



THE RIGHT TO NON-DISCRIMINATION IN PRACTICE FOR VARIOUS GROUPS IN GEORGIA

2016 REPORT BY THE COALITION FOR EQUALITY



OPEN SOCIETY GEORGIA FOUNDATION
ფონდი ღია საზოგადოება საქართველო



კონალიტა თანასწორობისთვის

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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.

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INTRODUCTION

The member organisations of Coalition for Equality have developed the present document to evaluate the key challenges, discrimination practices and state policy on equality in Georgia in 2016. The document also presents specific recommendations for relevant public institutions to facilitate the development of effective anti-discrimination policies.

The document individually describes the human rights situation for various discriminated, marginalised and vulnerable social groups (including women, the LGBT community, non-dominant religious and ethnic groups, children, persons with disabilities, homeless people, and the political opposition) and evaluates the key tendencies and deficiencies of public policy implemented in 2016 in this realm.

The Law of Georgia on the Elimination of All Forms of Discrimination passed by the Parliament of Georgia in 2014 was a significant step forward in the process of fighting against discrimination. Nevertheless, current mechanisms to enforce equality (including the Public Defender (Ombudsman) and judiciary and their respective mandates), competences and procedures are not sufficiently effective. Thus, the newly deployed mechanisms are limited in their ability to effect clear and positive changes toward equality. The mandate of the Public Defender is rather limited in reviewing the cases of discrimination and the actions taken against private individuals, and the enforcement of its decisions and recommendations with effective legal instruments is not ensured. Awareness and sensitivity of judges on discrimination-related topics is poor, which is also evidenced by the justifications presented in court rulings. Irrespective of the legislative proposal initiated by the Public Defender to strengthen existing procedural standards and public promises made by Members of Parliament (MPs), regarding the submitted proposal, amendments have not been made to the Law of Georgia on the Elimination of All Forms of Discrimination, thus preventing the creation of effective institutional and procedural guarantees of equality mechanisms.

The Government of Georgia has not developed a systemic positive policy to support equality since the adoption of the antidiscrimination law, which would, inter alia, ensure the revision of existing ethics codes and internal regulations, prohibition of discrimination and hate speech and guarantees of religious neutrality in public service. In addition, the Government of Georgia has not provided consistent information or implemented educational policies to support 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 crimes, 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 environment 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 grounds 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 is not a priority on the political agenda.

The Coalition for Equality hopes that this annual summary of the current situation concerning equality in the country will drive focus towards current challenges faced by discriminated groups and, ultimately, be reflected in the political agenda of the country. Additionally, members of the coalition hope that the recommendations discussed in the document will be supported and shared by various actors—the relevant public institutions in particular.

DISCRIMINATION ON THE BASIS OF GENDER

Women amount to 52% of Georgia's population, though they remain one of the most discriminated groups in the country.¹ Women are less engaged in the political, economic and social life of the country, and often become victims of domestic violence, molestation and sexual harassment. Gender stereotypes are widespread and further reinforced by media. Marginalised women (sex workers, HIV-infected women, drug-using women, representatives of ethnic and religious minorities, and others) face increased discrimination.

Women often become victims of domestic violence. Such practices led to the deaths of 17 women in 2016. The Ministry of Internal Affairs (MIA) of Georgia issued 2,566 restrictive orders in the cases of domestic violence. In total, there have been 1,323 cases categorised by the Criminal Code of Georgia as domestic violence, 880 of which led to criminal prosecution. Phone calls to Georgia's 122 Emergency Rescue Service in 2015 amounted to 15,910 in total. However, police only launched investigations into 949 cases.² There were no follow-up inquiries into other cases by law enforcement bodies or any other institutions. As practice has shown, police officers lack the specialised knowledge to investigate gender-motivated crimes. Beneficiaries of shelter programs often end up as secondary victims in police departments.

Female MPs elected in 2012 comprised only 12% of the Parliament of Georgia. As of 2016, total female representation in Parliament is 16%. In this area, Georgia lags behind the average indicator of many other countries. Given low female participation in the political system, political representation at the national and local levels of Parliament in Georgia does not adequately reflect country's population. Thus far, every attempt made in 2015-2016 to introduce compulsory gender quotas has been rejected.

According to official statistics from GeoStat, 13% of women married in 2014 were between the ages of 16-19.³ The number of men (16%) in early marriages

1 Report of the Public Defender released in 2016; Page 24; <http://www.ombudsman.ge/uploads/other/3/3966.pdf>

2 <http://police.ge/>

3 http://www.geostat.ge/cms/site_images/_files/georgian/health/Qali%20da%20kaci_2015.pdf

is significantly lower than women (84%). Furthermore, there is no available statistical data to evaluate the number of unregistered marriages involving individuals under the age of 16. Article 140 of the Criminal Code of Georgia mandates 7-9 years of imprisonment for cases involving sexual intercourse between adults and individuals below the age 16; nevertheless, a practice has been established in Georgia whereby the General Prosecution releases the jailed offenders on bail.⁴ Arranged marriages, which are negotiated by parents and then subsequently forced on their children, are particularly worrisome. Article 150¹ (legislation addressing cases of forced marriages) was added to the Criminal Code of Georgia on 1 April 2015.

The Labour Code of Georgia requires paid maternity leave for pregnant women and/or for child care. The law prohibits the dismissal of pregnant women after notice of pregnancy has been filed for a certain period of time. Nevertheless, pregnant women often do not get employment contracts extended by employers and the Labour Code of Georgia does not require any justification for employment decisions not to extend the contract in pre-employment relations.

Sexual harassment in the workplace is also a significant problem. In Georgia, no legislative regulation exists for sexual harassment. In addition, a study showed that women are not well informed on the topic of sexual harassment at a general and fundamental level. In general, public awareness on the subject is very low.⁵ The gender-wage gap in labor relations is also problematic (a 36% difference between what men and women earned in 2016⁶) which is, inter alia, caused by unequal distribution of salaries and wages.

Women often end up being victims of sexual harassment in public places, though no legal provision exists to protect women from such danger. Sexual harassment

4 Report of the Public Defender on the Position of Human Rights of Women and Gender Equality in 2015; Pages 30-31.

5 Study of Article 42 of the Constitution on Sexual Harasment; http://tanastoroba.ge/ka/explore_data?filter_variable=&row=G4_16&col= http://tanastoroba.ge/ka/explore_data?filter_variable=&row=G2&col=

6 GeoStat Data on Women and Men; http://www.geostat.ge/cms/site_images/_files/georgian/health/Qali%20da%20kaci_2015.pdf

affects the psychological health of women, as well as their engagement in the social and political life of the country.

Women often appear in commercials as housewives or objects of sexual attraction. Sexist commercials place women and men in unequal positions, thereby solidifying the public notion that men have a dominant role. This further jeopardises the fight for gender equality and reinforces negative stereotypes in Georgian society of the female gender role. In the mentality of Georgian men “women [are] weak human beings depend[ent] on men, should act in accordance to men’s will, and further justifies violence committed against women”⁷

It was believed up until 2016 that the female genital mutilation was not practiced in Georgia. In 2016, it was found that Avarian communities in various Kakhetian villages were practicing female genital mutilation within households as a baptism tradition. In addition, it is worth noting that no laws exist in Georgia to regulate female genital mutilation.

Women need to be economically empowered to achieve gender equality in the country. General programs for empowering women were developed and discussed in the Report of the Gender Equality Council of the Parliament of Georgia in 2015, though no tailor-made program on the needs of women specifically exists in the country.⁸

According to the Global Gender Gap Index, Georgia ranks among the lower-middle income group in its classification of countries. The referred source ranks Georgia 60th out of 145 countries in terms of economic engagement and opportunities of women, while 83rd in terms of their engagement in the labor force, whereby men (79%) prevail over women (61%). The same data ranks Georgia 25th in terms of remuneration for equal value for equal work, but with regard to average income of different between sexes, Georgia ranked 110th among 145 countries.⁹

7 General Proposal of the Public Defender; <http://www.ombudsman.ge/uploads/other/2/2164.pdf>

8 Implementation of Gender Equality Policy in Georgia for 2014-2016; Annual Report for 2015; pages 15-16

9 Report of the Public Defender in 2015, Women’s Rights and Gender Equality; pages 14-15.

RECOMMENDATIONS:

- Establish a special unit at the Ministry of Internal Affairs of Georgia mandated to investigate gender-motivated crimes;
- Pass the Law on Compulsory Gender Quotas within the Parliament of Georgia to increase the engagement of women in political life of the country;
- Provide legislative regulations on sexual harassment in order to prohibit harassment in public and work places;
- Engage authorities to develop state strategy against early marriages;
- Criminalise female genital mutilation.

**DISCRIMINATION ON
THE BASIS OF SEXUAL
ORIENTATION AND
GENDER IDENTITY
(SOGI)**

The human rights situation of LGBT individuals remained challenging this year. Again, the LGBT community faced regular violence and discrimination similar to previous years,¹⁰ thus deepening their social vulnerability and leaving them beyond employment, healthcare and other basic opportunities. Policies and rhetoric supporting equality in the pre-election period was further weakened and human rights and social security issues affecting discriminated groups were less represented in public debates, which was predominantly a byproduct of loyalty towards an ideology of religious nationalism. Instead of acknowledging and eradicating violent and discriminating practices towards the LGBT community over the current year, authorities employed homophobic rhetoric for their political goals throughout the pre-election period. The initiative to amend the Constitution of Georgia and call for a referendum for explicit phrasing of the concept of a family in the referred legal instrument¹¹, which was further intensified in the pre-election period, supports this claim.

Irrespective of the fact that amendments to the Constitution of Georgia have not been made and the idea to call for a referendum was ended by a resolution of the President of Georgia (though mainly technical arguments have been brought to justify the rejection of the idea¹²), it was seen beyond the universal values of human rights protection. Moreover, the ruling political party promised the general public—contradicting the resolution of the President of Georgia—to unconditionally make the referred amendments to the Constitution of Georgia.¹³ Thus, these promises actually shared the anti-gender policy and ideology of social groups who depict the LGBT community as enemies and artificially promote threats in relation with a concept of marriage. It is worth noting that discussion

10 <https://emc.org.ge/2016/06/03/emc-78/>

11 <https://emc.org.ge/2016/04/27/emc-39/>

12 President of Georgia justified his rejection for calling a referendum through the presence of occupied territories within the country and sufficiency of current regulation of the marriage in the Civil Code of Georgia. <http://www.radiotavisupleba.ge/a/prezidentis-uari-referendums/27911357.html>

13 Public Statement of Giorgi Kvirikashvili, Prime Minister of Georgia; <http://netgazeti.ge/news/136544/>

<http://www.ipress.ge/new/48735-sozar-subari-qortsinebis-shesakheb-cvllileba-aucileblad-sheva-konstituciashi>

pertaining to the referred initiative substantially facilitated the public increase in homo/transphobic hate speech from various political subjects¹⁴ and indirectly promoted violent practices against the LGBT community.

On 2 October 2016, several days prior to general elections, pre-election banner images of an individual candidate for membership of the Parliament of Georgia from the Saburtalo District of Tbilisi were posted on social media. In these posts, Alexandre Bregadze (the nominated MP) called on the potential electorate to support him in exchange for a promise that LGBT individuals would be subject to severe measures and their right to equality would be suppressed from 2016 should he be elected. The post's content of the post on social media contributed further to an established hostile environment for LGBT individuals, promoted violence towards them and included elements and signs of a call for discrimination towards them. The previously mentioned material has been appealed on the grounds of Article 45¹⁵ of the Election Code of Georgia by WISG. However, the Central Election Commission has yet to take any action on the issue.¹⁶

In the reporting year, violence against LGBT people became extremely severe in character. In particular, this applies to violence towards transgender individuals, which has been evidenced by violent incidents of various frequency and gravity. EMC has presently taken 8 cases forward—WISG almost 30 cases—which contained signs of potential hate crimes. Victims of the cases assert that they suffered on homophobic and transphobic grounds, though general prosecution failed to see motives of hatred in most cases and the circumstances were neither taken into account for augmenting the gravity of charges and court ruling against the offenders. It needs to be noted herewith that the majority of victims are transgender women.¹⁷ Cases

14 MDF, Language of Hatred, 2016; <http://www.mdfgeorgia.ge/geo/view-library/55/>

15 3. Election subjects and their supporters have a right to present a program of further activity. The election program shall not contain propaganda of war and violence, overthrowing the existing state and social order or replacing it through violence, violating the territorial integrity of Georgia, calling to foster national hatred and enmity, religious and ethnic confrontation.

16 Unidentified Violence - Litigation Report; Women's Initiatives Supporting Group (WISG), 2017. http://women.ge/data/Unidentified_Violence_WISG_2017.pdf

17 Unidentified Violence - Litigation Report; Women's Initiatives Supporting Group (WISG), 2017. http://women.ge/data/Unidentified_Violence_WISG_2017.pdf

include the brutal murder of Zizi Shekiladze, a transgender woman, on 14 October 2016. Alas, litigation is still in progress.¹⁸

Irrespective of the frequency of homo/bi/trans-phobic offences and the gravity of unfair treatment and behavior, which has been clearly witnessed this year, response measures taken by law enforcement bodies are still ineffective and fragmented, which makes the deficiencies of the system very vivid both at the individual as well as systemic levels. Irrespective of multiple recommendations issued by international organisations in 2016¹⁹, the Ministry of Internal Affairs of Georgia has not yet developed a general strategy to combat hate crimes and develop a preventive vision within its national policy aimed at acknowledging the problem and conceptualising multi-layered measures against it. Additionally, the Ministry of Internal Affairs of Georgia has no specialised police services within its system to fight against hate crimes, which would be staffed by people with relevant knowledge and expertise to focus on the investigation of such crimes and development of measures to fight or prevent them. Apart from the aforesaid, authorities still fail to have official statistics on offences committed on the grounds of sexual orientation and gender identity (SOGI), while four cases²⁰ (with signs of sexual orientation being a factor) recorded by the general prosecution are essentially disproportional with the stark reality of the country.

In addition, it is worth noting that identification of motives of hatred in the litigation of such cases remains an essential problem. Also, insufficient competence, lack of knowledge of prejudice towards homophobias and transphobias, along with other tendencies are apparent, thus jeopardising the investigation process. In addition, police are still insensitive towards victims of hate crimes, which becomes vivid in the repressive policies towards transgender sex work-

18 <https://emc.org.ge/2017/01/11/emc-200/>

19 Authorities have assumed commitment towards strengthening the institutional mechanisms for the fight against homo/trans-phobia crimes, training of law enforcement bodies and identification of hatred in relevant cases within the Universal, Periodic Review; For reference: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GESession23.aspx>. Authorities received recommendations on the protection of human rights of LGBT from the European Commission Against Racism and Intolerance; <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-ENG.pdf>

20 Response letter from the General Prosecutor's Office of Georgia, N13/63344, 03/10/2016.

ers.²¹ In the background, there is also a lack of trust within the LGBT community towards law enforcement bodies, which was crystallised by declaring the offender not guilty of a murder of Sabi Beriani, a transgender woman in 2014, who was ultimately deemed guilty by the Supreme Court of Georgia only at the end of 2016.²² Insensitive and negligent policy of the police, supplemented by the repeated inability to punish offenders, leaves the LGBT community alone versus crime and leads to repeated victimization.

A tendency has been singled out in the practice of WISG cases, whereby sexual abuse of LGBT individuals in the public space is left unanswered by the police. In some cases, police detain the applicant victim instead of responding to the offence.²³

Similar to previous years, the LGBT community was again prevented from gathering peacefully for freedom of expression guaranteed by the Constitution of Georgia on 17 May 2016 for IDAHOT Day.²⁴ Authorities argued that they could not guarantee sufficient security to the LGBT community and activists, which is largely caused by loyalty to the dominant religious institutions. As such, they restricted the right of free public gathering.²⁵ In such conditions, several LGBT activists attempted to make themselves heard in front of the Patriarchy of Georgia on 17 May 2016 using critical posters. On the dawn of 17 May, a group of employees from the Ministry of Internal Affairs of Georgia in civilian outfits detained the LGBT activists and others when drawing stencils on the grounds of administrative charges, allegedly for distorting the image of the local authority and disobeying a lawful order of the police. In line with the clarifications made by the detained individuals, police officers used homophobic language

21 See previous footnote.

22 EMC received ideas from the friends of the court of law on the referred case, which was submitted to the Supreme Court of Georgia; <https://emc.org.ge/2016/12/29/emc-197/>

23 Unidentified Violence - Litigation Report; Women's Initiatives Supporting Group (WISG), 2017; http://women.ge/data/Unidentified_Violence_WISG_2017.pdf

24 General Prosecutor's Office appealed the court ruling declaring the 4 detainees of the 17th May 2013 case at the Court of Appeals, which has not yet completed the hearing of the case (despite starting in February 2016).

25 <http://liberali.ge/news/view/22562/17maisi--ra-igegmeba-homofobiasa-da-transfobiastan-brdzo-lis-msoflio-dghes>

while detaining them, at the police station, and when they were transported to the City Court of Tbilisi. Police officers used hate speech in their conduct with the activists, thus breaching the principles of remaining discrimination-free, respecting human rights and religious neutrality that the police should adhere to in conducting their work.²⁶

Two more LGBT activists were detained for charges promulgated in Article 173 (disobeying a lawful order of the police) of the Administrative Code of Georgia in a different district of the city for groundless reasons on 17 May 2016. The court suspended the administrative case on the grounds that no administrative violations were found. LGBT activists assert that their detention was motivated by their activities.²⁷

²⁶ <https://emc.org.ge/2016/05/30/emc-66/>

²⁷ Unidentified Violence - Litigation Report; Women's Initiatives Supporting Group (WISG), 2017. http://women.ge/data//Unidentified_Violence_WISG_2017.pdf

RECOMMENDATIONS:

- Develop an ethics code for the Parliament of Georgia, along with relevant mechanisms on the use of hate speech by MPs;
- Develop and implement a consistent and effective anti-discrimination government policy, which, inter alia, implies the prohibition of discrimination and hate speech in the Law of Georgia on Public Service and Ethics Code for Public Institutions. It should also elaborate the standards for adhering to religious neutrality, implementing special positive measures in support of equality, and establishing mechanisms for effective internal monitoring and accountability;
- Ensure, on the part of the Government of Georgia, the planning and implementation of systemic education and information campaigns for strengthening tolerance and ideas of equality in society;
- Develop a strategy and operating manual within the Ministry of Internal Affairs of Georgia for combating the hate crimes, which would lead to the creation of the specialised services staffed with officers who are equipped with adequate knowledge and sensitivity;
- Ensure that the Ministry of Justice of Georgia creates rapid, transparent and accessible regulations and administrative practices in coordination with the Ministry of Labour, Health and Social Security of Georgia to enable transgender individuals to change the gender marker in all documents issued by public or private institutions. It is important that the referred procedure is clearly separated from the medical transition process;
- Ensure that the Ministry of Corrections and Probation of Georgia protects LGBT individuals at penitentiary institutions and eliminates their unjustified segregation.

**DISCRIMINATION
ON THE BASIS OF
RELIGION**

Challenges to religious freedom have remained critical in 2016. In the reporting period, inefficiency of the State Agency of Religious Affairs became more visible. Its Performance Report demonstrates that the Agency focuses primarily on managing a non-secular and discriminating funding system of basically four religious communities (Muslim, Judean, Catholic Cristian and Armenian Gregorian Church) and tries to gain control and loyalty of religious organisations through solving issues concerning their funding and property.²⁸ Irrespective of the fact that the agency operates in direct subordination of the Prime Minister of Georgia and should have resources to enforce a significant political impact on the process, the agency failed to address major disputes and problems related to religious freedoms in 2016, thus clearly demonstrating a lack of relevant political will. Institutions with similar mandates exist in post-soviet countries as a rule and, irrespective of their soft competencies, and in fact carry out a control function over the religious organisations in a real sense.²⁹

The essential objective of the Commission established by the Agency back in 2014 was to determine the historic and confessional origin of a disputed building in Mokhe village (Adigeni municipality). The Commission failed to achieve the goals defined by its charter, and on 1 December 2016 a decision was issued not to transfer the disputed property to any religious communities. Hence it would acquire the status of a cultural heritage monument, probably under the label of ‘Disputed Place of Worship’. The commission’s decision was much to the dissatisfaction of the Muslim community. Prayers are performed in the open air next to the historic building every Friday to protest the ineffectiveness of the Commission, as well as to highlight the problem of losing the opportunity to pray in a mosque established in a private house in the same village.

The relationship between the Christian and Muslim communities is notably tense currently. Fragmented conflicts occur in the village every Friday. Public announcements made by the Agency prior to this claiming that the

²⁸ Joint Study of EMC and TDI – State Policy on Funding of Religious Organizations (2014-2015); <https://emc.org.ge/2016/07/16/emc-101/>

²⁹ EMC Study: Critical Analysis of the State Agency of Religious Affairs; <https://emc.org.ge/2016/12/14/emc-190/>

commission was trying to regain trust and de-radicalise the parties turned out to be fragile and unjustified. By considering the composition of the commission, which includes representatives of only the Patriarchy (Orthodox Christian) and Muftah Division (Muslim) and had nobody from the local community, it was clear that the current format would fail to recover trust between the parties. Moreover, risks of higher antagonism were created because of efforts made by the Agency to take the issue out of the legal framework and to conserve the dispute.

The unresolved dispute related to the property in Mokhe village essentially resulted from a lack of restitution legislation and consistent, discrimination-free policy. It vividly evidences the need to have a legal remedy to return the property that was foreclosed on during soviet times to the religious organisations. Nevertheless, authorities have refused to even find a limited solution to the restitution problem, and thus the discriminating policy towards non-dominant religious organisations continues.³⁰ It is worth noting that in line with the Action Plan of the Government of Georgia on the Protection of Human Rights, the Agency is mandated to resolve disputes related to historic places of worship, though so far it lacks the vision and policy necessary to perform this function.

The Agency has recently started to transfer the historic places of worship to religious organisations for temporary use, though it needs to be noted that this process is rather nominal in nature and applies to buildings that are either already in use and undisputed. Additionally, due to the discriminatory nature of the Law of Georgia on State Property³¹, such buildings are not transferred into title ownership, but rather with the right of temporary use.

The construction of a Catholic church in Rustavi continued to be challenging throughout the reporting period. Although a Catholic church has been trying

30 Legal Assessment of the Resolution issued by Mokhe Commission, EMC; <https://emc.org.ge/2016/11/04/emc-175/>

31 Constitutional appeal developed by the Free University and TDI; <http://tdi.ge/ge/news/404-sakonsticio-sasamartlom-arsebitad-gansaxilvelad-miigo-religiuri-gaertianebebis-sarcheli>

since 2013³², they have been unable to obtain a construction permit to build a church from the Municipality of Rustavi. Loyalty to the local Orthodox congregation among the Municipality of Rustavi has been a factor explaining why the permit has not been granted. In July 2016 the City Court of Rustavi honoured the application filed by the Catholic Church and instructed the Municipality of Rustavi to issue a construction permit for the place of worship, thereby ruling that what had been happening was discrimination on religious grounds.³³ The Municipality of Rustavi has appealed the court ruling at the Tbilisi Court of Appeals, thus delaying the enforcement of the court's initial ruling.

Property rights among the Muslim community in 2016 remained troubled. Another instance of religious conflict became apparent in February 2016 in the village of Adigeni. A dispute stemming from the village cemetery³⁴ led to violence and an attack on Muslims by the dominant religious community. This conflict is the seventh since 2012 and demonstrates the consistent discrimination the Muslim community faces. Similar to other cases of religious violence, the Adigeni village case was not thoroughly and effectively investigated by authorities, thereby reinforcing the view that crimes towards religious minorities go unpunished and facilitating crimes driven by intolerance.³⁵

By the end of the year one more conflict took place in the village of Mokhe. The principal of the public school in the village had allegedly discriminated against a female Muslim student who was forced to remove her head scarf inside the school building. Following the incident, other Muslim students initiated a protest.³⁶ It is worth noting

32 <https://emc.org.ge/2015/11/19/katolikuri-eklesia-rustavi/>

2. Report of the European Commission Against Racism and Intolerance (ECRI) on the Fifth Cycle of Monitoring; Page 26, Clause 95; <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Georgia/GEO-CbC-V-2016-002-GEO.pdf>

3. U.S. Department of State; Report on Current Position of Religious Freedom in Georgia for 2015; <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dld=256191#>

33 EMC Statement; Accessible from: <https://emc.org.ge/2016/06/08/emc-83/>

2. Article in The Liberal Magazine, Court Ruling Evidencing Discrimination of Catholic Church by Rustavi Municipality; <http://liberali.ge/news/view/23841/sasamartlom-rustavis-meriis-mkhridan-katolike-eklesiis-diskriminatsia-daadgina>

34 Local Christians objected to allocate territory to Muslims for the arrangement of a cemetery.

35 EMC Assessment on Developments of Events in Adigeni; <https://emc.org.ge/2016/03/02/emc-11/>

36 <http://sknews.ge/index.php?newsid=11127>

that an individual appointed as the new principal of the school in September 2016 had been previously actively supporting the Christian community.³⁷ It needs to be mentioned also that discriminating practices of persecution of Muslim school children have not ceased and continue into the present day.³⁸

A conflict concerning a Muslim boarding school in Kobuleti is ongoing. An investigation into threats directed at the school's administration is ongoing; however, it has been inefficient and the relevant people have not been granted the status of victims. The Batumi City Court ruled on the case after scrutinizing the relationship between the administration and other individuals for two years. On 19 September 2016, the defendant claimed to be the subject of discrimination. Nevertheless, charges were not brought against the Ministry of Internal Affairs.³⁹ The case is currently being appealed within the Kutaisi Court of Appeals.⁴⁰

Additionally, the Government of Georgia has refused to transfer a plot of land to the Muslim community for the construction of a new mosque in Batumi.⁴¹ Given that the government is the sole authority responsible for transferring plots of land, and has permanently transferred dozens of plots to the Patriarchy (Orthodox Church)⁴², the refusal to transfer one to the Muslim community for the construction of a new mosque in Batumi is a clear manifestation of a policy of discrimination within the state.⁴³

37 <https://www.youtube.com/watch?v=JGYmKqJIT-s&feature=youtu.be>

38 EMC Statement on Continuous Facts of Discriminatory Pressure at Mokhe School; <https://emc.org.ge/2017/02/08/emc-213/>

39 EMC Conclusive Statement on Kobuleti Case; <https://emc.org.ge/2016/09/21/emc-145/>

40 Note: It is worth mentioning that Public Defender of Georgia justified the discrimination committed by Kobuleti Water Company LTD and Kobuleti Municipality against the boarding school's sewage system on 19th September 2016 on the grounds of the Law of Georgia on the Elimination of All Forms of Discrimination within the EMC Application. The accused parties have done nothing to execute the Resolution of the Public Defender of Georgia. Recommendations of the Public Defender of Georgia are available at: <http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/pirdapiri-diskriminacia-religiuri-nishnit.page>

41 Note: It is worth mentioning that EMC approached the Public Defender of Georgia on behalf of the Group of Initiators in view of the case on the grounds of the Law of Georgia on the Elimination of All Forms of Discrimination

42 Findings of data collection by EMC; <https://emc.org.ge/2017/01/27/emc-207/>

43 EMC Statement on the Refusal of Land Transfer for the Construction of a New Mosque in Batumi; <https://emc.org.ge/2016/11/01/emc-173/>

RECOMMENDATIONS:

- The Government should reconsider the mandate of the State Agency on Religious Affairs, its activities and obviously ineffective policy, and should ensure its fundamental transformation;
- Implement the Policy on Religious Freedoms by adhering to the principles of human rights and equality and terminate policies of intervention and control by authorities, especially with regard to the autonomy of Muslim organisations; Terminate the sporadic, poorly conceptualised policy of the State Agency of Religious Affairs concerning the restitution of properties of religious organisations that were foreclosed on during the soviet era;
- Initiate legislative amendments and design policy to ensure that restitution occurs in a consistent, discrimination-free manner in accordance with the rule of law;
- Amend the 27 January 2014 Government Resolution on the Rule on Implementation of Certain Measures related to the Partial Reparation of Injuries to the Religious Unions Existing in Georgia, Inflicted during the Soviet Totalitarian Regime accordingly to eradicate discrimination and ensure compensation by defining objective, fair and damage-related criteria. Additionally, change the policy pursued by the State Agency of Religious Affairs from being based on special purpose and control of expenditures;
- Ensure that the Ministry of Internal Affairs of Georgia and the General Prosecutor's Office conduct effective, timely, independent investigation of crimes motivated by religious intolerance, and that these investigations include the ability to identify hate crime motives and adhere to the procedural rights of the victims;
- Ensure that local authorities protect legislation related to the construction of places of worship, along with the prohibition of discrimination and religious neutrality.

**DISCRIMINATION ON
THE BASIS OF RACE
AND ETHNICITY**

Like previous years, migrants were subjects of hate crimes in 2016. Authorities' responses to such attacks remained inadequate. Teaching the Georgian language to citizens belonging to ethnic minorities remained challenging. The socio-economic condition of the Roma and equal access of foreigners to social benefits and services are additional areas of continuous alarm.

The Committee for the Elimination of Racial Discrimination expressed concerns in its Concluding Observations issued on 13 May 2016 on physical abuse towards representatives of ethnic and religious minorities. The document further acknowledged that Article 53.3¹ of the Criminal Code of Georgia is not applied in real practice.⁴⁴ The committee calls to ensure that all instances of racist hate crimes are thoroughly investigated and that racist motivation is considered from the outset of judicial proceedings, that perpetrators are prosecuted and punished with appropriate sanctions.⁴⁵ The activities of ultra-right wing radical groups continued to have a tendency of intensification during the reporting period. On 27 September 2016, police detained 11 members of the ultra-right wing organisation Georgian Force. Members of the group were throwing small fireworks at Arabian and Turkish cafes and bars on Aghmashenebeli Avenue (Tbilisi), destroying sign plates and banners and insulting foreign citizens. The Ministry of Internal Affairs of Georgia categorized the offence as hooliganism.⁴⁶ The Tbilisi City Court ordered the release of five members of the Georgian Force from jail on bail on 30 September 2016, while others - minors - were sentenced to parental supervision.⁴⁷

The UN Committee on the Elimination of Racial Discrimination also focuses its attention on the difficult socio-economic conditions of the Roma. It indicates that many Roma have no personal identification documents in Georgia, and that the school attendance indicator of Roma children is low. Their report shows

44 Concluding Observation of the Committee on Elimination of Racial Discrimination issued on 13th May 2016; Clause 8; http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GEO/CERD_C_GEO_CO_6-8_23906_E.pdf

45 Same as above; Clause 9.A;

46 <http://police.ge/ge/shss-m-khulignobis-braldebit-11-piri-daakava/10030>

47 <http://kvira.ge/284237>

that Roma children tend to live and work in the streets. Georgia has no strategic vision to soften the difficult conditions of Roma children. The committee also indicates at the problem of early marriages in the Roma community.⁴⁸

Teaching of the official language (Georgian) to ethnic Armenians and Azerbaijanis of Georgia is still a problem in the regions of Kvemo Kartli and Samtskhe-Javakheti. The Public Defender of Georgia indicated in his 2015 report that teaching with bilingual textbooks is a great difficulty at schools that have no bilingual teachers. The Georgian language content of the textbooks amounts to 30%, while the minority language content accounts for the remaining 70%. 30% of these textbooks becomes impossible to teach in conditions where teachers are not bilingual.⁴⁹

The Committee on the Elimination of Racial Discrimination also examines instances where shelter seekers are refused refugee status on the grounds of national security without further justification.⁵⁰ It is worth noting that such problem existed towards foreigners over years, who had their requests to extend stay in Georgia refused on the grounds of state security. The Public Service Development Agency - the relevant decision-making body - was deprived of the opportunity to argue its refusal.

Irrespective of the court ruling on the case of Oganeg Darbinian and Others vs. Parliament of Georgia issued by the Constitutional Court of Georgia, discrimination of foreigners permanently residing in the country is still practiced in view of certain social rights. Citizens of Armenia in Akhalkalaki municipality are refused from being granted the status of permanent residents of a high mountainous settlement. The referred status enables citizens to enjoy certain social benefits.

48 Conclusive Opinion of the Committee on Eradication of Racial Discrimination issued on 13 May 2016; Clause 14; http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GEO/CERD_C_GEO_CO_6-8_23906_E.pdf

49 Report of the Public Defender (Ombudsman) of Georgia to the Parliament of Georgia; Page 500.

50 Concluding Observation of the Committee on the Elimination of Racial Discrimination issued on 13th May 2016; Clause 20 http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GEO/CERD_C_GEO_CO_6-8_23906_E.pdf

The Public Defender of Georgia approached Batumi City Assembly with a recommendation on 22nd September 2015 and requested that regulations that set different tariffs for foreigners and citizens of Georgia be voided. This recommendation has been accepted and common tariffs have thus been set for entrance to the botanical garden of Batumi irrespective of citizenship. Nevertheless, there are still monuments of cultural heritage and recreational parks in the country where foreign visitors pay different tariffs based on the grounds of citizenship. Rabat Castle in Akhaltsikhe is an example of cultural heritage.

RECOMMENDATIONS

- Train police and General Prosecutor's staff to identify and work on crimes motivated by racism;
- Intensify efforts among Georgian authorities to issue personal identification documents to all Roma individuals living in Georgia;
- Ensure that authorities take every measure to increase school attendance among Roma children;
- Develop a specialized strategy for addressing the heavy socio-economic conditions of the Roma in Georgia;
- Schools in the regions inhabited by ethnic minorities should be provided with teachers specialized in teaching bilingual textbooks;
- Provide individuals refused shelter with guarantees of due process;
- Ensure that authorities provide foreign citizens living in Samtskhe-Javakheti and Kvemo Kartli social benefits designed for highlanders;
- Establish a common-tariff for foreigners and Georgian citizens for entry to recreation areas and monuments of historic or cultural heritage.

**DISCRIMINATION
ON THE BASIS OF
DISABILITY**

Persons with disabilities are one of the most isolated groups in the country, as they still face systemic barriers in almost every aspect of public life, which leads to the violations of several fundamental rights, including dignity. Irrespective of the commitments assumed towards the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which also covers protection from discrimination and guarantees of equality, authorities have thus far failed to address human rights difficulties of persons with disabilities. Consequently, discrimination on the basis of disabilities is a key challenge, which in some cases manifests itself in the form of full isolation of the persons with disabilities. Taking into account the multiple challenges existing in the area of equality, we present a number of significant and pending problems below.

Discriminating regulation of rehabilitation/abilitation programs is a vivid problem in the country. A convention obliges authorities to develop and implement rehabilitation/abilitation programs to ensure greater access to services, designated spaces, etc. for the affected individuals⁵¹, however, children with a certain type of autism still fail to equally benefit from services as they are not accessible for all affected children. In addition, criteria for admission into rehabilitation/abilitation programs are also discriminating. Such approaches from authorities' place children in an unequal position, thus violating their right to benefit from state rehabilitation/abilitation programs due to discrimination.

Realization of labour rights for people with disabilities is still an unresolved problem. Current legislation links employment of persons with disabilities in the public sector directly to a refusal to benefits outlined in a social security package⁵². Individuals with the status of significantly expressed disabilities must refuse cash benefits in exchange for their employment. This provision does not apply only to individuals with significant disabilities and/or significant eyesight impairment. It is on the one hand a discriminating approach and on the other hand a barrier to employment, as compared to incentivised employment of persons with disabilities.⁵³

51 UN Convention on the Human Rights of the Persons with Disabilities; Article 26.

52 Government Resolution N279 on the Definition of a Social Security Package issued on 23rd July 2012; Article 6, Clause 4.

53 Special Report of the Public Defender of Georgia on the Human Rights of the Persons with Disabilities; 2016; Pages 47-48.

In line with the convention, authorities should provide for the independent life of people with disabilities.⁵⁴ However, the country still has large, specialised institutions operating round the clock in which the inhabitants still do not have equal opportunities to benefit from their constitutional rights.⁵⁵ These individuals have restricted personal and family rights. The majority of them do not receive essential medical and rehabilitation services. They fail to get pre-school, general schooling or other types of education, nor do they have equal opportunities to partake in cultural, sports and social activities. Hence, the individuals living at these institutions are often victims of systemic discrimination.⁵⁶

Irrespective of the essentially positive transformation of human rights of persons with disabilities resulting from the fundamental reform of the system of legal capacity (which has improved as a result), the new model of support contains several instances of discriminatory phrasing concerning the healthcare, election and labour rights of individuals eligible for support. Namely, in line with the Law of Georgia on Health Care⁵⁷, individuals eligible for support may become the subjects of medical-biology studies, if they do not mind and if support has been previously provided. The participation of other individuals in such procedures required consent made on the grounds of informed decisions.⁵⁸ Similarly, legislation prohibits hospitalised individuals eligible for such support to take part in elections, which differs from other hospitalised individuals with psycho-social needs.⁵⁹ Also, it is a mandatory requirement to dismiss individuals from public service should they become a beneficiary of these services. This limits such individuals' ability to work in civil service unless otherwise determined by a court. This restriction, which only applies to public sector, rather than private, is a blanket norm at its essence and contradicts the current model of individual assessment.⁶⁰

54 UN Convention on the Human Rights of the Persons with Disabilities; Article 19.

55 Special Report of the Public Defender of Georgia on Legal Situation of Persons with Disabilities in the State Care Institutions; 2016; Page 30.

56 Same as above; Page 29.

57 Law of Georgia on Health Care; Articles 108, 109, 110.

58 Assessment of Capacitation System Reform and Its Implementation Process: Analysis of Legislation and Practice; Human Rights Education and Monitoring Centre (EMC), 2016; Page 33.

59 Same as above; Pages 26-28.

60 Same as above; Pages 24-26.

Current municipal services for shelter seekers, as a rule, exclude individual needs of vulnerability of different types or directly refer to the exclusion of certain groups from services.⁶¹

A lack of housing services drastically affects the condition of individuals with psycho-social needs, which can be viewed as an indirect form of discrimination. The primary challenge is the under-development of alternative housing services and the current practice of leaving the individuals with psycho-social needs at psychic wards for indefinite periods of time. The latter is one of the gravest manifestations of basic human rights being violated and necessitates an immediate response from authorities.⁶²

61 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Pages 59-60.

62 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Pages 61-61.

RECOMMENDATIONS:

- Ensure that authorities provide equal and nation-wide access to rehabilitation programs for persons with disabilities;
- Abolish discriminatory regulation and ensure that social benefits to be made equitable to individuals with acute disability status are eligible for employment in the public sector;
- Develop an action plan immediately and accelerate the closure of large institutions while simultaneously improving community programs and subjecting them to quality control;
- Amend legislative regulations that employ discriminatory approaches to providing health care, labour and voting rights during the election process;
- Establish housing services to enable individuals with psycho-social needs to gain both independence and the opportunity to lead dignified lives. In addition, remove prohibitions that bar individuals with physical and psycho-social needs from being admitted to shelter services.

**PROTECTING
CHILDREN FROM
DISCRIMINATION**

Protecting children's rights in Georgia has been alarmingly stagnant in recent years. Discriminatory practices affecting children have escaped societal as well as government recognition. The unequitable reality children live in is perceived as a natural condition. In contrast to all other vulnerable groups, children are unable to protest the inequality they experience independently.

Ratification of Additional Protocol N3 to the UN Convention on the Rights of the Child (CRC) in 2016 was a step forward for protecting the rights of children, including the elimination of discrimination, which will enable children to approach the UN CRC Committee when their rights are violated. Transitional Provisions of the Civil Code of Georgia were enforced on 1 January 2016 as well. They prohibit the marriage of individuals below the age of 18 years. Another significant achievement was the Public Defender's review of matters concerning discrimination against children, the result of which was a resolution elevating the issue's social prominence.

Most recently, the 2016 Household Welfare Study published by UNICEF elaborates on discrimination against children⁶³, according to which: poverty indicators, in contrast with other groups of population, are most severe among children and respectively have a visibly negative impact on a child's right to life, development and social security. 1.7% of Georgian households, 2.1% of the entire population of the country, 1.7% of pensioners, and 2.5% of children fall below the extreme poverty line in Georgia. 11.9% of households, 13.3% of the entire population of the country, 10.5% of pensioners, and 16.6% of children live below the minimum subsistence line. These problems originate from the fact that Georgian executive authorities' Policy on the Welfare and Poverty Reduction Among Children is fragmented and inefficient. It is not based on studies, and individual programs are neither subject to monitoring nor adjustments.

In line with the Report of the Public Defender of Georgia⁶⁴, there were 635 child mortality cases for the age group of below 5 years in 2014. This indicator implies that 9.7 children are stillborn out of every thousand live births, which is more

63 UNICEF (2015); Welfare Monitoring Survey; http://unicef.ge/uploads/Welfare_Monitoring_Survey_Georgia-GEO_WEB.pdf

64 Report of the Public Defender of Georgia (2014).

than double the average world indicator (which is 4.6).⁶⁵ The Report of the Public Defender of Georgia⁶⁶ presented even worse data for 2015: 12 deaths out of every 1000 live births. It is worth noting that indicators continue to deteriorate due to the miserable socio-economic conditions and deficiencies in healthcare infrastructure, which has a most-damaging effect on children that violates their right to life. According to the same report, child mortality statistics vary by geographic location. Namely, the probability of infant mortality outside the capital city of Tbilisi is 1.4 times higher, thus depicting location-based discrimination.

Despite urges from numerous international human rights organizations⁶⁷ and commitment on the part of the Government of Georgia, there were no prohibitions in legislation concerning forms of abuse towards children in Georgia in 2016.⁶⁸ Namely, Georgian legislation does not fully prohibit corporal punishment of children, which is a manifestation of discrimination based on age. Irrespective of the fact that amendments made to the Civil Code of Georgia in 2014 (Article 1198) prohibit the application of methods that could lead to physical or mental trauma or suffering among children by parents or legal guardians, such prohibition is not found anywhere. Legislation regulating abuse in households, child care and education has not been integrated into the Criminal Code of Georgia. One of the reasons of for this deficiency is ignorance among legislators on the significant impact of corporal punishment and its consequences, which negatively impact the dignity, moral and physical condition of children. The discriminating nature of the regulation can be identified in the fact that the outcomes of abuse among adults would warrant a legal response. However, in the case of children, there is no legal response mechanism.

65 Annual Report of the Public Defender of Georgia, The Situation of Human Rights and Freedoms in Georgia, (2014), page 391

66 Report of the Public Defender of Georgia (2015).

67 UN Universal Periodic Review; The United Nations Human Rights Council; Session 31 on 13 January 2015.

68 Open Society Georgia Foundation (2016); The Government's Compromise on Violence against Children; Policy Document (2017); http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Children_Rights_GEO.pdf

The right to development and education remained notably limited in 2016 for children of vulnerable groups – street children and those left without shelter are often deprived the opportunity of development and frequently become victims of trafficking in labour as well as other types of exploitation. Disabled children under public care, who still live at large institutions for children and shadow houses for children⁶⁹ fail to benefit from the services required for their development. Their right to life is often breached due to the lack of nutrition and medical services. Disabled children are also isolated from the rehabilitation/abilitation services in a rather discriminatory manner. Their right to quality education is also violated due to deficiencies concerning inclusive education of the country.

In line with Georgian legislation, children, by the age of 14, are eligible to independently approach the court of law and start litigation in order to protect their rights. Nevertheless, it is worth noting that dependence of children on their parents effectively eliminates such activities. Particularly troubled in this sense are children whose rights are violated by their legal guardians. Children often have no guarantees that if they approach a court of law that authorities will offer them adequate services. In these conditions, the country has a complete deficit of child support and social services.⁷⁰ NGOs also fail to provide legal support to children aged below 14 without the consent of their legal guardians. Respectively, even when the grave violations against children aged below 14 are evidenced, including violence, children face discriminatory treatment with regard to access to justice from the side of their legal guardians.

69 Open Society Georgia Foundation(2015); Assessing the First Year of Georgia's Implementation of the Association Agenda – Progress and Opportunities in the Political Sphere; https://www.osgf.ge/files/2015/2015/publication/Book_ENG_WEB.pdf

70 About 240 social workers and 9 psychologists employed in all areas of social security throughout the country.

RECOMMENDATIONS:

- Develop public policies targeted at rapidly eliminating the root causes of increased child mortality, rising poverty, and ensure protection of children's right to life, education and development;
- Amend legislation in order to increase children's procedural capacity and to incorporate NGOs into the processes necessary to ensure that children can seek justice;
- Develop legislation to establish corporal punishment of children as a criminal offence and facilitate its implementation through the development of a policy aimed at ensuring that children are protected.

**DISCRIMINATION
ON THE BASIS OF
HOMELESSNESS**

Public policy on fight against homelessness, which should manifest itself in the consistent guarantees of the basic standards of the right to housing and prevention of homelessness, is not even declared anywhere, thus leading to the continuous and systemic violations of homeless individuals and indicates that authorities do not acknowledge the significance of the right to housing. Apart from having an unrecognized problem, current legislation institutionalised a number of discriminating approaches for the punishment of homeless individuals on the one hand and for difficulties in the administration of social security system on the other. It further worsens the condition of homeless people. Limited services of housing, which developed in response to immediate and urgent needs, mainly neglect the needs of individuals belonging to various groups and directly or indirectly excludes them from the service eligibility.⁷¹ The most vivid cases of the current discriminating practice towards homeless people are presented in the current chapter.

Under current legislation, families are entitled to register in a common database of socially vulnerable households who believe that their socio-economic conditions categorise them as socially vulnerable and therefore require state support.⁷² Instead of pursuing a consistent resolution to the problem of families living in vacated public facilities without permission in order to support themselves, amendments were made to the legislation⁷³, according to which the applicant is not accepted for registration in the database, if the household is placed in a vacated public facility without a permission and if the legitimate owner of such facility does not agree to such intrusion.

Respectively, individuals who use public property without permission of the authorities, are deprived of the right to registered in the database of social security seekers and to respectively receive basic social allowances and benefits. The benefits provide a minimum subsistence subsidy in addition to a whole range of services rendered to socially vulnerable groups of Georgian society. Depriving individuals of this right is a discriminating regulation, which has manifested itself *de facto* as a repressive public policy.⁷⁴

71 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Page 65.

72 Government Resolution N126 on the Reduction of Poverty Level in the Country and Improvement of Social Security Measures of the Population of Georgia issued on 24th April 2010; Article 4.

73 Same as above; Article 5.5.

74 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Page 112.

Like those mentioned previously, individuals without a permanent residence and thus living in the streets are unable to register themselves in the common database of socially vulnerable families under current Georgian legislation⁷⁵, receive a subsistence allowance and have access to many other benefits provided to those registered in the database. e.g. central and local authorities run social security programs within which the registered individuals have a waiver on the court fees when and if they decide to start litigation, file an application, etc.⁷⁶

Regulations that only grant the aforementioned rights to those with permanent residencies imply that there is different and unequal treatment given to those without permanent residencies. Alas, both groups may have equal justifications for benefitting from the state's social security mechanisms. The availability (or lack thereof) of a permanent residence is likely an illegitimate reason for isolating one of society's most vulnerable groups from the country's social security system.

Poorly developed municipal housing services fail to respond to individual needs, while the urgent need for shelter clearly discriminates against certain groups.⁷⁷ Namely, the Tbilisi Lilo Shelter, which is an emergency refuge for homeless people living in the streets of the capital city, explicitly excludes those homeless individuals who cannot care for themselves due to physical or psycho-social needs (or dependency on substances) from its service coverage.⁷⁸ Effectively, emergency shelter service coverage has excluded those whose needs are most pressing.⁷⁹

75 Government Resolution N126 on the Reduction of Poverty Level in the Country and Improvement of Social Security Measures of the Population of Georgia issued on 24th April 2010; Article 5.2; Law of Georgia on Social Support; Article 4.Q; Articles 7.1-7.2.

76 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Page 77.

77 Same as above; Pages 52-60.

78 Local Authority Resolution N41.16.1192 on the Adoption of Registration Application and Application Letters of Shelter Seekers for Lilo Shelter for the Homeless – private entity of public law, Tbilisi Municipality; Article 3.

79 Homelessness-Analysis of State Policies; Human Rights Education and Monitoring Centre (EMC), 2016; Pages 52-60.

RECOMMENDATIONS:

- Remove restrictions on individuals dwelling in public properties without due permissions from registering themselves in the common database of socially vulnerable families;
- Remove restrictions on accessing subsistence allowances that prevent households without permanent residence from being eligible and develop the mechanisms necessary for their integration into the social security system;
- Abolish laws that discriminate against homeless people with various needs (physical, psycho-social or other) by limiting/blocking their access to emergency shelters.

**DISCRIMINATION
ON THE BASIS OF
POLITICAL OPINIONS**

Discrimination caused by political and other beliefs remains a significant challenge in the current reality. The problem is primarily noticeable in the operations of the public sector and is mainly influenced by a disregard for the rule of law.⁸⁰ Changes in the administration of public institutions are often followed by large-scale layoffs of staff.⁸¹ Ultimately, this problem significantly jeopardizes the process of becoming a legitimate state.⁸² A proper conception of the public sector is an essential component of statehood, and its implementation creates solid grounds for the establishment of a democratic and legitimate state. Having stable staff and employment is a cornerstone of establishing a professional cadre of civil servants in the country. Changes in the government should not lead to wide-scale staff dismissals.⁸³ Such an approach would generally be deemed unacceptable in legitimate states and democratic societies.

Apart from the public service, 2016 was marked by discrimination on political and other grounds and within other institutions. Most recently, the tentatively discriminating practice of wide-scale staff dismissal became very prominent leading up to the general elections. Several principals and deputy principals of kindergartens subordinated to the Kindergarten Management Agency, a private entity of public law established by the Municipality of Tbilisi, were dismissed. Article 42 of the Constitution - a local NGO - provided evidence in the form of numerous applications for legal counsel and support filed by the dismissed individuals. Statistical information collected from the Kindergarten Management Agency also confirms the great number of dismissed principals and deputy principals of kindergartens in 2016.⁸⁴

80 Irakli Kvaratskhelia vs. Tbilisi Municipality; Court Ruling of the Administrative Chamber of Tbilisi Court of Appeals N 3B/1907-15, 24th March 2016;

81 Court Ruling of the Administrative Chamber of the Supreme Court of Georgia N BS-463-451(K-13), 18th February 2014.

82 Irakli Kvaratskhelia vs. Tbilisi Municipality; Court Ruling of the Administrative Chamber of Tbilisi Court of Appeals N 3B/1907-15, 24th March 2016.

83 Address of Giorgi Margvelashvili, President of Georgia; November 2014 <http://netgazeti.ge/opinion/36680/>

84 Statistical information collected from the Agency evidences that 15 principals and 47 deputy principals of kindergartens were dismissed from 1st January through 4th April 2016. It is noteworthy that 44 out of 47 deputy principals were allegedly dismissed on the grounds of their resignation letters.

Dismissed principals and deputy principals of kindergartens have been working since the United National Movement (UNM) held the majority of seats in Parliament. Systemic discriminatory practices have been witnessed in the aforementioned cases. It is reasonable to assume that employers had a discriminatory attitude due to the fact that these kindergartens are subordinated to the private entity of public law established by the Municipality of Tbilisi, while court rulings have evidenced the discrimination on political grounds among people working within the system of Tbilisi Municipality in the recent past.⁸⁵ In addition, David Narmania, the mayor of Tbilisi, presented a performance report on 8 April 2015 at the City Assembly and personally noted that staff were cleansed due to their political affiliation.⁸⁶

Hence, in parallel with the looming general elections in 2016, employers intensified the dismissal of principals and deputy principals of kindergartens through various legal methods, e.g. findings of monitoring of financial and other violations. The employer was trying to find substitutes for the dismissed principals and deputy principals with people supporting the authorities to increase their control over the electorate. Wide-scale dismissal of principals and deputy principals of kindergartens turned into a high-profile news issue in the media.⁸⁷

Politically-motivated discrimination became the most intense among local authorities in the recent past.

It is noteworthy that the wide-scale and intensive discrimination at workplace has been evidenced since 1 October, 2012 when the Georgian Dream Coalition came to power. Statistical data on the dismissal of people from their positions in

85 *Irakli Kvaratskhelia vs. Tbilisi Municipality*, Court Ruling of the Administrative Chamber of Tbilisi Court of Appeals N 3B/1907-15, 24 March 2016; *Giorgi Khaburzania vs. Tbilisi Municipality*, Court Ruling of the Administrative Chamber of Tbilisi Court of Appeals N 3C/279-16, 11 May 2016; *Teona Chalidze vs. Isani District Administration of Tbilisi Municipality*, Court Ruling of the Administrative Chamber of Tbilisi Court of Appeals N 3/4308-14, 22 November 2016.

86 <http://www.tabula.ge/ge/verbatim/94973-narmania-enm-is-danatovari-kadrebis-umetesobisgan-chveni-sistema-gatsmendilia>

87 <http://argumenti.ge/sazogadoeba/2510--.html> ; http://for.ge/view.php?for_id=44457&cat=3
<http://rustavi2.com/ka/news/42571>; <http://rustavi2.com/ka/news/42518>

public sector at various times are rather alarming.⁸⁸ Also, the Georgian Dream Coalition's victory at the local level in 2014 was followed by wide-scale dismissals.⁸⁹

Since the local elections in June 2014, many civil servants claimed that they were forced to vacate their positions against their will, i.e. they were victims. These cases gave rise to the reasonable suspicion that their dismissals were politically motivated and that they were targets.⁹⁰

The majority of the dismissal cases were not sufficiently justified or not justified at all by the respective administrative bodies.

88 Right after the general elections of 1 October 2012 Governors left their positions in 55 Municipalities of Georgia, followed by the dismissal of 2321 civil servants in the period of 1 October 2012 through 1 July 2013. <http://www.isfed.ge/main/798/geo/>

89 For instance, 884 civil servants were dismissed only within a short period between July 2014 through 1 October 2014, 434 of which allegedly resigned; <http://www.isfed.ge/main/807/geo/> Report of the Public Defender of Georgia on the Position of Human Rights in Georgia for 2014, which claims that cases of discrimination at work place – including on the political grounds - dominated in the applications filed to the Equality Department. A huge number of discrimination cases on political grounds at the judiciary has also been documented in the reports of other NGOs. <http://www.ombudsman.ge/uploads/other/3/3509.pdf>; Page 377. http://www.osgf.ge/files/2015/News/29%20ivlisi/Report_210x270mm.pdf; Pages 28-34.

90 2015 Human Rights Watch Report; <https://www.hrw.org/world-report/2015/country-chapters/georgia>

RECOMMENDATIONS:

- Ensure that senior officials fight against the discrimination in public sector by developing and introducing anti-discrimination guarantees in the internal guidelines (charters, statutes) of administrative bodies, thereby promulgating charges for discriminating against officials;
- Make law enforcement bodies provide efficient and effective responses to cases involving coercion and pressure put on civil servants. It would also be important to ensure that charges of discrimination against officials are enforced;
- Deliver intensive trainings on human rights and anti-discrimination practices to civil servants and senior government officials to increase their legal awareness and ethics.

