the dispute was the discriminatory treatment that the appeal court deemed established. The Tbilisi Mayor's Office appealed the decision by the rule of cassation. The Supreme Court is now considering the admissibility of the complaint.

G.B. v. a Tbilisi kindergarten, a non-commercial (non-profit) legal person

The case concerns the dismissal of kindergarten directors and deputy directors on political grounds.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: The complainant G.B. worked as a deputy director in a specific kindergarten. During the former government she was an activist of the United National Movement (UNM). The 2014 local elections and the change of local self-government were followed by the change in the leadership of non-commercial (non-profit) legal person Tbilisi's Kindergarten Management Agency. After that the attitude of the employer towards the complainant sharply deteriorated. There were rumours about the elimination of the deputy director's position; attempts were also made to dismiss all deputy directors. The pressure stopped for a certain period of time but resumed shortly after with hints from the employer towards the victim of discrimination to resign of her own volition or move to a lower position. On 22 February 2016, the employer terminated a lifelong labour contract with the complainant. The reasons cited for the dismissal were: a) incompatibility of employee's qualification and professional skills with the position and b) other objective circumstances which justify the termination of the labour contract. The complainant believes that her dismissal was politically motivated. She believes that she proved unacceptable for the employer as a member of the former government's cadre, a former UNM activist and an employee with dissenting views. The complainant emphasises that Tbilisi's Kindergarten Management Agency is subordinated to the Tbilisi Mayor's Office. G.B. states that with the 2016 parliamentary elections approaching, a mass dismissal of deputy directors took place and the employer showed a bias in selecting deputy directors for dismissal.

Date of application to court: 16 March 2016.

Legal reasoning: The complainant began working at the particular kindergarten in 2008 and had a lifelong contract. The political background of the complainant and the mass dismissal of deputy directors give rise to doubts about discriminatory action. The defendant has the burden to prove that G.B.'s qualification is incompatible with the position as she held this position for several years. The complainant maintains that she was dismissed for her political views and she was treated unfavourably. She got messages suggesting she leave the position or move to a lower position. The management equated G.B. with the UNM as she had held the position since the rule of the former government.

Claim: The complainant demands the elimination of discrimination through her reinstatement to the job and reimbursement of back pay, also compensation of moral damage for discrimination on political grounds.

Outcome: The case is being considered in the lower court.

N.B. v. Tbilisi's Kindergarten Management Agency, a non-commercial (non-profit) legal person

The case concerns the dismissal of kindergarten directors and deputy directors on political grounds.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: The victim of discrimination worked as a director of a kindergarten in Tbilisi for years. On 24 December 2015, the director of the kindergarten was issued a strict reprimand for several violations. The monitoring team of the non-commercial (non-profit) legal person Tbilisi's Kindergarten Management Agency detected violations in the kindergarten again on 10 March 2016. The director was dismissed from her job on 16 March. The complainant had a lifelong contract with the employer. She held the position of director also during the rule of the former government. The employer associated her with the UNM as N.B. was a person employed during the rule of this political party.

Date of application to court: 23 June 2016.

Legal reasoning: The Kindergarten Agency is a non-commercial legal person established by the Tbilisi Mayor's Office. The complainant believes that with the 2016 parliamentary elections approaching, a mass dismissal of directors and deputy directors of kindergartens subordinated to Tbilisi's Kindergarten Management Agency began. In the complainant's view, the employer is making efforts to replace incumbent directors and deputy directors with the supporters of the ruling political team in order to use them in the pre-election and election periods for political aims. The complainant believes that the on-going events and obtained statistical data create reasonable doubt that subjective, discriminatory attitudes are being applied in dismissing directors on political grounds. The complainant considers the decree on her dismissal unsubstantiated and believes that the real cause of her dismissal is that she worked during the previous government. Seeking out violations through monitoring pursued the aim of dismissing N.D. as an affiliate of a different political party unacceptable to the employer, and camouflaging a discriminatory action so as to create an impression of a legitimate ground for her dismissal. The

violations detected by the monitoring were not of an important nature that would necessitate the dismissal of the director. The employer found it unacceptable to have a person, associated with the undesirable political team (UNM), hold a leading position. The complainant believes that this creates reasonable doubt about discriminatory action and points to the shift of burden of proof. The defendant shall prove that the violations detected in the work of N.B. were of an essential nature. Tbilisi's Kindergarten Management Agency shall prove that N.B. was directly responsible for the violations detected by the monitoring service.

Claim: To eliminate the consequences of discrimination and compensate for material and moral damages.

Outcome: The case is under consideration by the lower court.

F.Ch. v. Tbilisi's Kindergarten Management Agency, a non-commercial (non-profit) legal person

The case concerns the dismissal of kindergarten directors and deputy directors on political grounds.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: F.Ch. worked at a kindergarten in Tbilisi since 2007. On 15 June 2015, the monitoring service of the non-commercial (non-profit) legal person Kindergarten Management Agency detected violations. The director was issued a reprimand. According to the conclusion of the monitoring, the director was advised to terminate the labour contract with the head of the logistics department. Instead of dismissing her, the kindergarten director issued a reprimand to the head of logistics as a less strict measure of liability. After that, the director was dismissed from her position on 9 October 2015.

Date of application to court: 11 July 2015.

Legal reasoning: The complainant believes that the employer was trying to replace the incumbent director and deputy director with supporters of the ruling political team in order to use them in pre-election and election period for political aims. Although F.Ch. is not an obvious supporter of the UNM, the employer associated her with the UNM because she held her position since the rule of the former government. The complainant expresses doubt that the employer found it unacceptable to have a person associated with the undesirable political team (UNM) hold a leading position. The complainant believes that the decree on her dismissal was unfounded. She also believes that violations identified in the conclusion of the monitoring are of an insignificant nature and were merely used to conceal the real motive behind the dismissal.

Claim: To eliminate the consequences of discrimination (reinstate her position and compensate for back pay) and compensate her for moral damages sustained due to discrimination on political grounds.

Outcome: The case is under consideration by the lower court.

Nino Andriadze v. Tbilisi Mayor's Office

The case concerns the dismissal from the job on political grounds.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: Nino Andriadze began working at the Tbilisi Mayor's Office during the government of the UNM. In 2014, after the local self-government elections, the department where Nino Andriadze worked was reorganised: it was divided into three parts and as a result a new organizational structure was drawn up. Nino Andriadze and other employees were summoned and offered to continue work as acting personnel at lower positions. Nino Andriadze turned down the offer and was subsequently dismissed from her position on the ground that the total number of personnel was being reduced. It must be noted that the reorganisation, in fact, led to an increase in the number of personnel.

Date of application to court: November 2014.

Legal reasoning: Nino Andriadze is a supporter of the UNM and worked at the Tbilisi Mayor's Office during the rule of the UNM. The complainant questions the proportionate use of the right to dismiss an employee by the employer and raises concerns about the selective approach. The evidence in the case (including audio recording, various documents that have legal flaws, et cetera) creates reasonable doubt that her treatment was politically motivated and discriminatory.

Claim: To reinstate her position, compensate for back pay, and compensate for moral damage caused by discriminatory treatment.

Outcome: The complaint was filed with the administrative panel. The administrative panel raised the issue of jurisdiction and sent the part of the case that concerns the establishment of discrimination to the civil cases panel. The civil cases panel denied the case as being incorrectly sent. At present, the issue of jurisdiction is being considered by the Supreme Court.

The lower court partially satisfied the complaint. Without resolving the dispute and for a comprehensive inquiry into the circumstances of the case and issuance of a new act, the lower court returned the case to the Mayor's Office. The decision of the lower court was appealed both by the complainant and the defendant. The court of appeal shared the opinion of the lower court, leaving the decision unchanged. The complainant appealed the decision by the rule of cassation. The cassation complaint is now being considered for its admissibility.

T.U. v. Tbilisi kindergarten, non-commercial (non-profit) legal person

The case concerns discrimination on freedom of expression and political grounds.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: The victim of discrimination worked as a deputy director of a kindergarten in Tbilisi since 2008. On 19 May 2016, the employer terminated her lifelong labour contract without any substantiation. The decree on her dismissal states the reason: 'other objective circumstance which justifies the termination of labour contract.' The victim noted there was significant pressure put on deputy directors of kindergartens in January 2015. In particular, directors were summoned to the Kindergarten Management Agency and instructed to fire deputy directors. The reason, as cited, was that these were partisan positions and deputy directors had to tender their resignation upon 'their own volition. The victim of discrimination was told several times that she was to tender resignation, but she disobeyed. However, having returned to her job after being ill which was confirmed by a medical certificate, she found the order on her dismissal. Shortly thereafter an activist and supporter of the Georgian Dream was appointed to this position. The victim of discrimination had been a UNM activist during the former government. She has a card of UNM membership. She believes that the motive behind her dismissal is her political affiliation.

Date of application to court: 17 January 2016.

Legal reasoning: The change in local government following the 2014 local elections led to the change in the leadership of the kindergarten agency. The complainant was told several times to tender her resignation. Then her labour contract was terminated without any substantiation. The complainant notes that she was treated unfavourably. The employer cites the violation of work ethics as the official ground for her dismissal, but fails to substantiate how this violation manifested. This creates reasonable doubt that the employer's action was discriminatory. The complainant had held this position since the previous government. The complainant emphasises the fact that she was a UNM activist for years and after her dismissal a Georgian Dream activist was appointed to her position. The employer fired a politically undesirable employee and upon her dismissal appointed a supporter of the ruling political force, which shows that the treatment was discriminatory. A recent practice of mass dismissal of directors and deputy directors of kindergartens subordinated to the non-commercial (non-profit) legal person Tbilisi's Kindergarten Management Agency as well as statistical data on the dismissal of tens of directors and deputy directors within the short period of time gives rise to a reasonable doubt about discriminatory action.

Claim: Reinstatement to the position; reimbursement of back pay; compensation of moral damage.

Outcome: The case is being considered by the lower court.

T.M. v. Hermesi LLC

The case concerns discrimination on the ground of freedom of expression.

The case was prepared by Article 42 of the Constitution.

The circumstances of the case: In 2015, employees of Hermesi LLC received quarterly bonuses in the amount of 70% of the wage. The bonus amount was determined by a decision of the management of the enterprise. On one occasion a smaller than usual amount was transferred incorrectly. The enterprise apologised to its employees for this mistake and reimbursed the shortfall when transferring bonuses for the next quarter. Such an incident happened later again. This raised questions among employees. The victim of discrimination enquired with the management whether the mistake occurred again. For this enquiry, the victim was subject to oppression (talking at high pitch, shouting, banging a hand on the table). The employer told him that his question about the decrease in bonuses almost triggered a revolt from employees. Shortly after this incident the victim of discrimination was dismissed from his position on the ground of 'other objective circumstance.' The employer explained that the dismissal of the victim was caused by the decrease in the volume of work at the enterprise. However, the workforce at the enterprise was not downsized in accordance with the procedure established by the law.

The victim of discrimination was dismissed from the job so that his vacancy remained open.

Date of application to court: 28 September 2016.

Legal reasoning: The complainant believes that he was discriminated against on the ground of freedom of expression. This is the motive that is behind his dismissal. He believes this because the order on his dismissal is not substantiated and the workforce was reduced without any necessity for doing so.

Claim: To eliminate discrimination and compensate for moral and material damages.

Discrimination on the Grounds of Sexual Orientation and Gender

The Constitutional Court of Georgia explained that Article 14 of the Constitution protects a person against discrimination on the basis of sexual orientation.

Articles 1 and 2 of the Law of Georgia on the Elimination of All Forms of Discrimination prohibit the treatment of a person on any ground, including that of sexual orientation, in his/her enjoyment of the rights provided by the legislation of Georgia, which puts a person in an unfavourable situation, unless such treatment serves the statutory purpose, has an objective and reasonable justification, and is necessary in a democratic society, while the means used are proportionate to the purpose pursued. Otherwise, such treatment will constitute discrimination. Paragraph 6 of the same article states that discrimination may exist regardless of whether a person actually has any of the characteristics defined in Article 1.

Discriminatory treatment towards a gay couple at the nightclub

The case concerns the forced removal of a gay couple from a nightclub and the refusal to serve them there.

The case was prepared by Human Rights Education and Monitoring Centre.

The circumstances of the case: At a nightclub a gay couple kissed each other. About 15-20 minutes after the kiss, they were approached by two security guards of the club who forced them out of the club while using homophobic terms. The victim of discrimination applied to the Public Defender, familiarised him with the circumstances of the case and in order to timely obtain evidence (video recordings) before the submission of a comprehensive application on the case, asked the Public Defender to get in touch with the administration of the nightclub and investigate the incident. In parallel to informing the Public Defender, an investigation was launched under Article 125 (Battery) of the Criminal Code by the 6th department of Interior Ministry's Main Police Division of Ajara Autonomous Republic, which was later terminated on the ground of absence of action significant for criminal law purposes. However, an administrative misdemeanour was established and one of the security guards was fined 100 GEL for committing an offense specified in Article 166 (Disorderly Conduct) of the Code of Administrative Offence.

Despite the penalisation of the security guard, the Public Defender continued studying the case. Case-related video recordings were not obtained because of the very short storage period of such recordings, according to the administration of the club. However, the club administration provided the Public Defender with an oral explanation in which it did not deny the incident.

Date of application to the Public Defender: 22 August 2016.

Legal reasoning: The complainants believe that the factual circumstances corroborate the allegation of discrimination on the ground of sexual orientation, which is prohibited under the Law of Georgia on the Elimination of All Forms of Discrimination.

Claim: To establish discrimination and issue relevant recommendation to the nightclub.

Outcome: Based on the Law of Georgia on the Elimination of All Forms of Discrimination, the Public Defender of Georgia established discrimination against the complainants on the ground of sexual orientation and issued a relevant recommendation to the administration of Sector 26, which calls on the club administration to offer access to publicly supplied services to everyone regardless of their sexual orientation and/or other traits.

Discrimination against the personnel of the vegan café Kiwi

The case concerns discrimination against the personnel of the café Kiwi on the ground of different views.

The case was prepared by EMC.

The circumstances of the case: In May 2016, there was an incident committed by a neo-Nazi group against the personnel of café Kiwi because of the latter's different attitudes and appearances. This incident caused dissatisfaction among neighbours and led to the conflict with the personnel. The owner of the café blamed the Kiwi personnel for triggering the conflict. After that, the owner of the space housing the café unilaterally terminated the rent agreement with the Kiwi initiative group on the ground of non-normative appearance and non-heteronormative sexual orientation by association. On behalf of the activists of the café, EMC applied to the Public Defender with the request to establish discrimination.

Date of application to the Public Defender: 27 July 2016.

Legal reasoning: The circumstances of the case, namely, the explanations of the complainants and other evidence in the case, including photos and audio recordings of talks with the owner of the space, indicated that the owner terminated the agreement on the ground of intolerance of the personnel's different views and sexual orientation by association. The complainants noted that the owner did not have a plausible reason, as envisaged in Article 526 of the Civil Code of Georgia, to terminate the contract; his treatment of the personnel constituted direct discrimination under the Law of Georgia on the Elimination of All Forms of Discrimination. The Public Defender addressed the owner of the space and received explanations from him concerning the circumstances of the case within the period of one month; the owner denied the discrimination and justified the termination of the agreement as a right granted by the law. With regard to the owner's position, EMC submitted its own opinion and emphasised once again the circumstances that showed that the owner committed discrimination.

Outcome: Prior to the submission of the application on discriminatory treatment, EMC applied to the Public Defender and requested, within the scope of mediation envisaged in the Law of Georgia on the Elimination of All Forms of Discrimination, to communicate with the owner and postpone the termination of the rent agreement. This issue was solved positively through communication between the representative of the owner and the representative of the Public Defender, though later, the owner, nevertheless, terminated the rent agreement. Consequently, the case is being now studied by the Public Defender.

Discriminatory advertisement of CCloan

The case concerns the enhancement of stereotype against transgender persons.

The case was prepared by Sapari.

The circumstances of the case: Georgian TV channels air a derisory and unethical advertisement of the company CCloan, which infringes on the dignity of transgender persons and sex workers, stigmatises and discriminates them. The CCloan advertisement features a sort of red light district with sex workers, including a crossdresser (a man dressed in women's clothes) that might be implying a transgender sex worker. One can hear shouts from a car: 'Hi, hookers!' The crossdresser receives a phone call from her mother who asks her to bring bread home. The advertisement ends with sex workers running away at the sound of a police siren.

Legal reasoning: Society, the police and family often stigmatise sex workers. This leads to their isolation from society. The practice shows that sex workers often become victims of physical and verbal abuse. As regards transgender sex workers, they experience twofold oppression both because of their gender identity and for being sex workers. Clients of transgender sex workers often do not pay them and instead beat, rape and rob them. They are especially vulnerable to sexually transmitted infections. Because of stigma, sex workers have problems receiving medical services. Portraying transgender persons as comical characters, ridiculing their problems and calling them names containing stigma ('Hi, hookers!') violate the right to equality guaranteed under Article 14 of the Constitution and discriminate on the ground of gender identity which is specified in Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination. The complainant applied to the Georgian National Communications Commission (GNCC) as well as to the Public Defender of Georgia.

Claim: To GNCC: to stop the broadcast of CCloan advertisement as an improper advertisement. To Public Defender: to make CCloan eliminate discrimination, in particular, to stop using the advertisement discriminating against transgender persons and sex workers both on TV and the Internet.

Outcome: The Public Defender issued a general proposal and confirmed that the CCloan advertisement contains stereotypes and encourages discrimination.

Shota Kiknadze (a pseudonym) v. Ministry of Internal Affairs of Georgia, Mental Department of Otar Ghudushauri Clinic and a Taxi Driver

The case concerns the ill treatment of an MSM (man who has sex with men) sex worker by the patrol police, medical workers, a police department investigator and a taxi driver.

The case was prepared by Identoba.

The circumstances of the case: At about 2 a.m. on 12 October 2014, Shota Kiknadze, who is a transgender woman and a sex worker, was in the territory of the Circus near Heroes' Square in Tbilisi. This is a territory where sex workers gather. This territory is also known as a place for gay, bisexual, transgender and MSM rep-

resentatives to socialise. A patrol police vehicle stopped near Shota Kiknadze. Patrol police officers demanded from Shota Kiknadze that she leave the territory or risk being penalised for an administrative offence if she disobeys the order. The organisation Identoba carried out a qualitative study on the situation of the rights of MSM sex workers. The study showed that the restriction of movement of sex workers by patrol police officers has become systemic since the summer of 2014. Identoba believes that the measures applied by the patrol police against sex workers do not serve any legitimate aim. Even if such an aim exists, the restrictive measures applied by police are hardly proportionate to the achievement of this aim.

Shota Kiknadze refused to leave the territory. The patrol police responded by verbally abusing her, which manifested in homophobic statements. One of law enforcement officers told Shota Kiknadze in an aggressive manner: 'There is no place for faggots here!' Due to the emotional stress, Shota Kiknadze felt bad and called for emergency medical service. Employees of the emergency medical service gave a tranquilizer to Shota Kiknadze. A doctor from the emergency service said in the presence of Shota Kiknadze to other doctors and police officers: 'Look how ugly she is! You can't tell whether this is a man or a woman.'

Upon the request of law enforcement officers, the ambulance took Shota Kiknadze to the mental department of Otar Ghudushauri clinic, where Shota Kiknadze was asked to sign a document of consent for administering treatment, which she refused to do. After that, a medical worker rudely grabbed Shota Kiknadze by her clothes, forced her to the main exit of the department and kicked her out. To report this incident, Shota Kiknadze immediately called 112 and asked for the patrol police. She recounted the incident to the law enforcement officer who arrived at the scene and did the same in the 1st precinct of the Didube-Chughureti Police Department. After leaving the police building, Shota Kiknadze and an Identoba employee who was accompanying her, hailed a taxi. Shota Kiknadze negotiated the fare to the destination point with the taxi driver. The Identoba employee took a back seat whilst Shota Kiknadze intended to take the front seat, next to the driver. The driver noticed that Shota Kiknadze was a biological male dress as a female. After that the driver said that he was not going anywhere unless the passengers got out. The passengers obeyed the demand of the taxi driver.

Date of application to the Public Defender: 18 October 2014.

Legal substantiation: According to Paragraph 1 of Article 22 of the Constitution of Georgia, 'everyone legally within the territory of Georgia shall, within the territory of the country, have the right to liberty of movement,' which also means that everyone has the right to freely move in public places. According to Paragraph 2 of Article 17 of the Constitution, treatment infringing upon honour and dignity shall be impermissible. Article 3 of the European Convention on Human Rights and Fundamental Freedoms also prohibits degrading treatment. The nature of this prohibition is absolute: there is no ground for permitting such treatment. Paragraph G of Article 18 of the Law of Georgia on Police states that to prevent a threat to or violation of public security and legal order, the police, within the scope of their authority, can demand that a person leave a place and prohibit entry to a certain territory. Article 25 of the same law defines the limits of the authority of the police. When imposed, the restriction shall last only until the threat has been eliminated.

Claim: On 18 October 2014, Shota Kiknadze applied to the Public Defender to study the indicated circumstances and react accordingly. On 2 February 2014, the organisation Identoba became involved officially in the proceeding of the case and further specified Shota Kiknadze's demands and the legal grounds of those demands.

Outcome: On 15 October 2014, the Gender Equality Department of the Public Defender's Office requested from the Patrol Police Department of the Interior Ministry to explain the purpose of the actions undertaken by law enforcement officers against sex workers in the territory adjacent to the Circus, in particular, the restriction of their movement and the protection of the rights of sexual minorities. The request also asked that information to the about decisions taken and measures implemented by law enforcement agencies to avoid homophobic attitudes be provided to the Public Defender's Office.

Through a letter received from the Patrol Police Department of the Interior Ministry on 1 October 2014, the Public Defender was informed that the Patrol Police Department of the Interior Ministry, in accordance with the law, regularly undertook preventive measures in risk-prone districts of Tbilisi, including the territory adjacent to the Circus. According to the same letter, within the scope of the measures to be undertaken against homophobic attitudes, the Academy of the Ministry of Internal Affairs has been retraining patrol inspectors since 9 July 2014.

On 7 February 2015, the Gender Equality Department of the Public Defender's Office also requested information from the 1st precinct of the Didube-Chughureti Police Department and received the response on 5 March 2015. According to the response, the police and employees of emergency medical service assisted Shota Kiknadze; in particular, Shota Kiknadze was taken from the territory adjacent to the Circus to the mental department of the Ghudushauri hospital, where he was offered medical service. Shota Kiknadze rejected this offer. According to the letter from the Interior Ministry, the protocol of the interview with a nurse did not prove ill treatment of Shota Kiknadze, because the nurse, who was named by Shota Kiknadze, denied kicking him. On 18 March 2015, the Equality Department of the Public Defender's Office sent a letter to the 1st precinct of the Didube-Chughureti Police Department and requested the materials in the case, including the interview protocols.

The Equality Department of the Public Defender's Office terminated the proceeding on the application because in the letter of 23 April 2015 the Interior Ministry said that the General Inspection of the Interior Ministry studied the case and found that there was no administrative misdemeanour on the part of the Interior Ministry officers. Moreover, Shota Kiknadze did not arrive either at the General Inspection of the Interior Ministry or the Equality Department of the Public Defender's Office and did not provide materials and evidence which would help detect signs of administrative misdemeanour.

Discrimination on the Ground of Gender

Discrimination based upon sex or gender is unacceptable according to both Georgian legislation and international agreements to which Georgia is bound.

Article 14 of the Constitution of Georgia explicitly refers to sex as a basis of discrimination. It can be said that sex constitutes a classical ground of discrimination. The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women specifically concerns discrimination on the basis of sex.

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination includes sex as one of the grounds of discrimination. The EU Charter of Fundamental Rights pays a substantial amount of attention to discrimination on the basis of sex.

The Union Sapari v. Tabula TV Company; sushi placed on the female body in the TV programme Restaurant

The case concerns featuring an object placed on the female body in a promotional advertisement and discrimination on the grounds of gender.

The case was prepared by Sapari.

The circumstances of the case: In April 2014, a promotional advertisement for the upcoming Restaurant programme was aired by Tabula TV Company, which featured for half a minute a food product placed on a naked female body.

Date of application to the Public Defender: October 2014.

Legal substantiation of the case: Paragraph 1 of Article 2 of the Law of Georgia on the Elimination of All Forms of Discrimination states that 'Direct discrimination is the kind of treatment or creating the conditions when one person is treated less favourably than another person in a comparable situation on any grounds specified in Article 1 of this law… in the enjoyment of the rights provided for by the legislation of Georgia.' Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field. It is important to take into account the international experience concerning the stereotyped roles of women. In 1995, the Conference on the Protection of Women's Rights adopted the so-called Beijing Platform for Action, which requires that media ensure non-stereotyped portrayals of women; refrain from presenting women as merely sexual objects; and support measures prohibiting sexist advertisements. In 2002, the Parliamentary Assembly of the Council of Europe adopted a document called The Image of Women in the Media, which notes that media frequently portray women as sex objects or associate them with family life, which is a source of gender discrimination and stereotyping.

Claim: The complainant demands that the Public Defender recognise the promotional advertisement for the Restaurant programme aired on Tabula TV as a discriminatory and sexist product.

Outcome: The Public Defender applied to the Tabula TV Company and asked whether the TV company intends to remove the advertisement from the Internet since such advertisements may strengthen existing stereotypes about women and encourage discrimination on the ground of sex. Tabula TV Company responded that it 'disagrees with the Public Defender's assessment that the promo of the programme Restaurant strengthens stereotypes and encourages discrimination on the ground of sex.'

T.S. v. Sh.R.

The case concerns an employee's sexual harassment by the employer.

The case was prepared by Sapari.

The circumstances of the case: T.S. worked at a company producing a satirical programme for TV broadcasting. T.S. performed the function of actress. Sh.R. was a line manager of T.S. Over the years, T.S. experienced both the physical and verbal forms of sexual harassment from Sh.R. who made derogatory and humiliating comments about the appearance, dressing style, age, sex and personal life of the complainant. This formed a hostile environment for the employee. At the end of the day, Sh.R. offered T.S. to have sex with him in exchange for career advancement and protection. This offer was very humiliating for T.S. and she decided to resign. When discussing the issue of resignation, Sh.R. promised the complainant to stop harassing her. To protect herself against the harassment, T.S. recorded that conversation on a mobile phone. Despite Sh.R.'s promise, the working environment continued to be hostile and T.S. complained about that to him. The defendant told T.S. that by rejecting his offer, T.S. lost favour with Sh.R. and now she was to deal with problems that emerged at work by herself. After the sexual harassment continued, T.S. quit her job.

Date of application to the court: 30 June 2016.

Legal reasoning: The complainant believes that the sexual harassment she suffered constituted discrimination on the grounds of sex and refers to Article 14 of the Constitution of Georgia and Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination. The complainant explains that the Law on the Elimination of All Forms of Discrimination applies to actions of a physical person in all spheres. The complainant refers to a norm in the Law of Georgia on Gender Equality, which focuses on sexual harassment at the workplace and prohibits it. The complainant relies on the norms of the Labour Code, which identifies two types of discrimination in labour relations: violation of equality and harassment. The complainant emphasises the undesirable and grave nature of the action.

Claim: T.S. demands the compensation of material and moral damages sustained due to discrimination against her – sexual harassment.

Outcome: T.S.'s complaint has been admitted for consideration; a court sitting has not been scheduled yet. The complainant applied to the Public Defender with the request to submit an amicus brief.

Examining the constitutionality of the absence of the right to parental leave for men

The case concerns the existence of the right to parental leave for men and the issue of reimbursement of the leave.

The case was prepared by EMC.

The circumstances of the case: The provision establishing the right to parental leave is ambiguous in the Labour Code because men are not the subjects eligible to use this right. The provision leaves room for interpretation. The decrees of the Minister of Health of 25 August 2006 and 25 September 2007, however, exclude men altogether from the category of persons eligible to reimbursement for the leave from the state. The right to parental leave and reimbursement thereof are enjoyed by biological mothers and adopted fathers.

Legal reasoning: The complainant argues that the term 'employee' provided in Paragraph 1 of Article 27 of the Labour Code, who in the given case has the right to parental leave, must be defined in accordance with its content; in the present wording, this term does not include men or, at least, the norm leaves room for interpretation. The Labour Code of Georgia as well as the Decree No. 231 of the Minister of Labour, Health and Social Affairs defines a rule which, on the one hand, is ambiguous about the right of men, biological fathers, to take a parental leave and on the other hand, excludes the right of men to receive reimbursement for the mentioned leave. The complainant asserts that men do not have the right to parental leave. At the same time, an adoptive father has the right to use parental leave. Consequently, the complainant believes that biological fathers are, on the one hand, in a different situation compared to biological mothers and on the other hand, in a worse situation compared to adoptive fathers.

Claim: To declare unconstitutional Paragraph 1 of Article 27, Articles 28 and 29 of the Labour Code; First sentence of Article 6 and Paragraph 6 of Article 10 of Decree No. 231 of the Minister of Labour, Health and Social Affairs, dated 25 August 2006, on the Approval of the Rule of Remuneration of Maternity, Child Care, and Newborn Adoption Leaves of Absence; Paragraph 6 of Article 6 of Decree No. 281/n of the Minister of Labour, Health and Social Affairs, dated 25 September 2007, on the Rule of Conducting Expertise on Temporary Incapacity for Work and Issuing Sick Leave Certificate against Article 14, Paragraph 1 of Article 30, Paragraphs 1 and 2 of Article 36 of the Constitution of Georgia.

Outcome: A constitutional complaint has been filed. The constitutional proceeding on the case is at an initial stage. At this stage, an amicus brief as regards this case has not been submitted by the Public Defender.

T.T. v. Ministry of Internal Affairs of Georgia

The case concerns the gender discrimination of the victim of domestic violence by police.

The case was prepared by Sapari.

The circumstances of the case: T.T.'s daughter, M.Ts., lived with her boyfriend L.M. since 2013. During their joint life L.M. regularly abused M.Ts. both verbally and physically. The first call to 112 was made in April 2014. According to the protocol, M.Ts. said that she was verbally abused and threatened with being murdered. The next call was made on 22 September 2014, when M.Ts. said that she was physically and verbally abused though the physical abuse was not stated in the protocol. After this incident, M.Ts. left her boyfriend's house, but she continued receiving threats from him in the form of phone messages as well as in person. The former boyfriend threatened to set her car on fire; this threat was made from the street and others heard it too. Several days later L.M. even ambushed M.Ts. near her house. A stranger standing nearby helped her. Colleagues of M.Ts. spotted L.M. near her workplace. On the eve of her killing, L.M. chased her by taxi, making dangerous manoeuvres. M.Ts. made applications to the police asking for help. The response of the police was that they would be able to help her only in case of physical abuse but were helpless in case of verbal abuse and threats. The only response on the part of police was that they demanded from L.M. a written promise not to repeat such behaviour. However, a written promise is not a measure envisaged under the law and has no legal power. On 17 October 2015, L.M. went to M.Ts.'s workplace, shot her to death and then killed himself.

Date of application to the court: 7 August 2015.

Legal reasoning: Referring to the obligations of police officers specified in the Law of Georgia on Domestic Violence and the rule of issuance of restriction order defined in the General Administrative Code, the complainant believes that the Ministry of Internal Affairs (MIA) failed to fulfil its obligations and this constitutes the ground for liability of an administrative body specified in the General Administrative Code. The complainant notes that police officers violated the principle of equality guaranteed by the Constitution of Georgia and the Code of Ethics of the Police. The complainant states that the police discriminated against M.Ts. on the ground of gender. The police officers violated Article 2 (the right to life) and Article 14 of European Convention, which prohibit discrimination. Moreover, the Convention on the Elimination of All Forms of Discrimination against Women, which Georgia ratified, was also violated.

Claim: To compensate moral and material damages sustained because of failure of police officers to perform their duties and of discrimination on their part.

Discrimination on the Ground of Property Status

Discrimination on the ground of property status is clearly prohibited under Article 14 of the Constitution of Georgia. Consequently, property is a classical ground. Discrimination on the ground of property status must be examined by applying strict scrutiny (the defendant must prove that differentiation serves a compelling governmental interest) even if the intensity of different treatment towards essentially equal ones is not significant.

Article 14 of the European Convention and Protocol 12 to the Convention prohibits discrimination on the ground of property status.

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination explicitly states property status as a ground.

K.N. v. Tbilisi Municipality City Council and Tbilisi Mayor's Office

The case concerns discriminatory regulation of car parking lot for PWDs.

The case was prepared by PHR.

The circumstances of the case: K.N. is a person with a disability. On 4 December 2015, a friend who was carrying the complainant in a car, parked the car in a special parking place for PWDs. In order to make the motive of parking on this place identifiable for a representative of CT Park LLC, K.N. placed a certificate of PWD on the front window of the car. Nevertheless, a representative of CT Park LLC issued a parking penalty notice for the car of the complainant's friend and towed the car away, pursuant to Paragraph 6 of Article 125(2) of the Administrative Offences Code of Georgia. The ground of penalty was the rule approved by the decision No. 9-48 of the city council, which excludes the right of PWDs to use special parking places designated for them if they do not own the car and have not applied for permits to a relevant service of the Tbilisi Mayor's Office. Since K.N. does not have a car, he could not apply for a permit to the Tbilisi Mayor's Office. Therefore, because of the absence of such a permit, the complainant and his friend were considered ineligible persons for using the parking place. Due to his health condition, K.N. is not recommended to stand on his feet over a long period of time, however, since the car was towed away, he had to stand on his feet for 40 minutes.

Date of application to the court: 14 December 2015.

Legal reasoning: According to Article 4.2 of the General Administrative Code of Georgia, impeding or restricting the exercise of rights and freedoms or legal interests of any party to the administrative-legal relation, as well as granting any privileges not provided for in the legislation to, or taking discriminatory measures against, any party shall not be permitted. Moreover, the Law of Georgia on the Elimination of All Forms of Discrimination prohibits direct and indirect discrimination of a person on the ground of property status. In the given case a material lawfulness of a normative administrative-legal act was violated. It is not compliant with the legal act on the basis of which it was issued, namely with the Law of Georgia on Traffic. Subparagraph A of Article 19.2

of the mentioned law speaks to the issuance of identifiable marking in two instances – on vehicles operated by PWDs themselves or vehicles which are used to transport such persons. Moreover, in contrast to the decision of the Tbilisi City Council, the law does not specify the criterion of ownership of a vehicle as a necessary condition for obtaining identifiable marking. Consequently, such a regulation of the city council constituted direct discrimination on the ground of property status because it flatly ruled out the use of special parking places by those PWDs who do not own vehicles themselves. Those PWDs who are transported with the help of others or in a taxi, are not able to use special parking places. The existing wording of the normative administrative legal act also runs counter to the Law of Georgia on Social Protection of Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities which obligate the member states to introduce such regulations that contribute to the independent life of PWDs.

Claim: To abolish the disputed norms of the normative administrative legal act; regulate the issue in a non-discriminatory fashion; compensate for moral damages.

Outcome: The Tbilisi city court partially satisfied the claim, rescinding the concrete regulations of the act and instructing the Tbilisi Municipality city council to develop a new, non-discriminatory regulation. The Tbilisi city court's decision was appealed by the Tbilisi Municipality city council but the court of appeal left the decision of the lower court in force.

Discrimination on the Ground of Health

Although the list provided in Article 14 of the Constitution of Georgia does not include health, Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination specifies health as a ground of discrimination.

T.G. v. Ministry of Education and Science

The case concerns the use of discriminatory terms in textbooks approved by the Education Ministry.

The case was prepared by Sapari.

The circumstances of the case: The biology textbook for the 8th grade, approved by the Ministry of Education and Science of Georgia, contains discriminatory terms, phrases and reasoning concerning HIV, AIDS and drug dependence. The biology textbook (Malkhaz Makashvili, Rusudan Akhvlediani, Klio publishing house, Meridiani publishing house, 2012) was approved in 2012 by LEPL National Centre For Educational Quality Enhancement of the Ministry of Education and Science. The textbook refers to drug-dependent persons as 'druggies' (pp. 45-48); chapter 2.13 of the textbook opens with a phrase of Patriarch of Georgia that drug addiction is a shame; a question is then asked: 'How do you understand the phrase of Ilia II? Think, why may a drug abuser become dangerous for society?' (p. 45); drug abusers often use syringes already used by others and face a threat of developing AIDS and Hepatitis C (p. 47); the textbook includes a photo of drug abuser suffering from AIDS (p. 48); the textbook says that AIDS may be transmitted to a person through sexual intercourse with a HIV-infected person (p. 47); the terms AIDS and HIV infection are used as synonyms (pp. 46-48).

Date of application to the Public Defender: 7 August 2016.

Legal reasoning: The rights of HIV-infected and drug-dependent persons to free development of personality and dignity, guaranteed by the Constitution, are violated. HIV-infected and substance-dependent persons are not allowed to enjoy these rights in breach of the principle of equality specified in Article 14 of the Constitution of Georgia. The textbook invites schoolchildren to think about why a drug addict may become dangerous for society. Such a stigma prevents a substance-dependent person from adapting to society, finding employment and establishing social contacts. As regards HIV infection, a terrifying and absolutely inauthentic picture of a person with AIDS is provided. Such a picture has a depressive impact on any person and gives rise to feelings of alienation among people; the respect and dignity of persons are infringed.

Claim: To replace the word 'druggie' with the term 'substance dependent' in the 8th grade biology textbooks; to modify the text of the textbook so as to avoid portraying a substance-dependent person as a danger to society; to provide accurate information about HIV infection and AIDS and differentiate these two diseases from each other; to accurately describe the difference between the ways HIV and AIDS are transmitted and the fight against these diseases in the textbook; to remove the photo provided at the end of chapter 2.13 as well as 19 pieces of information that may lead to stigmatising, stereotyping and discriminating against substance-dependent persons and persons suffering from HIV and AIDS.

Outcome: The Public Defender submitted a general proposal to the Education Ministry, requesting: to replace the word 'druggie' with the term 'substance dependent' in the 8th grade biology textbooks; to modify the text of the textbook so as to avoid portraying a substance-dependent person as a danger to society; to provide accurate information about HIV infection and AIDS and differentiate these two diseases from each other; to accurately describe the difference between the ways HIV and AIDS are transmitted and the fight against these diseases in the textbook; to remove the photo provided at the end of chapter 2.13 as well as 19 pieces of information that may lead to stigmatising, stereotyping and discriminating against substance-dependent persons and persons suffering from HIV and AIDS.

Discrimination on Religious Ground

Georgian national legislation and the international treaties on human rights to which the country is bound prohibit discrimination on religious ground.

Religion is explicitly included among the grounds of discrimination listed in Article 14 of the Constitution of Georgia, which makes it a classical ground of discrimination. Discrimination on the basis of religion is prohibited under Articles 2 and 26 of the International Covenant on Civil and Political Rights, Article 2 of the International Covenant on Economic, Social and Cultural Rights, Article 14 of the European Convention on Human Rights and Article 1 of Protocol 12 to the Convention.

Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination considers religious affiliation as one of the grounds of discrimination.

Sh.G. v. Ertsulovneba TV of the Patriarchate of Georgia

The case concerns the advertisement aired on the Patriarchate's TV channel, discriminating on the ground of religion.

The case was prepared by Sapari.

The circumstances of the case: The advertisement 'Benefit,' which aired on the Patriarchate's TV channel Ertsulovneba, compares people who are not churchgoers to animals: 'Being in church means being a human. But those who do not go to church? Are they really humans? Do they not have legs, ears, eyes? Dear friend, animals also have eyes, legs and other organs and even more so, of a larger size, but these do not make them humans. A human differs from an animal not only by appearance but also by reasoning which is granted by god and a manifestation of which is churchgoing. If a person does not go to church he/she takes after animal. Think about it: during the whole week he/she, like an animal, is busy getting food, working to maintain him/herself and his/her family. He/she sleeps, but so does an animal. He/she eats, rests. An animal also requires rest. Then what's the difference? The difference is seen on Sundays when a human goes to church and appears before god – something that an animal does not do. Those who do not go to church forget that they are humans and degrade to an animal existence, become uncivilised and turn into beasts. He/she may wear a necktie, be cleanly shaved, but his/her heart is a beast's heart.'

Legal reasoning: The complainant Sh.G. believes that the advertisement constitutes unfavourable treatment, discrimination against both non-religious people and those believers and religious people who do not go to church. Unfavourable treatment is manifested in comparing non-churchgoers to animals. An attempt to dehumanise people is not only degrading but also discriminating and violates equality through introducing a hierarchy among people. Comparison of non-churchgoers with animals offends the honour and dignity of these people. Discrimination is carried out on the ground of religion and belief. Unfavourable treatment violates the freedom of conscience, religion and belief enshrined in Chapter II of the

Constitution of Georgia. It also violates the right to dignity, which is an absolute right by essence. Sh.G. submitted an application to the Public Defender.

Date of application to the Public Defender: 1 August 2016.

Claim: To establish discrimination and issue a recommendation to the TV channel Ertsulovneba requesting to take the advertisement off the air. Also, to instruct TV channel Ertsulovneba to bring all other advertisements aired on TV channel in line with the Law on the Elimination of All Forms of Discrimination.

Outcome: The Public Defender terminated the proceeding on the basis of Subparagraph B of Paragraph 2 of Article 9 of the Law of Georgia on the Elimination of All Forms of Discrimination. The Public Defender noted that in accordance with the constitutional agreement between the state of Georgia and the Orthodox Church, also, Articles 9 and 11 of the European Convention on Human Rights, he is not authorised to interfere in issues arising from the dogmas of the Orthodox belief. The Public Defender notes that the phrases articulated on the TV channel might be offensive to concrete individuals, but the plot does not encourage discrimination.

Meetings with the Public Defender

The Public Defender and the Coalition for Equality signed a memorandum of understanding, which envisages regular meetings and cooperation on issues of equality. Four meetings were organised during the reporting period. The meetings were attended by the Public Defender, his deputies, the head of Equality Department, specialists and members of the Coalition. The meetings discussed the rule, procedures and terms of consideration of cases by the Equality Department (23 December 2015). On 7 March 2016, the Equality Department presented its vision for adjustments to legislation or other types of regulation as pertains to labour relations. The meeting of 3 June 2016 was dedicated to shortcomings in the application of the anti-discrimination law and to a package of legislative amendments; the parties discussed the changes that would significantly increase the efficiency of the Public Defender as an anti-discrimination mechanism. On 6 October 2016, the parties agreed on the methods of effective use of amicus briefs and the use of constitutional complaint as an equality policy mechanism.

Activities carried out by member organisations of the Coalition for Equality

Trainings regarding anti-discrimination legislation

On 9-10 November 2016, Sapari conducted a training seminar for journalists, titled Non-discriminatory Coverage of Minority Issues – Ethical and Legal Standards. The invited trainers were Zviad Koridze, Nestan Tsetskhladze and Baia Pataraia. The training discussed the following issues: the essence of discrimination and equality; stereotypes, their dissemination and formation of stigma; protected grounds and burden of proof; necessity to change a discriminatory environment; ways of dealing with discriminatory problems in newsrooms; legal mechanisms of combating discrimination.

On 15-16 December 2016, Sapari organised a training seminar for judges, titled Georgian and European Standards of Prohibiting Discrimination. The invited trainers were appeal court judge Ketevan Meskhishvili, Rustavi city court judge Giorgi Adeishvili and the head of the union Sapari, Baia Pataraia. Participants in the training were provided with general information about privileges and discrimination. The training discussed legal issues such as: comparator, difference between direct and indirect discrimination, harassment, protected grounds, burden of proof, Article 14 of the Human Rights Convention and 12th Additional Protocol to it, the practice of Constitutional Court of Georgia and discrimination scrutiny tests. This training was conducted in accordance with the training module developed jointly with the High School of Justice in 2014.

On 15 June 2016, PHR organised a one-day training for PWDs and their parents, titled Discrimination and Legal Mechanisms of Its Prohibition. The training aimed to explain the essence of discrimination, provide information about anti-discrimination mechanisms in Georgia and review the existing practice. The training was important as the target audience learned about anti-discrimination mechanisms and practice, which will help them in timely detection and proper reaction to incidents involving discrimination.

To study the human rights situation of persons and children with disabilities and identify/prevent discrimination against them, lawyers from PHR met with persons living in the Dusheti boarding house for PWDs and PWDs living in Batumi in addition to their parents and children. At both meetings, lawyers discussed the importance of equal rights and anti-discrimination mechanisms. They also heard information from attendees about alleged discrimination. PHR lawyers explained to attendees how they should protect themselves from discrimination and provided them with legal advice concerning each concrete problem.

PHR organised working meetings with PWDs and their parents and explained to them the essence of discrimination. The participants received information on how the law protects them from discrimination and what mechanisms are available towards this end. Participants in the meetings learned about on-going PHR cases. Four additional meetings are planned in the future.

The organisation, Article 42 of the Constitution, produced a public service announcement (PSA) regarding discrimination on political ground. The PSA describes instances of possible political discrimination. The PSA was aired on Imedi TV channel three times a day for one week in the first half of October. To raise public awareness and promote discussion about discrimination, the same organisation conducted 10 public discussions on the topic of political discrimination in five cities (Telavi, Gori, Batumi, Kutaisi and Zugdidi).

Capacity building of coalition members

OSGF organised a workshop for members of the Coalition to enhance strategic case-management skills. The training covered the issues of developing strategy for discrimination case, gathering evidence, effectively working with a victim, understanding burden of proof and awarding compensation for material and moral damages. The training was led by Iustina Ionescu. The trainer talked about the importance of anti-discrimination law and its role in society. The participants discussed which groups are most frequently discriminated against in which spheres. The training discussed cases of direct and indirect discrimination. The trainer talked about harassment as a form of discrimination. The participants discussed which mechanisms are effective in eliminating discrimination and what role the Coalition members can have in relation to discrimination cases. At the end of the training, the trainer shared her experience in monitoring, implementation and enforcement of successful cases with the participants.

Reports prepared by the Coalition for Equality

EMC works on two reports: **Review of Legal Mechanisms against Discrimination, Indoctrination, Proselytising at Public Schools and Best Practices of Supervision** and **National Mechanism of Combating Discrimination and Its Implementation**.

Public schools. The aim of the planned discrimination-related research is to study the operation and institutional arrangement of internal monitoring mechanisms of the education system and to draw up proactive recommendations for the government. The study will include the overview of national material legislation and international standards concerning the prohibition of indoctrination and proselytising at schools. Moreover, the document will review the monitoring mechanisms operating inside and outside the education system (police and Social Service Agency, as subjects engaged in the child protection referral system and the Public Defender of Georgia) and their interaction. The study will provide a summary of monitoring mechanisms in the general education systems of relevant countries and best practices of other policies in the fight against intolerance and will prepare a package of recommendations for state entities. As regards the report on the national mechanism of combating discrimination, the study aims to assess the efficiency of the activities of anti-discrimination mechanisms operating in Georgia and critically analyse their decisions in view of human rights standards. Within the scope of the study, the organisation will analyse the decisions taken by the Equality Department of the Public Defender of Georgia and common courts and assess the compliance of standards applied for establishing discrimination (including admissibility of complaint, burden of proof and discrimination scrutiny test) with international requirements for the protection of human rights. The study envisages the development of recommendations for the enhancement of anti-discrimination mechanisms and the improvement of existing court practice.

Conclusions and recommendations derived from cases handled by members of the Coalition for Equality

Moral damage

According to Article 10 of the Law of Georgia on the Elimination of All Forms of Discrimination, any victim of discrimination has the right to claim compensation for moral damage from a person having committed discrimination. As the established practice shows, when determining the amount of moral damage, a court considers a subjective component (the attitude of the victim to the sustained damage) as well as objective circumstances (for example, the severity of offence). Since it is complicated to determine a victim's emotional feelings and attitudes and express them in monetary terms, it is important for a lawmaker to take into account that discrimination causes strong emotions in the victim and the establishment of discrimination must automatically lead to compensation of moral damage. In such a case, the victim of discrimination would not have to provide additional evidence to court in order to prove moral suffering she/he experienced. The analysis of cases handled by members of the Coalition shows that according to court practice, the establishment of discrimination does not automatically lead to compensation for moral damage, in particular:

In the case of G.B. v. L.G., the lower court established discrimination and ordered the defendant to compensate for moral damage. The court noted that the termination of the agreement on the ground of discrimination worsened the condition of the complainant; it explained that the fact of discrimination already constitutes the ground of compensation for moral damage. In the case G.B. v. L.G., the court notes with regard to moral damage: 'moral damage is caused by spiritual and moral pain sustained by the complainant;' 'for a claim for non-material damage to arise, it is suffice to have a fact of violation of non-material right, which is apparent in the given case. It is also noteworthy that moral damage may be directly related to discriminatory treatment.'

In the case of Irakli Kvaratskhelia v. Tbilisi Mayor's Office, the court of appeal states: 'for a claim for non-material damage to arise, it is sufficient to have a fact of violation of non-material right, which is apparent in the given case. It is also noteworthy that moral damage may be directly related to discriminatory treatment and the moment of dismissal from the job on this ground, or moral damage may arise later because of long unemployment, inability to lead an active life, change of mode and rhythm of life, frustration, uncertainty, nervous strain, inferiority complex and other factors. It is also worth noting that non-material damage, by its nature, does not represent a source of compensation of any material cost, it is given to the victim to compensate moral damage.'

In the case of G. Khaburzania v. Tbilisi Mayor's Office, the court of appeal states: 'since discrimination against Giorgi Khaburzania on political grounds is established, there is also a material-legal ground to claim for moral damage.'

Although, at this stage, the court practice in the area of ordering compensation of moral damage while establishing discrimination is developing in the right direction, it is important to specify this right in the Law of Georgia on the Elimination of All Forms of Discrimination in order to avoid a different interpretation of the law by the courts in the future. As regards the determination of amount of compensation, the court practice needs to be changed in this area because amounts determined by the courts for victims of discrimination are significantly lower than the amount established in international standards and are not proportionate to the moral pain experienced by victims and corresponding moral damage.

Terms of application to courts

Under the effective legislation, the term of filing a complaint about discrimination with the courts is three months. When determining the period of limitation for a fact of discrimination, it is important to take into account the grave psychological and emotional state of a victim, the amount of time needed to gather evidence and the readiness of a victim to defend his/her rights in a legal manner. Considering the low level of public awareness of the issue of discrimination, a victim needs time to realise that he/she is a victim of discrimination and that there are legal remedies to restore his/her own right.

Moreover, it is important to take into account that a three-month limitation period defined for civil disputes is much shorter compared to the limitation periods for other disputes. According to international experience, a period of limitation for discrimination complaints mainly ranges between six months and three years. The need to increase a three-month term was also clear from the cases handled by the Coalition. For example, in one of the cases, the applicant applied to the organisation after the expiry of the three-month term. Although the court admitted the case for consideration, the defendant may refuse to satisfy the claim due to the period of limitation, thus adversely affecting the protection of the right of complainant.

The Public Defender of Georgia applied to the parliament with a legislative proposal concerning the increase of the three-month term. The Coalition was actively involved in drafting the proposal and relevant argumentation. The parliamentary committee on human rights and legal issues prepared their conclusions about the legislative proposal. They agreed with our argument regarding the obligation to ensure effective legal protection in accordance with Article 13 of the European Convention on Human Rights and supported the proposal. For the time being, this legislative proposal is suspended for an unspecified time.

Since the period of limitation cannot be extended by a court, it is impossible to develop a corresponding court practice. Consequently, it is necessary to make legislative changes and in accordance with the Public Defender's legislative proposal, extend the three-month term for the filing of complaints against discrimination to up to one year.

The issue of dividing a case when applying to the administrative panel or transferring it to the civil panel

When a case is filed with the administrative cases panel, the established practice is that the case is divided into two parts and a section concerning the establishment of discrimination and compensation of moral damage is sent to the civil cases panel. Such an approach aggravates the condition of victims of discrimination, as they have to challenge the case in two different panels simultaneously, which essentially doubles the amount of court-related activities and increases the demands on their time. Moreover, such an approach significantly protracts the process of reinstating a victim's rights, thereby undermining the guarantee to ensure a court hearing within a reasonable timeframe or causing victims of alleged discrimination to abandon claims.

Given that discrimination, especially political discrimination, frequently occurs in the public sector, such an approach of the court will also significantly weaken the fight against discrimination in this sector.

The practice of splitting up a case was seen in cases handled by the Coalition members. Teona Chalidze's complaint in which she demanded the abolition of individual legal act of the Tbilisi Mayor's Office, reinstatement to her job, back pay, establishment of discrimination and compensation of moral damage was split by the administrative cases panel, sending the section concerning the establishment of discrimination and compensation of moral damage to the civil cases panel. The administrative cases panel said that since the proceeding is regulated by the Civil Procedure Code, the legislation attributes the jurisdiction of cases on establishment and elimination of discrimination and compensation of moral damage to the civil courts and thus ruled out the consideration of such cases by the administrative courts. The civil cases panel studied the complaint but forwarded the complaint to the Supreme Court in order to determine the subject-matter jurisdiction.

When considering the subject-matter jurisdiction of Chalidze's complaint, the court of cassation, relying on the analysis of international sources of fair trial principle and Article 42 of the Constitution, noted that the proceeding oriented on the restoration of violated rights of a person shall be carried out in such a way that facilitates, to the maximum possible extent, the restoration of this violated right and creates maximally fair, comfortable and competent conditions. Article 2 of the Administrative Procedure Code of Georgia specifies a list of disputes that may be a matter of administrative dispute in a court. This list cannot be exhaustive. In the final regulation, the article states that a matter can be an administrative dispute if it arises from administrative legislation. Since Teona Chalidze demanded the abolition of an individual legal act, it is unarguable that in this part the complaint was to be considered as an administrative dispute.

The court of cassation notes that it is unacceptable to view a public law dispute as a private law dispute only because a complainant substantiates her public law claim with private law norms.

The court of cassation explains: 'Pursuant to Paragraph 1 of Article 60^1 of General Administrative Code of Georgia, an administrative act shall be null and void if it contradicts the law or if other requirements determined by law for drafting or issuing it have been substantially violated. In the given case, if it is proved that the ground of dismissal of the complainant from her job was political, or if there is a comparator (one of standards necessary to reveal discriminatory action) who was treated differently in the same situation, discrimination in dismissal will be apparent as well as the unlawfulness of administrative-legal act. It is impossible to separately evaluate the lawfulness of the act and discrimination when the alleged discrimination is the main ground of unlawfulness of the act.'

The court believes that a separate consideration of the issue of the establishment of discrimination and compensation of moral damage from the issue of the lawfulness of the decree on dismissal is incorrect and such a division of the subject-matter of the dispute will result in the infringement of the complainant's right to have her complaint heard by a competent court. In the court's view, challenging a discriminatory decision in the on-going proceeding by any type of complaint cannot make this complaint a civil complaint and the complaint shall be considered following that general rule which is applied for the consideration of the main issue.

It is important that this issue is regulated by court practice because the law already envisages the administrative cases panel as a corresponding legal mechanism for discrimination complaints. Given that Georgian legislation attributes the competence of hearing discrimination complaints to administrative cases panel, the legislation does not need amending. There is a need to develop court practice in the right direction and this, we hope, will be facilitated by the decision of the Supreme Court.

Amicus curiae

The Law of Georgia on the Elimination of All Forms of Discrimination was adopted in May 2014. Consequently, it is a relatively new phenomenon for Georgian legislation and the court practice in this regard is not yet well developed. The Office of the Public Defender, according to the anti-discrimination law, is the main institution to fight against discrimination. The Equality Department of the Public Defender's Office draws up reports on discrimination and constitutional complaints and monitors the implementation of national and international acts on the elimination of all forms of discrimination. Therefore, the Public Defender has accumulated knowledge and expertise to assist courts in establishing correct practice in relation to discrimination cases.

The amicus curiae institution ensures the proper awareness of the courts of those circumstances which are important for taking decisions on concrete cases. Georgian legislation envisages the amicus curiae institution in constitutional proceedings as well as at the level of common courts and criminal cases. The Criminal Procedure Code clearly highlights the main elements of amicus curiae institution: 1) amicus briefs shall be submitted by a third party who is not a party to a criminal case or an interested person (bias towards any of the parties to a case shall be excluded); 2) opinions shall be intended to assist a court in properly solving a problem which emerged in a concrete case (opinions shall assist the court to resolve legal problems in the case).

According to Paragraph E of Article 21 of the Law of Georgia on the Public Defender of Georgia, the Public Defender, in certain cases, may act as a friend of the court (amicus curiae) in common courts and the Constitutional Court of Georgia. However, this is specified in general in the Law on Common Courts, which might mean that the Public Defender is not limited to submitting his opinions on criminal and administrative cases. The Public Defender might be authorised to submit opinions on civil disputes too in the capacity of a friend of the court regardless of the fact that civil procedure legislation does not explicitly provide for that.

Although the civil procedure legislation does not explicitly provide for the submission of amicus briefs by the Public Defender, members of the Coalition appealed to the Public Defender to submit amicus briefs on civil cases too (for example, the case of T.S. v. Sh.R.). The case is on a preparatory stage and the Public Defender has not submitted his opinions yet.

The Public Defender submitted a legislative proposal envisaging legislative regulation of the process of submitting opinions to court in relation to civil cases too. The Legal Committee supported the amendment and stated that this institution facilitates the involvement of society in the decision making process and a court will have a possibility to rely on more sources when taking a decision. We believe that the mentioned legislative proposal must be enacted as soon as possible.

Although Article 21 of the Law on the Public Defender enabled the Public Defender to submit amicus briefs to the common courts, it is important that this possibility of Public Defender is explicitly specified in the Civil Procedure Code in order to prevent a court from interpreting differently or a defendant from challenging the acceptability of an amicus brief.

Burden of proof

According to Article 363³ of the Civil Procedure Code, when filing a claim, a person shall present to the court those facts and evidence that provide grounds to assume that a discriminating action has been committed. After this, the burden of proof that he/she has not committed the discriminative action shall be imposed on the defendant. This is because the information and evidence concerning discrimination are often available to that person who committed discrimination whereas a discriminated person has no access to them. Therefore, putting the parties in equal conditions would be damaging for one of the parties. This led to such a redistribution of the burden of proof when a defendant is obligated to prove that discrimination did not take place. Moreover, it is difficult for a victim of discrimination to find out why he/she was discriminated against, what was the real reason for the discriminatory action. The real motive of a discriminatory action is known to the person who committed this action. Such a redistribution of burden of proof is envisaged not only by Georgian legislation but is in full compliance with the EU law and the European practice of human rights. Despite such a provision about the burden of proof, courts often impose the burden of proof on a complainant, which means that the court practice is evolving in a direction opposing the legislation.

A court decision in the case of G.B. v. L.G. refers to Article 363³ of the Civil Procedure Code, concerning the burden of proof; nevertheless, the court imposed the burden of proof on the complainant and notes: 'Thus, the court believes that the complainant proved that she was subject to discriminatory treatment while the defendant failed to provide evidence proving the opposite.' A similar reasoning is seen in the case of Irakli Kvaratskhelia v. Tbilisi Mayor's Office.

Although the court refers to the obligation of the defendant to present counterevidence, it notes that the discrimination was proven by the complainant. In reality, the complainant has the obligation to present the facts and corresponding evidence that provide the ground to allege discrimination. The complainant is not obliged to prove the fact of discrimination.

In the case of Giorgi Khaburzania v. Tbilisi Mayor's Office, the court of appeal correctly determined the issue of distribution of the burden of proof and noted: 'The burden of proof, in this case, is imposed on the employer; in particular, if the employee indicates that the termination of the labour contract with him was a discriminatory act, it is precisely the employer who is to prove the righteousness of his own will and non-discriminatory ground of dismissal.'

The above quotes show that the court refers to a legal norm about the burden of proof but, on several occasions, still fully imposes the burden of proof on the complainant. It is important for judges to take into account the specific nature of the distribution of burden of proof in discrimination cases and to develop court practice in accordance with the anti-discrimination law.

Discriminatory Harassment

The Law of Georgia on the Elimination of All Forms of Discrimination does not envisage harassment as a form of discrimination and consequently, does not define it. In the case of harassment, a court can defend a victim only on the basis of Article 2 of the Law of the Elimination of All Forms of Discrimination, which prohibits all forms of discrimination.

It is worth noting that the European human rights court practice and EU directives (2000/43/EC; 2004/113/EC; 2006/54/EC) define harassment as a specific form of discrimination which is aimed at offending a person's dignity and creating a threatening, hostile, humiliating or offensive environment. Considering that in proving direct and indirect discrimination there is a need for a comparator while in the case of harassment such a comparator does not exist, there is a need for legislative regulation of discriminatory harassment to effectively respond to such facts.

In the case of T.S. v. Sh.R., the victim was subject to sexual harassment. Since there is no corresponding legislation, it may come that the victim cannot be compensated for sustained damage and the complaint cannot be satisfied. It is yet unknown how the court practice develops and whether harassment will be considered as a form of discrimination; however, the lack of this regulation is a legislative shortcoming and it is important to define harassment in the Law of Georgia on the Elimination of All Forms of Discrimination.

Recommendations to state entities

Recommendations to the Parliament of Georgia

1. Increase the period of limitation specified in Article 363(4) of the Civil Procedure Code of Georgia from three months to one year.

2. Add a provision to Chapter 7(3) of the Civil Procedure Code of Georgia, which will enable interested persons and organisations to submit friend of the court opinions on discrimination cases.

3. Add a provision to Article 363(2) of the Civil Procedure Code of Georgia, to ensure that the establishment of discrimination automatically gives rise to moral damage.

4. Define harassment as a form of discrimination in the Law of Georgia on the Elimination of All Forms of Discrimination.

Recommendations to common courts

1. Take into consideration the Public Defender's friend of the court opinions in accordance with Subparagraph E of Article 21 of the Organic Law of Georgia on Public Defender, proceeding from the anti-discrimination legislation.

2. Use the standard of burden of proof specified in Article 363^3 of the Civil Procedure Code of Georgia when hearing discrimination cases.

3. Automatically recognise moral damage without the submission of additional evidence when establishing a fact of discrimination.

3. Consider the issues of the establishment of discrimination and moral damage in the administrative panel and not in the civil cases panel, pursuant to the administrative legislation for hearing a dispute and in accordance with the practice established by the Supreme Court.

Recommendation to High School of Justice of Georgia

Provide and require training on discrimination for every judge of the civil and administrative panels. A module intended for judges should include the topics of burden of proof, determination of moral damage and subject-matter jurisdiction of discrimination cases.


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