

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

2017 REPORT

Tbilisi  
2018



**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 the 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



This document analyzes the implementation of the right to equality for various groups in Georgia in 2017 and evaluates the current situation in the fight against discrimination, key challenges, state policy, legislation and practice. The document is the second report prepared by the Coalition for Equality aimed at promoting effective anti-discrimination policies in the country and ensuring equality.

The report analyzes the major events during the year in relation to the rights of various groups. It describes the human rights situation in terms of discrimination against women, persons with disabilities, children, LGBTQI, non-dominant religious groups, ethnic minorities, sex workers, persons affected by natural disasters and looks at the problems related to dissidents persecuted in Azerbaijan and Chaglari schools. The report offers recommendations to various state authorities in order to effectively implement the right to equality of these groups.

Despite the growing practice of the courts and the Public Defender in discrimination cases, in 2017 no relevant changes were introduced to create effective mechanisms for the implementation of anti-discrimination legislation and for strengthening the Public Defender as the equality body. Legislation still does not envisage certain forms of discrimination and the mechanisms of protection against thereof, including through the court. The lack of effective institutional and procedural instruments hinders the process of implementation of positive changes for ensuring equality in the State.

In the reporting period, Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence and implemented a number of legislative amendments to enhance the mechanisms for protection against violence. Nevertheless, violence and discrimination against women remains a hidden problem and the state's policy and practice for ensuring gender equality still proves to be relatively ineffective. Women's political participation and economic empowerment remain a major challenge.

Effective protection of children's rights is another concerning problem. Particularly worrying is the state of children living on the streets. It is necessary to find efficient ways for the protection of the children's rights to healthcare and education, address the problem of child poverty, and ensure children's access to justice. Persons with disabilities still have to struggle every day to have access to environment, social inclusion, public or private services. One of the most important problems is ensuring reasonable accommodation and effective implementation of the legal capacity reform.

The year of 2017 was particularly negative in terms of protecting lesbian, gay, bisexual, trans, intersex and queer rights to equality. The Constitution of Georgia was

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amended and marriage was defined as the union of a man and woman for starting a family. Discrimination and violence motivated by homophobic and transphobic hatred and ineffective response of law enforcement authorities thereto remain the biggest problems for the group. The social conditions of transgender individuals is still gruesome. Women sex workers, including transgender women, represent one of the most vulnerable groups who are subject to systemic oppression and hardly ever obtain access to legal remedies.

The reporting period was particularly marked by the state's discriminatory policy towards dissidents persecuted in Azerbaijan, as well as for Turkish citizens declared as "political enemies" by the Turkish authorities. The human rights situation of non-dominant religious groups has not substantially improved. The problem was revealed in the discriminatory practices towards the construction of religious buildings and the transfer of structures of worship without a proper examination of their confessional owners by the state. Representatives of Muslim communities still point out the practice of religious discrimination in the process of crossing the state border. The cases of discriminatory harassment of Muslim students on the ground of wearing a headscarf was also problematic. The issues related to ethnic minorities were still insufficiently represented in the political agenda and the protection of their rights was again placed within the security paradigm.

The state does not have a unified policy and vision to improve the situation of persons affected by natural disasters, and the protection guarantees envisaged in the legislation for internally displaced persons do not apply in relation to displacement as a result of natural disasters.

The Coalition for Equality hopes that this annual report of the situation concerning equality in the country will increase the visibility of challenges that the above discriminated groups face. Ultimately, the Coalition seeks these issues to be reflected in the political agenda of the country, which is essential for the development of effective anti-discrimination legislation and policy and for ensuring equality in the country.



**WOMEN**



In 2017, Georgia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The legislative amendments introduced as a result of the ratification of the Convention broadened the mechanisms for prevention of violence against women and protection of victims. Therefore, the Georgian legislation approximated to international human rights standards. Within the year, applications of victims on the facts of violence against women and response of the state thereof has increased. However, due to deeply rooted patriarchal norms and unequal distribution of power in the society, violence and discrimination against women still remain a hidden problem and the state policy and practice for ensuring gender equality remains relatively ineffective. Women's involvement in politics and economic empowerment is still a major challenge.

### Legislative amendments and remaining challenges

In 2017, the advocacy of the civil society resulted in amending the Constitution of Georgia, which provided special measures to ensure substantive equality of men and women.<sup>1</sup> The amendment is a key step in the process of transition from formal model of equality to substantive equality. The legislative amendments developed based on the Istanbul Convention expanded the mechanisms and services for protection of women from violence, which apply not only to domestic violence, but also to women victims of gender-based violence outside the family.<sup>2</sup>

New criminal offenses have been added to the Criminal Code of Georgia such as harassment<sup>3</sup>, Female Genital Mutilation (FGM)<sup>4</sup> and sterilization without a person's consent<sup>5</sup>. The legal provisions on rape<sup>6</sup> have been changed, although they do not still reflect the requirements of the Istanbul Convention and do not include the absence of a victims' consent as a component of the offense. Sexual harassment is still not punishable under the law. The legislation does not envisage the definition of femicide – a gender-related killing of a woman.

### Institutional changes

In 2017, the Ministry of Internal Affairs of Georgia announced about the establishment of its Human Rights Department. The purpose of the Department, along-

<sup>1</sup> Constitution of Georgia, Article N11.3. The Article shall enter into force after the election of the next president.

<sup>2</sup> The Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence, Article N2.

<sup>3</sup> Criminal Code of Georgia, Article N151<sup>1</sup>

<sup>4</sup> Criminal Code of Georgia, Article N133<sup>2</sup>

<sup>5</sup> Criminal Code of Georgia, Article N133<sup>1</sup>

<sup>6</sup> Criminal Code of Georgia, Article N137

side with other functions, is to supervise investigations of violence against women, domestic offenses and crimes committed on the ground of discrimination<sup>7</sup> with the active involvement of non-governmental organizations. The establishment of the above- mentioned department had been lobbied by Georgian Women’s Movement and NGOs within the Coalition for Equality for two years.

### Violence against women and Femicide

Despite the legislative and institutional amendments implemented in the recent years, the number of murders committed on the grounds of gender i.e. femicide is still alarming in the country. In 2017, 26 cases of women’s murder (including 14 facts committed by a family member) and 15 cases of attempted murder of women were reported (including 12 facts committed by a family member). Investigations were also initiated on 5 facts of incitement to suicide or an attempt to commit suicide on the ground of domestic violence<sup>8</sup>. In spite of this, the State still does not recognize femicide as a gender-related crime –it is still problematic to identify gender-related motives in such offenses and there is no mechanism for maintaining the statistics of femicide cases.

Although the applications on the facts of domestic violence and the protection mechanisms against violence increased, the lack of risk-assessment mechanism preventing the escalation of violence and raising awareness and sensitivity of law enforcement bodies on issues of violence against women is still problematic.<sup>9</sup> It is noteworthy that the cases of domestic violence recorded by “112” are still significantly higher than the number of cases, which have been responded anyhow: in 2017, the calls to 112 Emergency Rescue Service amounted to 24300, among them prosecution started in 1986 cases, restraining orders were issued in 4370 cases, and protection orders – in 180 cases.<sup>10</sup> Accordingly, the follow-up inquiries pursuant to the legislation have been provided only to a quarter of the applications (6536) and in other cases (26286) it is unknown what actions the state carried out for responding to violence.

### Sexual harassment

The year of 2017 was marked by identification of sexual harassment as a social problem. In the spring of 2017, “Sapari” organized a campaign “What happened

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<sup>7</sup> The Human Rights Department of the Ministry of Internal Affairs of Georgia, available at: <http://police.ge/ge/ministry/structure-and-offices/adamianis-uflebata-datsvis-departamenti?sub=11451>

<sup>8</sup> The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2017, p. 145, available at: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>9</sup> See the above, p. 141-144

<sup>10</sup> See the above, p. 143

on the Street”, within which more than 80 women shared their experience through the Facebook page. In the fall of 2017 Georgia joined the world campaign #Metoo. The Georgian Women’s Movement appealed to the Parliament with a petition to regulate the issue of sexual harassment, followed by broader discussions in the media. The Human Rights Committee of the Parliament handed over the petition to the Gender Equality Council and recommended to develop a relevant legislative initiative<sup>11</sup>. Despite the high support of the society, the Parliament has not yet adopted the amendments on sexual harassment.

### Political participation

Nowadays, female MPs make up a mere 16% of the Parliament. The 2017 local elections resulted in only one out of 59 self-government bodies to elect a woman as a mayor, and only 13% of the deputies elected in Sakrebulo are women<sup>12</sup>. On 12 June 2017, 37,455 voters appealed to the Parliament of Georgia with a legislative initiative, which implies nomination of every other different gender candidates in the party lists for parliamentary and local self-government elections. According to the survey conducted by the National Democratic Institute, the mandatory gender quota legislation has earned a broad public support<sup>13</sup>. In 2017, the draft law successfully passed the committee hearings<sup>14</sup>, but it ultimately failed.

### Women’s economic empowerment

Economic empowerment of women and fighting economic violence against women is not the state’s priority. This is evident as a result of analyzing the strategic economic documents of the state, which envisage no measures or policies for economic empowerment of women<sup>15</sup>. In addition, the level of awareness of the importance of women’s economic strengthening in the corporate sector is very low. The situation is aggravated by the fact that women, compared to men, are limited in their choices and control of their lives and have no equal access to financial and other resources<sup>16</sup>.

<sup>11</sup> See the petition: <https://manifest.ge/main/item/1755>

<sup>12</sup> See The website of the Election Administration of Georgia: <http://cesko.ge/statistic/>

<sup>13</sup> See the results of the study of the National Democratic Institute, 2017: <https://www.ndi.org/publications/ndi-poll-knowledge-and-expectations-georgian-parliament-low-majority-support>

<sup>14</sup> See the Draft Law on Amendments to the Organic Law of Georgia “On Election Code of Georgia”: <https://info.parliament.ge/#law-drafting/14155>

<sup>15</sup> K. Margvelashvili, Economic Empowerment of Women in Georgia - Analysis of Current Policies and Initiatives, Sapari, 2017, p. 22, available at: <http://sapari.ge/wp-content/uploads/2017/12/woman-economic-geo-www.pdf>

<sup>16</sup> See the above.

**Recommendations:**

- Provide the definition of femicide, i.e. a gender-related killing of a woman in the Criminal Code of Georgia (as a separate article or as an aggravating condition of the intentional murder), which will envisage sanctions proportionate to the gravity of the crime;
- Ensure that the Prosecutor's Office qualifies crimes of violence against women according to their gravity (including by investigating the discriminatory motive) and develops effective mechanisms for the protection of victims;
- The state shall ensure effective implementation of the measures of prevention of violence against women and combating domestic violence by coordinating among various bodies;
- Ensure that the Parliament develops the legal regulation of sexual harassment so as to prohibit sexual harassment in the public spaces as well as at workplace;
- Ensure that the Parliament adopts a law on mandatory quotas in the Parliament of Georgia and self-government bodies to increase women's political participation;
- Provide specific steps in the state programs for ensuring women's economic empowerment.

**CHILDREN**





**E**ffective protection of children’s rights is still a challenge in Georgia. Despite the state’s commitment to ensure the full implementation of children’s rights, a range of issues remains a matter of concern due to the ineffective actions of the State.

According to the report of the Public Defender<sup>17</sup>, the condition of children living and working on the street is particularly worrying as the measures provided by the state in relation to such children proved not to be effective, particularly in terms of education, access to healthcare services and integration into the society. Abandonment of schools due to labor is quite frequent. According to the Public Defender’s report on evaluation of the situation of 2017, 5713 juveniles were suspended the academic status, including 3454 children prior to the completion of compulsory basic level and 2259 children after the completion of the basic level in 2016-2017<sup>18</sup>. According to the same report, an alarming level of the lead has been found in the children’s blood<sup>19</sup>. Moreover, the poverty level of children is extremely alarming. The state programs fail to adequately protect families from poverty and ensuring the basic needs of minors still remains an issue<sup>20</sup>.

Despite some steps taken by the state with regards to inclusive education, the right to education of children of vulnerable groups, especially children with special education needs, is still problematic. In order to grant a student the status of a student with special educational needs, only a parent or a legal representative of the child can apply to the Inclusive Education Development Division. The school/the teacher do not have the obligation to act on their own initiative, taking into account the best interests of the child, if the child’s interests are neglected by a parent/a legal representative and they do not ensure the involvement of the student in inclusive education<sup>21</sup>. Consequently, if a parent refuses to apply for the assignment of the status to the child, the child may be deprived of the opportunity to receive the education tailored to his/her individual needs and will be forced to follow the National Curriculum, which can be ineffective failing to actually help a minor acquire the necessary general education.

The above-mentioned provision creates a risk of indirect discrimination of children

<sup>17</sup> See the Report of the Public Defender of Georgia on “Children’s Rights in Georgia”, 2016, p.41 <http://www.ombudsman.ge/uploads/other/4/4471.pdf>

<sup>18</sup> See the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2017, p. 252, <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>19</sup> See the above p.249

<sup>20</sup> See the above p.256

<sup>21</sup> Order №01 of the Minister of Education and Science of Georgia, 05.01.2016

with special education needs, as students who need an individual curriculum in the course of the learning process, may not receive the education adapted to their special needs in case of absence of their parents' goodwill. They are given the general education based on a common curriculum, similar to the other children who do not have the individual needs. Consequently, children with special educational needs may be deprived of the opportunity to receive education.

In addition, when a parent /a legal representative refuse to request the status of special educational needs, the best interests of the child are ignored. Hence, the state, namely, the Ministry of Education and Science of Georgia, completely evades the responsibility to protect children from violations and involve them in the educational programs and fully shifts the above responsibility onto the child's parent / legal representative, although the state has the obligation to provide an effective response in such cases to protect children against violence, and to inform relevant institutions thereof.

As to the situation in terms of violence against students in general education institutions, according to the report of the Public Defender<sup>22</sup>, children are frequently subjected to psychological and physical abuse in educational institutions, both by adults and peers, especially by those actively involved in communication with the students. Moreover, the monitoring has revealed stereotypical and in some cases discriminatory attitudes of students and teachers.

Ensuring access to justice for children is still a challenge. According to the Georgian legislation, minors may apply to the court to initiate litigation and defend their rights and legitimate interests independently only from the age of 14. In any notarized agreement, a minor, who has not reached the age of 16 years, has the right to be involved therein only with a legal representative<sup>23</sup>. If the child wishes to start a legal proceeding against his/her legal representative, he/she does not have the right to authorize any person of his/her own choice for such purposes. The right to give authority to someone on behalf of the child is in the hands of the legal representative only, and if the legal representative is the Social Service Agency, it has the right to grant such an authority<sup>24</sup>. Due to the above, if the Social Service Agency represents the rights and legitimate interests of a juvenile who is under the age of 14, the child is deprived of the opportunity to assign his/her desired representative at all.

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<sup>22</sup> Report of the Public Defender of Georgia "On Violence against Students in General Education Institutions" (2017), p.28, available at: <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/zogadsaganmanatleblo-dawesebulebebshi-moswavleta-mimart-dzaladobis-kutxit-arsebuli-mdgomareoba.page>

<sup>23</sup> Civil Procedure Code of Georgia, Article 81<sup>1</sup>

<sup>24</sup> Civil Procedure Code of Georgia, Article 81

The right to a fair trial is guaranteed by the Constitution of Georgia<sup>25</sup>, but under this regulation, children below the age of 14 remain beyond the scope of the Constitutional protection. If a parent breaches the child's rights, the minor or any interested person may independently apply to the guardianship and curatorship authorities and request the protection of the child's interests<sup>26</sup>, but when the legal representative of the child is the Social Services Agency and the lawfulness of the Agency's activities is an issue, there is no neutral, effective and fair mechanism for the protection of the rights of the child under the age 14, through which the child could fully enjoy the rights granted thereof.

As the above issues were identified in the PHR's legal practice, within the framework of one of the cases, the organization applied with the statement to the Public Defender who accepted the organization's opinion and established an indirect discrimination against children, as the legislative provision does not provide an effective mechanism for 14-18-year-old children to independently appear before the court and have a legal counselor. The Public Defender also studied the limitation of access to the court for children who have not reached the age of 14 years and established an indirect discrimination against children under 14 pursuant to the law, which restricts children to appear before the court independently without the consent of a legal representative. The Public Defender has addressed to the Parliament and the Government of Georgia with the recommendation to prepare and implement legislative amendments that will provide free legal assistance and / or opportunity of representation by relatives, other close persons or attorneys for the purpose of addressing the court without the consent of a legal representative<sup>27</sup>.

The issue of lawfulness of placing children under 16 in psychiatric institutions is also problematic. In particular, pursuant to the Georgian legislation, patients under the age of 16 shall receive psychiatric care on the basis of the request and/or informed consent of their legal representative<sup>28</sup>. Consequently, if a person under 16 refuses to be placed in a psychiatric institution, involuntary psychiatric service shall be provided, which constitutes deprivation of liberty. The law does not envisage involvement of a judge in the decision-making process over the placement of persons under the age of 16 in psychiatric institutions, whereas in case of a person who has reached the age of 16, the decision on assignment of compulsory

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<sup>25</sup> Constitution of Georgia, Article 42

<sup>26</sup> Civil Code of Georgia, Article 1198<sup>1</sup>

<sup>27</sup> Recommendation of the Public Defender of Georgia, 13.03.2018, available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saqartvelos-saxalxo-damcvelma-bavshvebis-sasamartlosadmi-xelmisawvdomobis-maregulirebeli-kanonmdebloba-diskriminaciulad-miichnia.page>

<sup>28</sup> The Law of Georgia on Psychiatric Care, Article 8

psychiatric treatment shall be made by the court based on the conclusion of the forensic -psychiatric expert commission<sup>29</sup>. Accordingly, the procedure is discriminatory towards children under the age of 16, as compared to those above 16, there is no neutral, independent institutional and legal mechanism of assessment of a child's psychiatric state, which would assess whether involuntary in-patient treatment is in the child's best interests, while 16 year-old patients exercise this right. The above approach creates a risk of arbitrary placement of persons under 16 in psychiatric institutions.

In addition, the rule of placement of minors in a psychiatric establishment is also an issue<sup>30</sup> according to which children of 4-14 shall be placed in children's unit, and patients of 15-17 years old shall be placed in the juvenile unit, and in the absence of the latter, in the adults' unit. According to the information available, only ten beds are allocated for minors aged 15-17, because of which a large number of patients may be placed in the adults' unit. Since the psychiatric institution is a place of restriction of liberty, the provision of the Convention<sup>31</sup> related to the deprivation of liberty and places of detention shall apply to this process. Placement of children separately from adults shall be obligatory to protect the child's best interests. The abovementioned exception clearly violates the right of equality of minors in psychiatric establishments and it is discriminatory.

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<sup>29</sup> The Law of Georgia on Psychiatric Care, Article 10

<sup>30</sup> Order No. 87 / 6, 20.03.2007, Article 3(13) of the Minister of Labor, Health and Social Affairs of Georgia

<sup>31</sup> Convention on the Rights of the Child, Article 37

**Recommendations:**

- Amend the law so that a parent and a relevant state body (the Ministry of Education and Science, Social Service Agency) shall be responsible for the involvement of a child in inclusive education. Consequently, if a parent neglects the child's interests, the school shall be obligated to take adequate measures and ensure the involvement of the child in the inclusive education;
- Amend the law to ensure the realization of the right of access to justice for children in accordance with the best interests of the child;
- Elaborate legislative amendments to require mandatory involvement of the court in deciding involuntary in-patient psychiatric care for children below 16. At the same time, rules of placing minors in psychiatric institutions shall be amended, so that children of 15-17 shall be placed only in the juvenile units, and the state shall ensure the provision of adequate services/care for these children.



**LGBTQI**





The year of 2017 was particularly hard in terms of equality of lesbian, gay, bisexual, transgender, and queer (LGBTQI) individuals. Namely, the amendment to the Constitution of Georgia, which was adopted by the Constitutional Commission on April 22, 2017, restricted the provision of Article 36 envisaging the principle of equality of spouses and defined marriage as a union of a woman and a man for the purpose of having a family<sup>32</sup>. This was the unequivocal manifestation of institutional / political homophobia existing in the country. According to the Opinion of the Venice Commission on the Constitutional amendments, the new Article 30 of the Constitution providing the definition of marriage shall in no case exclude the recognition of the union of persons with the same sex<sup>33</sup>. Despite this, the Parliament of Georgia has not yet initiated any legislative amendments to introduce civil partnership for same-sex couples.

It should be noted that, like in previous years, the process of reviewing the Constitutional amendments was accompanied by homophobic hate speech by the representatives of political parties and public officials in the media. The language of homophobic hatred was also present during the local self-government elections in 2017<sup>34</sup>. In addition, rallies conducted by ultra-nationalist groups in 2017, including the “Georgian March” were characterized and followed by homophobic hate speech.<sup>35</sup>

An important event was the celebration of the International Day against Homophobia and Transphobia (IDAHOT) by LGBTQI activists, community organizations and their supporters on May 17, 2017. The Ministry of Internal Affairs managed to ensure the safety of the organizers and participants of the event, which must be seen as a step forward considering the past experience. Despite this, the meeting was held in substantially limited conditions with the full isolation of the participants, and with restrictions imposed on the content and form of the assembly by the police, which cannot be regarded as a precedent of a full implementation of freedom of assembly and expression.

Despite the possibility of gathering on May 17, the biggest problem facing LGBTQI

<sup>32</sup> The Constitution of Georgia, Article 30 (1), the provision shall enter into force after the presidential elections of 2018, available at: <https://matsne.gov.ge/ka/document/view/3811818>

<sup>33</sup> CDL-AD(2017)013-e, Georgia–Opinion on the draft revised Constitution, §60. available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)013-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)013-e)

<sup>34</sup> Results of the Media Monitoring of Local Self-Government Elections 2017, EU / UNDP Georgia 2017. available at: [http://www.ge.undp.org/content/georgia/en/home/library/democratic\\_governance/media-monitoring-of-the-2017-local-self-government-elections-in-.html](http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/media-monitoring-of-the-2017-local-self-government-elections-in-.html)

<sup>35</sup> For example, monitoring of the activity of ultra-nationalist groups on FACEBOOK prior to the “Georgian March”, available at: <http://mdfgeorgia.ge/geo/view-library/71>

individuals is violence motivated by homophobic and transphobic hatred and discrimination similar to previous years. Unfortunately, the lack of trust in the law enforcement system is still central for the community members, and because of fear of disclosure of information on their personal lives and re-victimization, they usually refrain from applying legal mechanisms.

In the reporting year, the positive development was the establishment of the Human Rights Department by the Ministry of Internal Affairs of Georgia, which shall ensure the effective and timely response and investigation into the cases of domestic violence, violence against women, crimes committed based on intolerance and discrimination, trafficking, crimes committed by/against minors<sup>36</sup>. The Department shall take into account the critical importance of preventive, analytical and victim-oriented actions and fight against hate-motivated crimes with effective preventive action.

In addition, the actions taken by the Prosecutor's Office also proved to be important in the fight against discriminatory crimes. The measures included the introduction of systemic measures against such offenses, developing statistics, identification of motives of intolerance by the prosecution and inclusion of the motive in the indictment<sup>37</sup>.

Under the Chief Prosecutor of Georgia, in 2017, 44 persons were charged with the crime motivated by hatred. Out of them 4 people were charged with the crime motivated by sexual orientation and 4 persons were charged with the crime motivated by gender identity.<sup>38</sup> However, it should also be noted that the statistical information provided by law enforcement agencies about homophobic / transphobic offenses is still exceeded by the number and gravity of crimes and offenses documented by NGOs. In 2017, WISG recorded up to 40 cases and EMC revealed 10 such cases. Proper identification of hate motives in ongoing investigations still remains a significant challenge. For example, the transphobic motive has not been identified in the brutal murder of Zizi Shekiladze, a transgender woman<sup>39</sup>.

<sup>36</sup> Order No. 1 of January 12, 2018 of the Minister of Internal Affairs of Georgia "On Approval of the Statute of the Human Rights Department of the Ministry of Internal Affairs of Georgia", available at: <https://matsne.gov.ge/ka/document/view/3999709>

<sup>37</sup> According to the official statistics of the Prosecutor's Office of Georgia, in 2017, 4 persons were charged with offenses on the ground of hatred to sexual orientation (44 cases in total), and 4 persons - on the grounds of gender identity. The number of persons charged with homosexual / transphobic offenses doubled in 2017. The Report of the Chief Prosecutor of Georgia, February 6, 2018, p. 45, available at: <http://pog.gov.ge/res/docs/6tebervalimtavariprokurorisangarishi.pdf>

<sup>38</sup> See above

<sup>39</sup> The accused for Zizi Shekiladze's murder was sentenced to 13 year imprisonment, WISG. available at: <http://women.ge/news/newsfeed/130/>

Apart from inefficient response by the police and problems of investigation, crimes committed on homo/bi/transphobic grounds frequently reveal the trend of shifting the liability on victims and the detention of victims by the police<sup>40</sup>, which has also been raised by the Public Defender<sup>41</sup>. The clear demonstration of such a violent practice is the insult and violence committed by law enforcement bodies against T. Kusiani, L. Berianidze and three other persons accompanying them in Batumi on 25 August 2017, when T. Kusiani and L. Berianidze became victims of negligence, violence, homophobic hate speech and degrading treatment by the police<sup>42</sup>. The investigation has not seen any progress yet. Despite many applications, L. Berianidze and T. Kusiani were not even granted the status of a victim<sup>43</sup>. Life threats and violence expressed via comments and personal messages on Facebook towards LGBTQI activists K. Bitsadze and B. Gabadadze by ultra-nationalist groups should also be emphasized. <sup>44</sup>Despite the launch of the investigation, the MIA has not taken effective measures to protect the above persons and grant them the status of the victim.<sup>45</sup>

In the reporting period, the problem of identification of the ground of sexual orientation and sexual identity (SOGI) in domestic violence acts committed by family members against LGBTQI individuals (including forced marriages, unlawful deprivation of liberty, “compulsory medical treatment”, physical abuse and psychological violence<sup>46</sup>) and sensitivity and effectiveness of protection measures against domestic violence and support services was also critically<sup>47</sup>.

It needs to be emphasized that the social status of transgender individuals is still alarming. In 2017, WISG worked on the cases of two transgender persons who challenged the state’s denial of the recognition of their gender at the European Court of Human Rights. The systemic discrimination against transgender people in the first place is due to the absence of legal mechanism for gender recognition.

<sup>40</sup> Bakhtadze K. “Unrecognized Violence, Litigation Report”, WISG, 2017, pp. 35-45, 59-70, available at: [http://women.ge/data/Unidentified\\_Violence\\_WISG\\_2017.pdf](http://women.ge/data/Unidentified_Violence_WISG_2017.pdf)

<sup>41</sup> Special Report of the Public Defender, p. 49, 2017, available at: <http://ombudsman.ge/uploads/other/4/4451.pdf>

<sup>42</sup> The Public Defender’s statement on the alleged ill-treatment towards members of the Equality Movement. available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-ganxcadeba-tanasworobis-modzraobis-wevrta-mimart-ganxorcielebuli-savaraudo-arasatanado-mopyrobis-faqtze.page>

<sup>43</sup> The above case is litigated by EMC together with the Equality Movement and GYLA.

<sup>44</sup> EMC responds to violence and threats against LGBTQI activists Koba Bitsadze and Beka Gabadadze. available at: <https://emc.org.ge/2017/11/10/emc-372/>

<sup>45</sup> The case is litigated by EMC.

<sup>46</sup> Report of the WISG Litigation Activities.

<sup>47</sup> The Practice of WISG Litigation.

Although the law provides for the possibility of changing sex<sup>48</sup>, it does not regulate the medical issue of changing sex and of sex reassignment. In addition, according to the practice established by the Ministry of Justice of Georgia, transgender people shall be obligated to undergo compulsory, intrusive and at the same time costly medical procedures to change the sex marker in their ID documents<sup>49</sup>.

In addition, it should be noted that full access to health care services is still problematic for LGBTQI individuals. Members of the LGBTQI community are often reluctant to disclose their identity in order to protect themselves against negative and discriminative attitude from healthcare staff. Sometimes they refuse to have planned check-up visits, including with regard to their reproductive health, which prevents them from having access to sensitive information about their health status and to full implementation of the right to health<sup>50</sup>, which is again due to the lack of sex education and public awareness activities.

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<sup>48</sup> The Law of Georgia “On Civil Acts”, Article N78(g).

<sup>49</sup> Georgia’s denial to legal recognition of gender change for a transgender man will be reviewed in the European Court of Justice. available at: <http://ehrac.org.uk/wp-content/uploads/2017/08/AD-application-submitted-Georgian.pdf>

<sup>50</sup> See E. Aghdgomelashvili “From Prejudice to Equality” p. 22

**Recommendations:**

- Ensure that the Government of Georgia recognizes the alarming social impact of homophobia and provides and implements systematic educational and information campaigns with the view to strengthening principles of equality in the society including promotion of an adequate inclusion of sexual and reproductive health and rights education in the formal education system;
- Ensure that the Ministry of Internal Affairs facilitates the effective functioning of the Human Rights Department, which should both supervise investigative processes and protect victims and provide systematic activities aimed at crime prevention;
- Ensure that the Ministry of Justice of Georgia in coordination with the Ministry of Labor, Health and Social Affairs of Georgia develops expedient, transparent, accessible regulations and administrative practices that will allow transgender people change the sex marker in all the documents issued by the state or private institutions. It is important that the procedure should be clearly separated from the medical transition process;
- The State should ensure full realization of the right to freedom of assembly for LGBTQI individuals and efficiently implement the positive obligations imposed thereupon;
- Ensure access to health care services for LGBTQI people through promoting non-discriminatory, stigma and stereotypes free medical services by providing permanent activities for raising public awareness on sexual and reproductive health and rights.



# PERSONS WITH DISABILITIES





The issue of protecting the rights of persons with disabilities is still a challenge, as the State has not been able to alleviate the difficult conditions of vulnerable groups so far. The country still faces an acute problem of discriminatory treatment. On a daily basis, persons with disabilities are struggling to have access to environment, inclusion in the society, and to benefit from public or private services. Among many challenges in terms of equality, we would like to focus on the issues outlined below.

When discussing issues of discrimination on the grounds of disability, special attention should be paid to the principle of reasonable accommodation. According to the UN Convention on the Rights of Persons with Disabilities<sup>51</sup>, denial of reasonable accommodation is a form of discrimination - but despite this, the Georgian legislation does not recognize the importance of the concept of reasonable accommodation so far, which creates a barrier in the identification and prevention of specific forms of discrimination, also hinders the implementation of effective protection against discrimination of persons with disabilities.

Another problematic issue is that the existing legislation, which determines a social allowance package for persons with disabilities, except for a small exception, terminates the social assistance in case of employment in public service<sup>52</sup>. The Public Defender of Georgia, who represents the national mechanism for fighting against discrimination, has directly identified discrimination on the grounds of employment. The Public Defender has addressed the state bodies with the recommendation to change the provisions regulating the issuance of social allowances, which restrict people with severe (except for the significant form of limited eye sight) and moderate disabilities to benefit from social packages while performing public activities, unlike other groups with disabilities and persons with the same disabilities employed in the private sector<sup>53</sup>. Despite the recommendations issued, the discriminatory regulation is still in effect, as the Government has not implemented the recommendation of the Public Defender yet.

Currently one of the main challenges facing the State is to successfully implement the legal capacity reform. The existing practice of medical assessment for determining the need for assigning supported decision-maker encourages discrimina-

<sup>51</sup> UN Convention on the Rights of Persons with Disabilities, Article 2.

<sup>52</sup> Decree N279 of the Government of Georgia of July 23, 2012 "On Determination of the Social Assistance", Article 6.4. Available at: <https://matsne.gov.ge/ka/document/view/1043717>

<sup>53</sup> Recommendation of the Public Defender of Georgia "On determining the fact of discrimination on the grounds of employment of people with significant and moderate forms of disabilities", Available at: <http://www.ombudsman.ge/uploads/other/4/4495.pdf>

tion<sup>54</sup>. In particular, in the psychosocial evaluation, the National Forensics Bureau issues a blank report that a person needs to be supported virtually in all areas of social life, while the person may not really need any such care. Moreover, the court fully agrees with reports of the expert examinations and does not actually investigate any individual psychological and social needs of the person. The issue of execution of court decisions is also problematic in relation to individual facts in the process of implementation of the legal capacity reform. Even today, persons receiving support cannot receive a pension from financial institutions (banks). Banks do not have an approach on how to provide banking services to persons with supported decision-making so that these individuals could fully exercise their rights.

Much attention should be paid to the placement in the psychiatric institutions for the purpose of involuntary treatment of persons with mental health diagnosis or who had been previously hospitalized in such institutions. In such cases, the expert committee and the court usually act with pre-determined perception that the behavior of a person is a sign of deterioration of the person's mental health and place such a person in the clinic without any further adequate examination of specific circumstances<sup>55</sup>. The Court does not examine whether placement in a psychiatric institution is triggered by family members, in particular, whether there is psychological violence from a family member considering that such vicious practice exists in the country<sup>56</sup>. Consequently, such approach to the issue by the authorized bodies results in discriminatory treatment on the basis of mental diagnosis.

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<sup>54</sup> General Proposal of the Public Defender of Georgia of 21 June 2017 to the High Council of Justice of Georgia and LEPL Levan Samkharauli National Forensics Bureau, <http://www.ombudsman.ge/uploads/other/4/4616.pdf>

<sup>55</sup> Order No.38 / 2442-17 of the Tbilisi Court of Appeals of November 06, 2017, [http://phr.ge/home/content?content\\_id=657](http://phr.ge/home/content?content_id=657)

<sup>56</sup> See the Report of the Public Defender of Georgia, 2016, "On the Situation of Human Rights and Freedoms in Georgia", p. 632-633.

**Recommendations:**

- Ensure that the Parliament of Georgia introduces amendments into the Law of Georgia “On Elimination of All Forms of Discrimination” under which the principle of “reasonable accommodation” shall be defined as an obligation, and non-fulfillment thereof shall be assessed as discrimination on the ground of disability;
- Remove discriminatory provision from the law regulating public services restricting social assistance when employing persons with disabilities in the public service;
- Ensure that the National Courts and National Forensics Bureau apply an individualized approach when assessing the psychological and social needs of a person;
- Ensure that the National Bank of Georgia regulates the relationship with persons who are assigned supported decision-makers when providing with banking services so that to guarantee, on the one hand, their right to legal capacity and on the other hand, to protect them from all possible harms;
- Ensure that the Common courts and the expert commission of doctor-psychotherapists evaluate comprehensively a person’s psychic needs in order to protect the person from involuntary treatment only because s/he has had a mental diagnosis and had been hospitalized for involuntary medical treatment. Also, the state should take effective measures to eliminate stereotypical attitude towards persons with mental health diagnosis.



**PERSECUTED DISSIDENTS  
FROM AZERBAIJAN AND  
PERSONS RELATED TO  
CHAGLARI SCHOOLS**



In the reporting period, the rights of persecuted dissidents from Azerbaijan in Georgia, as well as the rights of Turkish citizens who were declared as “political enemies” by the Turkish authorities after the military coup in July 2016, was particularly alarming. Due to the political loyalty to the governments of the neighboring countries, the policy of the Georgian government towards Azerbaijani and Turkish dissidents was arbitrary and discriminatory. The most striking examples of political instrumentation of human rights was the organized kidnap from Georgia of Afghan Mukhtarli, an Azerbaijani journalist and activist, as well as the extradition proceedings against Mustafa Emre Çabuk, the manager and the teacher of the Chaglari schools in Georgia.

The analysis of the practice of Azerbaijani dissidents shows that the journalists and activists persecuted from Azerbaijan in 2016-2017, who maintain critical attitude towards Azerbaijan’s political authorities, are denied by the Government of Georgia to the refugee status and residence permit, which symptomatically coincides with tightening of repressive policy against activists in Azerbaijan<sup>57</sup>. Relevant administrative agencies explain the denial of issuance of the refugee status or residence permit by the general interest of national security, the relevance or substantiality of which is absolutely impossible to check due to the secrecy of reports of relevant security services. While the judicial control over the above-mentioned reports is weak and formalistic, the executive government is left with wide scope of arbitrariness, which contains high risks of violation of fundamental human rights<sup>58</sup>. The report issued by the State Security Service is classified as secret information and no applicant is allowed to have access to its content, which obviously deprives one of the opportunity to adequately protect his/her rights before the court<sup>59</sup>.

The cases of the Azerbaijani dissidents also reveal the problem of ineffective and inadequate response of the police to the crimes of their persecution, harassment and control during their stay in the territory of Georgia<sup>60</sup>.

In certain cases, there were doubts about the informal cooperation between Geor-

<sup>57</sup> See the review of the cases of Azerbaijani journalists and activists, Human Rights Education and Monitoring Center (EMC), 2017: <https://emc.org.ge/2017/06/28/emc-318/>

<sup>58</sup> See Repression beyond Borders: IDPs from Azerbaijan in Georgia, Human Rights Education and Monitoring Center (EMC), International Partnership for Human Rights, Freedom Now, 2017: <https://emc.org.ge/2017/11/21/emcraport/>

<sup>59</sup> See the review of cases of Azerbaijani journalists and activists, Human Rights Education and Monitoring Center (EMC), 2017: <https://emc.org.ge/2017/06/28/emc-318/>

<sup>60</sup> See Repression beyond Borders: IDPs from Azerbaijan, Human Rights Education and Monitoring Center (EMC), International Partnership for Human Rights, Freedom Now, 2017: <https://emc.org.ge/2017/11/21/emcraport/>

gian and Azerbaijani law enforcement bodies, which was critically demonstrated in the cases of the kidnap of Afgan Mukhtarli and unreasoned and discriminatory refusal and ban of Jamal Ali, the Azerbaijani journalist, to enter the country based on his political views<sup>61</sup>.

Although over nine months have passed since the launch of the investigation into the case of kidnapping of Afgan Mukhtarli from the Georgian territory, there has been no progress in the investigation yet. In addition, doubts still persist about the alleged participation of the Georgian law enforcement bodies in the organized crime. Moreover, serious shortcomings identified during the investigation process significantly disrupt public confidence and expectations towards the effectiveness of the investigation. The problem of institutional independence, of giving adequate qualifications to the crimes<sup>62</sup> and the denial of the victim's status was particularly concerning in the investigation process<sup>63</sup>.

Despite the fact that upon the very moment of arrest, Afgan Mukhtarli announced that his abduction was carried out in an organized manner and allegedly, with the participation of the Georgian criminal police officers, the investigation into the case was launched by the Ministry of Internal Affairs of Georgia, thus violating the standards of institutional independence. The case was transferred to the Prosecutor's Office for investigation only on July 20, 2017, almost two months later. For establishing the truth over the case, the most important and key evidence, including the video footage, was obtained by the MIA with significant drawbacks<sup>64</sup>.

<sup>61</sup> See the Statement of the Human Rights Education and Monitoring Center (EMC): <https://emc.org.ge/2017/05/05/emc-269/>

<sup>62</sup> Note: Although the circumstances of the case reveal the facts of participation of an organized group in the kidnapping process, and the transfer over the border significantly damaged the interests of Afgan Mukhtarli's family and the State, the Prosecutor's Office, despite the numerous requests of Afgan Mukhtarli's and Leila Mustafayeva's defense lawyer, did not change the qualification of the case to Article 143(4) of CCG and is still investigating the case pursuant to Article 143 (1) (illegal deprivation of liberty). In addition, the investigation ignores the interests and outcome of interference with Afgan Mukhtarli's and Leila Mustafayeva's, his wife's journalistic activities due to the kidnap, which must also become the subject of investigation (Article 154(2) of the CCG).

<sup>63</sup> See the joint statement of NGOs and media organizations, 2018: <https://emc.org.ge/2018/02/19/emc-csos/>

<sup>64</sup> Note: According to the case materials, it is clear that the investigation did not extract the video recordings of cameras attached to private buildings on the way from Tbilisi to Lagodekhi, and according to a witness testimony, the video cameras of the Ministry of Internal Affairs installed on the same route were disconnected. Under the case materials, the CCTV camera equipment installed on the periphery of the border-emigration point "Tsodna" (Lagodekhi) was out of order as well. Furthermore, the explanations recorded by Organized Crime and Corruption Reporting Project (OCCRP) and journalists of the TV Company "Rustavi 2" who were investigating the case of Afgani Mukhtarli's kidnap independently contain the doubts that allegedly MIA employees had deleted the materials recorded by the private CCTV cameras.



The Prosecutor's Office still refuses to recognize Afgan Mukhtarli (as well as Leila Mustafayeva under Article 154 of the Criminal Code of Georgia) as victims by referring to the absence of substantiated grounds about the crime in the case. It is noteworthy that despite the numerous requests of the civil society organizations, the Parliament of Georgia did not set up a temporary investigative commission over the case. In addition, the Prosecutor's Office, despite high public interest into the case, does not provide public with the information about the progress of the investigation and its results<sup>65</sup>.

Living in Georgia for persecuted activists and journalists was the opportunity to continue their professional activities and maintain close contact with their families.<sup>66</sup> However, as a result of the Georgian Government's policy contravening human rights against the dissidents and the kidnapping of Afgan Mukhtarli, many of them left Georgia<sup>67</sup>.

In the reporting period, the case of extradition to Turkey of the Chaglari schools manager and teacher Mustafa Emre Çabuk was also problematic. According to the Turkish authorities, Mustafa Emre Çabuk maintains the connection with the organization "FETÖ / PDY" founded by Pethullah Gülen, which was regarded as a terrorist organization after the events of July 15, 2016. The accusation of the Turkish government seems unreasonable and the documents submitted to Georgia do not contain any specific reference of why the Private Demirel College or the company registered in the United States can be regarded as terrorist organizations and why exercising of the representative authority by Mustafa Emre Çabuk can be viewed as an affiliation to the terrorist organization<sup>68</sup>.

Although the reports provided by the international organizations, including the European Commission<sup>69</sup>, the US State Department<sup>70</sup>, Amnesty International<sup>71</sup> and

<sup>65</sup> See the joint statement of NGOs and media organizations, 2018: <https://emc.org.ge/2018/02/19/emc-csos/>

<sup>66</sup> The joint video prepared by the Human Rights Education and Monitoring Center (EMC) and Netgazeti: <https://www.facebook.com/EMCRIGHTS/videos/1588495311183102/>

<sup>67</sup> See Repression beyond Borders: IDPs from Azerbaijan, Human Rights Education and Monitoring Center (EMC), International Partnership for Human Rights, Freedom Now, 2017: <https://emc.org.ge/2017/11/21/emcraport/>

<sup>68</sup> See Assessment of NGOs: <https://emc.org.ge/2017/07/10/emc-326/>

<sup>69</sup> The Report of European Commission, 2016: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf)

<sup>70</sup> The report of the US State Department 2016: <https://www.state.gov/documents/organization/265694.pdf>

<sup>71</sup> Amnesty International, Report, 2017: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/#endnote-5>

Human Rights Watch<sup>72</sup> include the indication to the risks of torture and inhuman treatment, absence of basic guarantees of the fair trial, politically motivated persecution against members of Petulahlh Gulen movement in Turkey, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia denied M.E. Çabuk and his family members the refugee status<sup>73</sup>, which the national courts eventually left unaltered<sup>74</sup>.

Shortly after the denial of the refugee status, the Prosecutor's Office addressed the common courts to take the decision on the admissibility of the extradition<sup>75</sup>. On February 19, 2018, the Tbilisi City Court, under the motion of the Prosecutor's Office, changed the extradition detention of Mustafa Emre Çabuk with the bail in the amount of 1,000 GEL. However, on February 24, Mustafa Emre Çabuk's 9-month period of the extradition detention envisaged by the law was already coming to an end. This decision can be seen as the result of the high public interest and strong local and international advocacy. The proceedings on the merits about the extradition is still ongoing.

In parallel with the initiation of the extradition procedure, the Government of Georgia shut down two most influential and successful Chaglari schools not allowing the school administrations to correct the identified violations (questionable by the school administrations) and exercised the discretionary authority on awarding the accreditation thus neglecting the right to education and best interests of students. According to the Public Defender, violations similar to Chaglari schools were also identified in other schools, which had not become the ground for the refusal of the authorization though<sup>76</sup>.

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<sup>72</sup> Human Rights Watch, Report, 2018: <https://www.hrw.org/world-report/2018/country-chapters/turkey>

<sup>73</sup> See the Assessment of NGOs: <https://emc.org.ge/2017/07/10/emc-326/>

<sup>74</sup> See the Amicus Curie of the Human Rights Education and Monitoring Center (EMC) on the case of refusal to the refugee status to M.E. Çabuk: <https://emc.org.ge/2017/10/10/emc56/>

<sup>75</sup> See the Amicus Curie of the Human Rights Education and Monitoring Center (EMC) on the case of alleged extradition of M.E. Çabuk: <https://emc.org.ge/2018/02/06/emc-%E1%83%A9%E1%83%90%E1%83%91%E1%83%A3%E1%83%A5%E1%83%98/>

<sup>76</sup> See The Public Defender's assessment on the termination of the authorization for Demirel's College: <http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-demirelis-koledjistvis-avtorizaciaze-uaris-tqma-ukanonod-miichnia.page>

**Recommendations:**

- Ensure that the Government of Georgia protects the security of foreign citizens, including human rights defenders and other dissidents from Azerbaijan and Turkey in the territory of Georgia;
- Ensure that the Prosecutor's Office conducts an independent, timely, due and effective investigation into the kidnapping of Afgan Mukhtarli (including ensuring the involvement of international investigators / experts in the investigation process and informing interested persons about the progress of the investigation). At the same time, the Parliament should set up a temporary investigative commission in the case;
- Ensure that the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia presents the relevant substantiation when refusing a refugee status by providing specific factual circumstances and references to the legislation. In addition, it should provide access to classified information and ensure the right to a fair trial, which implies an effective and thorough review of the court's negative decisions on granting a refugee status based on secret information;
- Ensure that the Ministry of Internal Affairs timely eliminates discriminatory and arbitrary practices of human rights violations when crossing the border;
- Ensure that the Common Courts and the Minister of Justice of Georgia adequately evaluate the high risks of the violation of fundamental human rights in case of M. E. Çabuk's extradition to Turkey and not allow such extradition.



# FREEDOM OF RELIGION



In 2017 there were no substantial improvements in the human rights situation of non-dominant religious groups.

During the year of 2017, the activities of the LEPL State Agency for Religious Issues, which is supposed to be the body implementing the state policy regarding the freedom of religion, again became the subject of considerable criticism similar to the previous year<sup>77</sup>. Under the media reports, the issue of abolition of the Agency was inter alia in the agenda<sup>78</sup>.

In the reporting period the discriminatory tax policy was not eliminated<sup>79</sup>, so were the problems caused by the funding of only four religious organizations pursuant to the Decree №117 of the Government of Georgia, and the gaps in the Law of Georgia “On the State Property.”<sup>80</sup>

On February 8, 2017, a self-organized group of Muslim community comprising tens of thousands of Muslims, applied to the Batumi Mayor to get the permission on building a new mosque in Batumi. Pursuant to the Order of 5 May 2017, the Mayor of Batumi municipality refused to issue the construction permit to Muslims<sup>81</sup>, relying on the interest of Batumi city development as a justification. As far as there are a number of orthodox religious buildings located in the area adjacent to the construction site, and that the legislation considers such constructions permissible in the above zone<sup>82</sup>, the decision of the Mayor’s Office creates a reasonable assumption of discriminatory treatment<sup>83</sup>.

The decision of the Rustavi City Court adopted on June 6, 2016, based on the lawsuit filed by the Catholic Church, ordered the Rustavi City Hall to issue a construction permit for building a Catholic Church. The Court also assessed the initial denial

<sup>77</sup> Withdrawal of personal data including the data of clergy from the religious organizations became the subject of criticism. On.ge – The reason why the Agency for Religious Issues requests personal data of the clergy: [goo.gl/xmlFvS](http://goo.gl/xmlFvS)

<sup>78</sup> TV Company Imedi “State Agency for Religious Issues may be abolished”: [goo.gl/tvw8Pa](http://goo.gl/tvw8Pa)

<sup>79</sup> The Minutes No. 1/8/671 of the Constitutional Court of Georgia of March 23, 2017: [goo.gl/B9U6cb](http://goo.gl/B9U6cb)

<sup>80</sup> Recommendations of the Council of Religions at the Public Defender of Georgia – 2017, p11-12: [goo.gl/fpNRQR](http://goo.gl/fpNRQR)

<sup>81</sup> Article of the Liberal “Batumi City Hall did not allow Muslim community to build a mosque”: [goo.gl/UhPqcP](http://goo.gl/UhPqcP)

<sup>82</sup> See the details of the EMC’s assessment of the Batumi City Hall’s refusal on the request for construction of a new mosque in Batumi, available at: <https://emc.org.ge/2017/05/11/emc-mosque/>

<sup>83</sup> The case of the permit for construction of a new mosque in Batumi is being reviewed by the court where the applicant’s interests are represented by EMC and TDI: <https://emc.org.ge/2017/06/13/emc-305/>

of the permit by the City Council as discrimination on the grounds of religion<sup>84</sup>. These became the subject of political negotiations throughout the year. Ultimately, the state provided another land plot for the construction of the church in exchange to the original land parcel, and the Catholic Church was forced to start building in another part of the city. Although the problem was eventually resolved, it is clear that this form of dispute settlement cannot be evaluated as an effective way to deal with the discriminatory practice of building religious structures.

Apart from the Orthodox Church of Georgia<sup>85</sup>, the Government has not developed a systematic policy of returning (restitution) cult buildings seized from religious organizations during the Soviet Union. Starting from 2015, the state hands over the functioning religious buildings to non-dominant religious organizations only under the right to use<sup>86</sup>, which is formally justified by the deficiencies in the Law on State Property<sup>87</sup>. However, the reasons of this are more political and can be seen as a leverage instrument of maintaining the control over religious organizations and of deep mistrust towards them. At the same time, transfer of religious buildings with the right of temporary use by the Agency cannot be seen as the restitution process<sup>88</sup>.

Despite the commitment undertaken under the Human Rights Action Plan (2016-2017)<sup>89</sup>, fair resolution of legal debates relating to disputed historical religious buildings still remains an issue. The most striking example of the state's inaction is the work of the Commission created by the State Agency for Religious Affairs in order to study the confessional and historical origin of the religious building located in the village of Mokhe. Irrespective of two years of work, the Commission refused to study the issue of the confessional origin of the building and granted it

<sup>84</sup> EMC's application on the permit of the construction of the Catholic Church was granted by Rustavi City Court: <https://emc.org.ge/2016/06/08/emc-83/>

<sup>85</sup> According to Article 7(1) of the Constitutional Agreement signed between the State of Georgia and the Georgian Apostolic Autocephalous Orthodox Church, the State shall recognize all Orthodox churches, monasteries (acting and non-acting), their ruins, and land plots where they are situated in the whole territory of Georgia as the property of the Church.

<sup>86</sup> See the Report 2015 of LEPL "State Agency for Religions Issues" p. 14, [goo.gl/gB9qb1](http://goo.gl/gB9qb1)

<sup>87</sup> The Law of Georgia on State Property shall not permit the disposal of state-owned religious buildings, including to religious organizations. In addition, according to the norms of the law, religious organizations with the status of a legal entity of public law, except for the Patriarchate, cannot purchase the state property;

<sup>88</sup> For assessment of the state restitution policy see EMC study "Freedom of Religion - Criticism of Discriminatory and Non-Secular Policy of the State", p. 91-102: <https://emcrights.files.wordpress.com/2017/03/170x250-geo-web.pdf>

<sup>89</sup> The Paragraph 11.1.3.4 of the Decree №1138 of the Government of Georgia, available at: [goo.gl/qz3Pzm](http://goo.gl/qz3Pzm)



the status of a “disputed cultural monument”<sup>90</sup>, and as an alternative to the dispute settlement, offered the Muslim community assistance in the construction of a new mosque<sup>91</sup>. A part of the Muslim community negatively assesses this decision and continues praying in the open air as a sign of protest against the decision of the Commission<sup>92</sup>. Despite the Commission’s activities for several years, the State actually failed to efficiently solve the problem<sup>93</sup>.

The process of the State’s transfer of religious buildings without a proper examination of their confessional owners is still an issue. Imam Ali Mosque, located in Marneuli, where a religious organization independently formed by the local parish (registered union “Imam Ali Mosque”) has been pursuing religious activities for years, was transferred by the State to another Muslim organization LEPL “Administration of Muslim of All Georgia” under the right of use without any further examination of the issue<sup>94</sup>. Along with the deficient process of the restitution of religious buildings, the above case demonstrates the government’s efforts to strengthen the legitimacy and resources of the Administration of Muslims of All Georgia as an exclusive Muslim organization.

In 2017, the State registered the Armenian Church “Tandoants Surb Astvatsatsin” located in №38 Aghmashenebeli Avenue in the ownership of the Patriarchate. The transfer of the Church in the ownership of the Patriarchate was based on the general reference of the Patriarchate that there were the ruins of an Orthodox Church in the area. Despite the fact that the State had been referring to the Armenian Church’s ecclesiastical possession of the church for years, the State eventually decided to transfer the monument to the Patriarchate<sup>95</sup>. Apart from the discriminatory process of restitution, the above decision provokes tension between ethnic and religious groups and erases the traces of authenticity and diversity of cultural heritage.

The Muslim community also points out the arbitrary barriers created during the

<sup>90</sup> EMC met with the Christian and Muslim community in the village of Mokhe: [goo.gl/AkqPtL](http://goo.gl/AkqPtL)

<sup>91</sup> The magazine Liberal, “The Status of Monument Granted to Mokhe Building - as Zaza Vashakmadze said “Everything is All Right”: [goo.gl/pYyNAh](http://goo.gl/pYyNAh)

<sup>92</sup> The Mokhe historical mosque saving group on Facebook: [goo.gl/jdF5sD](http://goo.gl/jdF5sD)

<sup>93</sup> EMC assesses the final decision of the Mokhe Commission: <https://emc.org.ge/2017/05/12/emc-mokhe-2/>

<sup>94</sup> EMC has initiated a court dispute over the issue of restitution of Imam Ali mosque in Marneuli: <https://emc.org.ge/2017/09/26/emc-359/>, the EMC represents the interests of the applicants in the case.

<sup>95</sup> The government handed over Tandoants church to the Georgian Patriarchate: [goo.gl/sKkHdd](http://goo.gl/sKkHdd), EMC and TDI represent the interests of the applicant at the court.

crossing of the State border, the interrogation on religious matters and the cases of confiscation of religious literature at the customs checkpoints<sup>96</sup>. Despite the recommendation of the Public Defender of April 24, 2017 on discriminatory practices identified during the border crossing<sup>97</sup>, Muslim community still identifies the practice of religious discrimination in the process of crossing the border.

In the reporting period, there were cases of discriminatory harassment of Muslim students on the ground of wearing a headscarf at school<sup>98</sup>. This in turn was encouraged by the findings of the report prepared by the Audit Department of the Ministry of Education and Science of Georgia, which considered it permissible for schools to limit individual demonstrations of beliefs with the argument of protecting religious neutrality<sup>99</sup>. The Public Defender addressed the Ministry of Education with the General Proposal on the mentioned issue and urged to take specific measures against discrimination on the ground of religious neutrality and religion in public schools<sup>100</sup>.

The reporting year was marked by obvious political instrumentalism and control of the Administration of Muslims of All Georgia by the Government of Georgia. This was most vividly manifested in the clash of interests between the Mufti Administration and the parish over the construction of a new mosque in Batumi municipality, the dismissal of the Imam for praying in the open air with other Muslims in the village of Mokhe and the salary termination of those Imams who maintained critical views.

It is noteworthy that the constitutional amendments of 2017 broadening the scope of legitimate aims restricting the freedom of belief and religion has been expanded<sup>101</sup>, which should be negatively assessed. However, the Government agreed with the position and these suggested amendments had to be modified.

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<sup>96</sup> The Public Defender granted the application of EMC on the Discrimination of Muslim community on crossing of the border: <https://emc.org.ge/2017/05/02/emc-262/>

<sup>97</sup> The Public Defender of Georgia established direct discrimination of Muslims on the grounds of religion when crossing Georgia's border: [goo.gl/Bf5ozy](http://goo.gl/Bf5ozy)

<sup>98</sup> See the history of the village Mokhe school: [goo.gl/7UxLuQ](http://goo.gl/7UxLuQ); See the history of the village Karajala school: [goo.gl/n7V8po](http://goo.gl/n7V8po)

<sup>99</sup> EMC challenges the Internal Audit Report on the case of Mokhe Public School: [goo.gl/PMvLnP](http://goo.gl/PMvLnP)

<sup>100</sup> Information on the general proposal of the Public Defender of Georgia: <https://emc.org.ge/2017/09/22/emc-357/>

<sup>101</sup> EMC assessment of the constitutional amendments: <https://emc.org.ge/2017/09/25/emc-358/>

**Recommendations:***To the Parliament of Georgia*

- Amend the legitimate aims of restricting freedom of belief and religion in the new draft of the Constitution and bring it in conformity with the grounds of interference provided for in the international treaties;
- Eliminate the existing gaps in the legislation that substantially hinder religious organizations from the enjoyment of the rights guaranteed by freedom of religion, including the discriminatory provisions in the Tax Code of Georgia, the Law of Georgia on State Property and the Law on State Budget;

*To the Government of Georgia*

- Ensure the amendments in the Resolution of the Government of Georgia of January 27, 2014 “On Approval of the Procedure for Implementation of Certain Measures for Partial Compensation of Damages Inflicted on Religious Associations Present in Georgia during the Soviet Totalitarian Regime” and revise the discriminatory and non-secular practice of funding;
- Develop consistent, transparent, non-discriminatory and rule of law-based legislative package and policy related to resolving disputes over restitution of religious buildings confiscated during the Soviet period. Until the systemic policy is adopted, for the purposes of preventing new disputes, suspend the inconsistent policy of transferring religious buildings;
- Analyze the gaps in the activities of the State Agency for Religious Issues and ensure the fundamental transformation of its mandate and the strategy of its activity;

*To the Ministry of Education and Science of Georgia*

- Ensure unequivocal observance of religious neutrality in public schools. Ensure adequate response to the cases of discrimination based on religion, as well as indoctrination and proselytism and imple-

ment systemic measures for their prevention (including by strengthening school administrations on the issues of religious neutrality management and of policy based on equality and diversity);

*To the Ministry of Culture and Sport of Georgia*

- Ensure maintaining and protecting the authenticity of historic buildings of non-dominant religious groups. For this purpose elaborate the needs-oriented action plan, which will be based on fair and non-discriminatory approaches.

# ETHNICITY AND CITIZENSHIP



Protection of rights of ethnic minorities is still largely viewed within the security paradigm, while non-dominant ethnic groups are commonly referred to as ‘others’, and in some cases, as ‘dangerous others’. The level of participation of security services in the policies related to non-dominant religious and ethnic groups is excessive and is often weakly coordinated with the other political and democratic agencies.

Ethnic minority issues are not sufficiently reflected in the political agenda. The authorities do not have a consolidating narrative of civic nationalism. A significant challenge of coexistence of ethnic Georgians with ethnic minorities is the two characteristics of identification as a Georgian: religious identity (orthodoxy) and identification as an ethnic Georgian. Citizens who are not characterized by these two aspects face difficulties in the integration process. They are not recognized as full-fledged members of the community<sup>102</sup>.

Lack of Georgian citizenship for ethnic Armenians residing in Samtskhe-Javakheti still remains a problem. The lack of citizenship not only deprives these individuals of the right to take part in the electoral process, but also to enjoy the benefits provided for in the Law on Development of Mountainous Regions<sup>103</sup>. In addition to the ethnic Armenians, the State still faces the problem of provision of birth certificates and identity cards to the Roma living in Georgia<sup>104</sup>. In 2015-2017, in total 6 Roma persons were provided with documents – 2 birth certificates and 4 ID cards were issued by the State Service Development Agency.<sup>105</sup>

Political participation of ethnic minorities is also very low. Only 11 representatives of ethnic minorities have been elected in the Parliament, while according to the 2002 census, 16% of the population of Georgia belongs to ethnic minorities and according to 2014 census, this figure amounts to 13.2%. For example, approximately 11% of Tbilisi population belongs to national minorities, but similar to the past years, national minorities are not represented in the current Tbilisi City Council. Moreover, none of the Governors/Deputy Governors of Tbilisi districts and municipalities, and heads of city services and their deputies is a representative of national minorities<sup>106</sup>.

<sup>102</sup> Ullmann A. (2016) Challenges to coexistence in Georgia, CSS analysis in security policy: [http://www.css.ethz.ch/en/publications/cssanalyses-in-security-policy/details.html?id=n/r/1/8/nr\\_186\\_herausgeforderte\\_koexistenz\\_in\\_ge](http://www.css.ethz.ch/en/publications/cssanalyses-in-security-policy/details.html?id=n/r/1/8/nr_186_herausgeforderte_koexistenz_in_ge)

<sup>103</sup> GYLA's lawsuit on the case of Armenian citizen Ani Minasian v. the Parliament of Georgia and the Government of Georgia

<sup>104</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/127/84/PDF/G1612784.pdf?OpenElement>

<sup>105</sup> Letter of Ministry of Justice of Georgia, N3363, 6 July 2017.

<sup>106</sup> Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2017: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

Denial of a permanent residence permit by the Services Development Agency constitutes a challenge in protecting the rights of foreigners. Moreover, the decisions of the Counter-Intelligence Service on denial of a residence permit to a foreign citizen for living in the country with the view to protecting the interests of the state and/or public safety, which serve as the basis of such negative decisions, are not accessible for foreign applicants. This circumstances create a high risk of arbitrariness and often contradict the principle of family unity, provided that the family members of a permanent residence seeker are Georgian citizens<sup>107</sup>. Due to the classified nature of the information, persons whose rights are violated are limited to have access thereof. Therefore, their defense lawyers are also deprived of the opportunity for providing adequate legal protection.

Knowledge of the State language among Armenian and Azerbaijani citizens of Georgia living in Samtskhe-Javakheti and Kvemo Kartli is still a problem. The research conducted in 2012 by the Institute for Social Studies and Analysis showed that 71.5% of ethnic minority residents above 6 years of age and living in Kvemo Kartli do not speak the Georgian language properly. Moreover, 78.3% of ethnic Azerbaijani and 36,6% of Armenians do not speak the official language at all. This circumstance not only affects the opportunity of using public services, but also isolates the ethnic groups. The lack of language competence is one of the reasons why representatives of ethnic minorities living in Georgia receive information about events taking place in Georgia from Armenian, Russian, Turkish and Azerbaijani TV channels<sup>108</sup>.

The year of 2017 was particularly marked by the regress in terms of providing access to information to ethnic minorities. The Public Broadcaster terminated broadcasting the news program “Moambe” in Azerbaijani, Armenian, Ossetian, Russian and Abkhazian languages<sup>109</sup>. Until then, broadcasting of the program by the Georgian Public Broadcaster was not very effective, as for the majority of ethnic minority population purchasing “set-boxes” necessary for digital transmission was not affordable.<sup>110</sup> At the moment, even for this small segment of the population, news programs in their native language via the public broadcaster TV channel is not accessible.

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<sup>107</sup> GYLA's application at the European Court of Human Rights, *Elo Duishvili v Georgia*.

<sup>108</sup> See for example the 2016 Report of the Public Defender of Georgia, p.437: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>

<sup>109</sup> See: <https://goo.gl/mJoeLo>

<sup>110</sup> The Report 2016 of the Public Defender of Georgia, p. 437: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>



The studies conducted by GYLA in Kvemo Kartli in 2017 revealed that local Azerbaijani population does not have access to comprehensive general education, which prevents them from acquisition of quality higher education. According to the information provided by focus groups, mostly the Azerbaijani students who live in the center of the municipality benefit from the Georgian higher education institutions 1+ 4 system, but the number of such students from the villages is relatively low. It should be noted that the State does not have a conceptual document to analyze the major shortcomings, challenges and the importance of new approaches to education policy for ethnic minorities.

In the reporting period, the issue of Pankisi Gorge was problematic. On December 26, 2017, as a result of a special operation conducted by the State Security Service of Georgia (SSSG), a 19-year-old Tamirlan Machalikashvili was wounded in his own bedroom. Later T. Machalikashvili died due to the serious injuries inflicted to his head. According to the SSSG, T. Machalikashvili attempted to launch a grenade, which became the reason for the use of force against him. However, this explanation does not seem reliable considering the circumstances of the case. The strategy of the SSSG to demonstrate repressive force during the operation was immediately criticized by the local population and human rights organizations, including the Public Defender<sup>111</sup>.

The circumstances of the above case revealed the possibility of detention in individual situations during a daytime. Besides the proportionality of the lethal force used by the SSSG, the issue of compliance of the planning and implementation of the special operation with the human rights standards is also problematic,<sup>112</sup> as well as the timeliness and proper coordination of the medical assistance for the wounded. The investigation is in progress with serious drawbacks and it is not consistent with the standards of institutional independence, including that the initial investigative activities on the spot were carried out by the SSSG.<sup>113</sup> The family member of the deceased is not yet granted the status of a victim. After the special operation, the political authorities failed to develop a proper communications strategy with the gorge and the high-profile officials did not try to communicate with the community. The locals are talking about the disruption of trust and political frustration, as well as the issues of growing vulnerability<sup>114</sup>.

<sup>111</sup> The 2017 of the Public Defender of Georgia: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

<sup>112</sup> EMC statement: <https://emc.org.ge/ka/products/machalikashvilis-sakmeze-emc-sus-is-tanam-shromlebis-samartlebrivi-pasukhismgeblobis-qovlismomtsvel-shefasebas-itkhovs>

<sup>113</sup> EMC statement: <https://emc.org.ge/ka/products/emc-temirlan-machalikashvilis-sakmeze-uakhlesi-ekspertizis-shedegebs-afasebs>

<sup>114</sup> The Material prepared by Radio Tavisufleba: <https://www.youtube.com/watch?v=aK5NQM-EOfs>

It is a positive development that during the reporting period there was the precedent of punishing the facts of hate crimes (racial discrimination).<sup>115</sup> Along with the repressive policy, it is substantial for the government to develop a systemic preventive policy regarding the ultra-right wing extremist groups.

Ethnic minorities face the issue of inadequate protection of their cultural monuments. In the absence of the restitution policy of buildings confiscated during the Soviet period, a number of monuments are destroyed, damaged or transferred to the dominant church, which is a form of institutionalized xenophobia, promotes the deletion of collective memory of ethnic minorities and affects the integration process into the common cultural space.

The human rights condition of women of ethnic minorities is especially complicated. Low political participation, social exclusion, economic vulnerability, failure of infrastructure (lack of water, limited public transport), and language barriers mostly affect women. In the condition of high economic migration of men, responsibility for communication with administrative authorities and caring for their families is largely the burden upon women. In some districts, there is a sharp rise in early marriages, and still existing practice of women's abduction. Public and social services, including programs for raising awareness of women's reproductive health and access thereof, are very weak<sup>116</sup>.

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<sup>115</sup> See the website of the Tbilisi City Court: <http://tcc.gov.ge/index.php?m=443&newsid=1105>

<sup>116</sup> The Needs and Priorities of Ethnic Minority Women in Georgia, European Center for Minority Issues (ECMI): [http://sapari.ge/wp-content/uploads/2016/05/Ethnic-Minority-Women\\_Geo.pdf](http://sapari.ge/wp-content/uploads/2016/05/Ethnic-Minority-Women_Geo.pdf)

### Recommendations

- The President of Georgia shall solve the problem of stateless persons in Samtskhe-Javakheti by providing dual citizenship to the persons residing in the region on an exceptional basis;
- Ensure that the State develops policies to support the political participation of ethnic minorities and provides the institutional space for informal civil and political education;
- Ensure that the Service Development Agency of the Ministry of Justice of Georgia enhances efforts to provide Roma persons living in Georgia with birth certificates and ID cards;
- Ensure that the Service Development Agency adequately focuses on the principle of family unity while issuing permanent residence permits;
- Ensure that the State eliminates discriminatory practices in regard to issuing a residence permit, and crossing of the state border and ensures the revision of arbitrary provisions in the legislation, including setting up a specialized defense lawyer's institute for the proper examination of administrative cases related to information containing state secrecy;
- Ensure that the Public Broadcaster improves the quality of transmission of information in the native language of minorities. At the same time, the State shall ensure to procurement of "set boxes" for minority populated regions;
- Ensure that the State assesses the system of education accessibility for ethnic minorities and develops a conceptual document on existing challenges and recommendations; also encourage ethnic minorities living in rural areas to enroll in the program "1 + 4";
- Ensure that the political parties intensify work in the regions populated by ethnic minorities to help them make informed choices;
- Ensure that the Prosecutor's Office conducts an effective, independent and comprehensive investigation into the case of Temirlan Machalikashvili. In addition, political authorities must strengthen trust-based activities with the local community;
- The State should promote gender-based approaches and the policy developed based on specific needs and interests of ethnic minorities.



# SEX WORKERS



Although the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and ensuing legislative amendments in 2017 broadened the scope of protection mechanisms against gender-based violence,<sup>117</sup> the condition of sex workers (both cisgender<sup>118</sup> as well as transgender women) has not changed. Women involved in prostitution are still one of the most vulnerable groups and often become victims of systemic oppression and intersectional discrimination. Structural inequality that sex workers experience due to their gender and economic marginalization affects their decision to engage and remain in prostitution, where they are completely deprived of access to State support services and legal remedies.

Discrimination against sex workers is based on their gender, the stigma attached to sex work and the repressive legislation on prostitution. Although men (especially gay men) and transgender women engage in sex work, mostly cisgender women are involved in prostitution, which is rooted in patriarchal oppression systems and in most cases is associated with women's sexual exploitation<sup>119</sup>.

According to the Administrative Offenses Code of Georgia, prostitution is an administrative offense<sup>120</sup> and the responsibility for the offense shall be imposed not on the purchaser (client) of the services, but on the seller (sex worker). This provision is discriminatory towards women, as most persons involved in prostitution are women- thus the administrative responsibility is largely applied against women. Coercing a person into prostitution by violence or other unlawful means<sup>121</sup>, as well as the transfer<sup>122</sup> of a place for prostitution are punishable criminal offenses.

The analysis of judicial decisions on imposition of administrative responsibility for prostitution has shown that protocols on offenses are drawn up by unauthorized persons (the Ministry of Internal Affairs of Georgia)<sup>123</sup>. The court rulings do not include any sufficient evidence to prove the offense, which questions the fairness of

<sup>117</sup> See chapter "Women" of this report.

<sup>118</sup> A cisgender- a person whose biological gender corresponds to their gender identity.

<sup>119</sup> See for example: J. Vandepitte, R. Lyerla, G. Dallabetta, F. Crabbé, M. Alary, A. Buvé, 'Estimates of the number of female sex workers in different regions of the world', *Journal of Sexually Transmitted Infections*, 82, 2006. See also gender violence against sex workers and barriers to access to justice: International standards and Georgian experience, Georgian Young Lawyers' Association, 2018.

<sup>120</sup> Administrative Offenses Code of Georgia, Article 172<sup>3</sup>.

<sup>121</sup> Criminal Code of Georgia, Article N253.

<sup>122</sup> Criminal Code of Georgia, Article N254.

<sup>123</sup> Administrative Offenses Code of Georgia, Chapter 3.

the proceedings<sup>124</sup>. Mostly, in order to prevent prostitution, the law enforcement bodies penalize sex workers not under the article of prostitution, but for disobeying to the demands of the employees of the law enforcement bodies, which allows the imposition of a larger amount of fines<sup>125</sup>.

The stigma associated with prostitution, administrative sanctions for prostitution and criminal responsibility for acts related to prostitution force sex workers to work in a high-risk environment where they lack access to resources and legal remedies available in the State<sup>126</sup>. Sex workers undergo physical and psychological violence and involuntary sexual intercourse with the police, illegal deprivation of liberty and forced co-operation in exchange for the release from administrative responsibility for provoking crime. They mostly suffer from physical, psychological, sexual abuse and harassment from the clients<sup>127</sup>. According to the Association HERA- XXI, sex workers undergo the above forms of violence at least 2 times a week<sup>128</sup>.

Despite the gross violations of human rights, application of sex workers for legal protection mechanisms is extremely low. This is caused by the repressive legislation, fear of the status disclosure, mistrust towards law enforcement agencies, acts of violence committed by law enforcement officers (including in times when sex workers apply to the police to ask for protection against abuse) and fear of revenge, especially when the offense was committed by the police<sup>129</sup>.

Throughout 2017, arbitrary detention of transgender sex workers by the police was still problematic. Arrests in a number of cases were carried out in the area of “Pleshka”(the place where transgender sex workers gather) and mostly the arrests were carried out when sex workers called the police to report homo/transphobic offenses. Instead of protection, sex workers were detained on the ground of minor hooliganism or for disobedience to the legal demand of law enforcement officers (Articles 166 and 173 of the Administrative Offenses Code of Georgia). Such experience directly affects the willingness of transgender sex workers to apply to the police, which often influences the decisions of other members of the community on whether to address the police in case of violence<sup>130</sup>.

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<sup>124</sup> Gender-based Violence towards Sex Workers and Barriers of Access to Justice: International Standards and Georgian Experience, Georgian Young Lawyers’ Association, 2018.

<sup>125</sup> See the above. Resistance to law enforcement officers shall result in a fine from 250 GEL to 2000 GEL or an administrative imprisonment for up to 15 days.

<sup>126</sup> See the above.

<sup>127</sup> GYLA’s Interim Alternative Report to CEDAW, 19.09.2016. GYLA held five focus groups and two meetings with 30 sex workers in 2016-2018.

<sup>128</sup> Study on Identification of Sex Workers’ needs and Factors Causing Discrimination, HERA- XXI, 2014.

<sup>129</sup> See the above.

<sup>130</sup> Intersectional Discrimination and LGBT People - Litigation Report”, WISG. 2018



**Recommendations:**

- Remove the article on prostitution (Article 172<sup>3</sup>) from the Administrative Offenses Code of Georgia to help increase access of sex workers to justice in cases of gender-based violence and to prevent the abuse of power by the police;
- Ensure that restraining and protection orders are applied in cases of violence against sex workers committed by clients and that these measures are also applied to protect transgender women from gender-based violence;
- Carry out effective investigation and prosecution of crimes committed against sex workers, particularly for offenses committed by law enforcement, and implement effective measures for crime prevention;
- Eliminate the practice of arbitrary imposition of administrative liability against sex workers for the facts of hooliganism and resistance against law enforcement employees;
- Train police and the chief prosecutor's staff, judges and lawyers in the issues related to gender-based violence against sex workers and their access to justice and for changing the homophobic and transphobic prejudice.
- Ensure that the State targets the root causes of prostitution by economic empowerment of vulnerable women and by increasing their access to support services.



# **PERSONS AFFECTED BY NATURAL DISASTERS**



**T**he State needs to elaborate a holistic policy and vision for the improvement of the rights situation of persons affected by natural disasters.

According to the United Nations Guiding Principles of 1998 on Internal Displacement, persons affected by natural disasters shall be included in the definition of internally displaced persons. Although the UN document is not of mandatory nature, it determines the basic principles of how states should act to ensure the rights of internally displaced persons. The International Organization for Migration has the same approach in regard to persons that had to displace as a result of environmental changes or other reasons.<sup>131</sup>

The Georgian legislation in force, in particular, the Law of Georgia “On Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia”, does not envisage persons displaced due to natural disasters within its scope. According to this law, an IDP shall be a person who was forced to leave his/her permanent place of residence because of threats to his/her life caused by the occupation of the territory by a foreign state, aggression, armed conflict, mass violence and/or massive human rights violations<sup>132</sup>. Consequently, the protection guarantees provided for IDPs under this Law do not apply to persons affected by natural disasters. Their issues are regulated by the Decree № 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013. The above Decree<sup>133</sup> provides for the definition of an eco-migrant family and the procedure for their accommodation and transfer of residence areas in their ownership.

The natural disaster of 13-14 June 2015 in Tbilisi, which killed 23 people and destroyed the property of tens of thousands of people, once again demonstrated that the above Decree №779 of the Minister does not offer complete guarantees for the legal protection and restoration of the rights of victims of natural disasters. This is exactly why the obligation of the response to the events of 13-14 June, 2015, the resettlement of the victims, compensation and rehabilitation of the damaged property was imposed on the local self-government, while the above is the duty of the Ministry according to the applicable legislation<sup>134</sup>. On 5 July 2015, in an ac-

<sup>131</sup> See UN Guiding Principles for Internal Displacement of 1998; See Also, International Organization for Migration, World Migration Report 2010, pp. 73-74.

<sup>132</sup> Article 6, paragraph 1.

<sup>133</sup> See the Decree №779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013 “On Establishment of the Commission to Regulate Settlement Issues for Families Victimized and Subjected to Displacement as a result of Natural Disasters”.

<sup>134</sup> Article 7(41) of the Decree №34 of the Government of Georgia of February 22, 2008 “On Approval

celerated manner the Tbilisi City Council developed and adopted the Resolution № 17-66 “On Approval of the Rules for the Provision of Residence, Cession of Real Estate Property Rights and Provision of other Forms of Monetary Assistance to the Families who Suffered as a Result of the Natural Disaster of June 13-14, 2015 in Tbilisi”, which compared to the Order № 779 of November 13, 2013 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, determined different categories of victims, as well as the accommodation and other types of assistance.

Despite the fact that certain persons affected by the disaster of June 13-14, 2015 still have the dispute for the compensation of damages,<sup>135</sup> the procedure for the provision of assistance and compensation developed by the Tbilisi City Council fully envisaged the needs of the affected population. The same cannot be stated about the general procedure developed by the Ministry under which the State provides assistance to eco migrants, and which only provides housing at this stage.

Persons displaced and affected by natural disasters are IDPs who in most of the cases, face the other needs along with housing problems, due to severe social-economic conditions. Therefore, it is necessary to develop and elaborate a unified State policy that will ensure uniform social guarantees for IDPs affected by natural disasters.

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of the Statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia”.

<sup>135</sup> See the report “Monitoring the Spending of the Finances and Resources for Elimination of the Damages Caused by the Disaster of 13-14 June 2015”, “Constitution - Article 42”.

**Recommendations:**

- The State shall elaborate the holistic policy and vision for the improvement of human rights situation of persons affected by natural disasters;
- The State shall take measures to ensure that persons affected by and displaced as a result of natural disasters enjoy the same social guarantees as the ones displaced as a result of conflict.

