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## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
the Public Defender's Office of Georgia  
concerning the 16th National Report on the implementation of  
the European Social Charter

submitted by  
**THE GOVERNMENT OF GEORGIA**  
Articles 7, 8, 16, 17, 19, 27, and 31  
for the period 01/01/2018 – 31/12/2021

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**CYCLE 2023**



**Comments regarding the 16<sup>th</sup> National Report on the implementation  
of the European Social Charter submitted by  
the Government of Georgia**

**Public Defender's Office of Georgia**

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## Introduction

The Public Defender's (Ombudsman) Office of Georgia (hereinafter the PDO) oversees the observance of human rights and freedoms in Georgia. The PDO also analyses the state's laws, policies and practices, in compliance with the international standards, and provides relevant recommendations.

The powers and functions of the Public Defender are defined in the 1996 Organic Law on the Public Defender of Georgia.

In 2014 the Public Defender of Georgia was named as the structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities. The monitoring mechanism of the Public Defender, together with the Department of the Rights of Persons with Disabilities, includes the Consultative Council for Monitoring of Promotion, Protection and Implementation of the Convention on the Rights of Persons with Disabilities and a monitoring group.

The Public Defender also exercises the functions of the National Preventive Mechanism (NPM), envisaged by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In addition, based on the Law on "Elimination of All Forms of Discrimination", the Public Defender is designated as an equality body with one of the functions to supervise the implementation of the aforesaid law.

The Public Defender undertakes educational activities in the field of human rights and freedoms, and lodges complaints in the Constitutional Court of Georgia in case the human rights and freedoms (as envisaged in the chapter II of the Georgian Constitution) are violated by a normative act.

The PDO is further authorized to exercise the Amicus Curiae function at the Common Courts and the Constitutional Court of Georgia and has experience in intervening before the ECtHR as well. In addition, the PDO has been submitting Rule 9 communications to the Committee of Ministers of the Council of Europe on the implementation status of ECtHR judgements and has been actively contributing to examination of state reports by UN treaty bodies.

The Public Defender exercises its functions independently and is bound only by the Constitution, international treaties and agreements of Georgia, and by the universally recognized principles and rules of international law, the Organic Law on Public Defender of Georgia, and other legislative acts. Any influences or interferences with the Public Defender's activities are prohibited and punished by law.

The DO welcomes the opportunity to provide to the European Committee of Social Rights comments regarding the 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia and the rights under the Charter that are examined in the present cycle.

## Article 7 – The right of children and young persons to protection

### Paragraph 1 of Article 7

The European Committee on Social Rights (hereinafter the Committee) has requested information on the measures taken by the authorities to detect child labour.<sup>1</sup> In this connection, study conducted by the Public Defender’s Office (hereinafter PDO) in 2020 revealed shortcomings in identification of risks and the underlying causes of heavy forms of child labor, in case detection and determination of identities of children involved in labor.<sup>2</sup> The study also pointed to lack of effective response to detected cases, inadequate assessment of the needs and the best interests of victim children, overload of social workers in the local offices of the guardianship-care body, lack of child-friendly physical environment, inappropriate follow-up to the identified cases and insufficient municipal services or programmes intended to prevent child labor or eradicate the risks of child labor.<sup>3</sup> As to the scale of the problem, children’s involvement in household or seasonal work, labor migration abroad and anti-social activities (such as begging for mercy, peddling) is common.<sup>4</sup> There have also been cases of hard forms of labour such as collecting scrap metal, working on trucks and farming.<sup>5</sup> The PDO has also noted the systemic cases of missing or dropping out of school due to child labor and non-recording of such cases by educational institutions.<sup>6</sup>

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<sup>1</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 2.

<sup>2</sup> The Public Defender of Georgia, Special Report on Child labor during the Covid Pandemic and beyond, 2021, page 29, available at: <https://cutt.ly/rwrUiTGb> [last seen 15.06.2023].

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, pages 6-7; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 216, available at: <https://cutt.ly/QwrUoTAA> [last seen 15.06.2023].

<sup>5</sup> The Public Defender of Georgia, Special Report on Child labor during the Covid Pandemic and beyond, 2021, page, pages 6-7; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 216.

<sup>6</sup> The Public Defender of Georgia, Special Report on Child labor during the Covid Pandemic and beyond, 2021, page, pages 7; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 216.

In terms of identifying and supporting children living or working in the streets, the 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia (hereinafter the National Report) refers to day center and night shelter services within the sub-program for providing shelter for homeless children.<sup>7</sup> It is noteworthy that 104 beneficiaries were enrolled in 7 day centers and 6 shelters within the sub-program of provision of shelter for homeless children while 314 minors were beneficiaries of the services of this sub-program in 2022.<sup>8</sup> However, given the difficulties in case detection and scarcity of services, the aforesaid statistics do not reflect the correct number and do not cover all the children working or living in the streets.<sup>9</sup> Moreover, the monitoring of all the daycare centers and 24-hour shelters by the PDO in 2021 pointed to the need to strengthen children and their biological families, to find/mobilize community resources to this end and to address the stereotypical attitudes of the society towards homeless children and their families.<sup>10</sup> In addition, infrastructural problems in shelters were also revealed.<sup>11</sup> These issues have remained unresolved.<sup>12</sup>

According to the previous conclusions of the Committee, a situation in which a child under the age of 15 years works for between 20 and 25 hours per week during school term (Conclusions II, p. 32), or three hours per school day is contrary to the Charter (Conclusions IV, p. 54).<sup>13</sup> In light of this standard, the Committee found non-conformity as, under the Georgian Labour Code, children under the age of 15 were allowed to perform light work up to 24 hours per week.<sup>14</sup> In this connection, there have been no changes as 14-year-old children i.e., minors under the age of 15 are still allowed to work up to 24 hours per week according to the Labor Code.<sup>15</sup> Paragraphs 8 and 9 of article 24 of the Labor Code fail to take into account the school term in regulation of permissible work hours which are not determined and

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<sup>7</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 4.

<sup>8</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 217; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 274, available at: <https://tinyurl.com/37whcu5d> [last seen 15.06.2023].

<sup>9</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 217; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 275.

<sup>10</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 217.

<sup>11</sup> Ibid.

<sup>12</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 275-276.

<sup>13</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 4.

<sup>14</sup> Ibid.

<sup>15</sup> Paragraph 9 of article 24 of the Labor Code of Georgia.

differentiated according to whether the labor happens during or outside school term. Thus, the non-conformity has not been resolved.

The Committee's previous conclusions also found non-compliance with the Charter on the ground that "labour inspections supervising that the regulations on child labour were respected in practice were very limited and during the reference period were carried out only with the consent of the employer".<sup>16</sup> In this connection, the National Report reads that "inspections conducted by the Labor Inspection Service in 2021 revealed no violation of the Labor Code norms regarding the labour rights of minors".<sup>17</sup> However, the Labour Inspection Service did detect one case of child labour inconsistent with the Organic Law of Georgia on Safety at Work.<sup>18</sup> The Labour Inspection Service demanded from the company in question to remove the juvenile from the facility of construction work which is a particularly high-risk, harmful, and dangerous area.<sup>19</sup> It was also decided to suspend the operation of the company.<sup>20</sup> The PDO would also like to note that 18 complaints on alleged child labour/labour exploitation were filed to the Agency for State Care between January and December 2021.<sup>21</sup>

## Paragraph 2 of article 7

According to the Labor Code of Georgia, "employment agreements for performing arduous, harmful or hazardous work shall not be concluded with minors".<sup>22</sup> Although this provision is formulated as an absolute prohibition, an exemption therefrom is provided by №01-126/N Order on Approval of the List of Heavy, Harmful and Hazardous Jobs for Persons under the Age of 18, adopted by the Minister of IDPs from the occupied territories of Georgia, Labour, Health and Social Protection of Georgia in November 2020.<sup>23</sup> Paragraph 2 of article 3 of the №1 annex of this Order stipulates that it is allowed to employ minors at jobs listed as prohibited only in exceptional cases when these jobs relate to a minor's vocational/professional training, are carried out in direct presence of a supervisor or a person entrusted by the supervisor and requirements under the Georgian labor legislation are completely fulfilled. This provision does not fully comply with the standard set by the Committee according to which "young persons

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<sup>16</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 5.

<sup>17</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 5.

<sup>18</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 216.

<sup>19</sup> Ibid, page 217.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, page 216.

<sup>22</sup> Paragraph 5 of article 10 of the Labor Code of Georgia.

<sup>23</sup> №01-126/N Order on Approval of the List of Heavy, Harmful and Hazardous Jobs for Persons under the Age of 18, adopted by the Minister of IDPs from the occupied territories of Georgia, Labour, Health and Social Protection of Georgia in November 2020, available at: <https://tinyurl.com/4jfu9wy> [last seen 15.06.2023].

not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons”.<sup>24</sup> Thus, employment at occupations prescribed as dangerous or unhealthy must be absolutely necessary for minors’ vocational training. However, the aforesaid national exception provides a weaker standard and wording by allowing child labor at such jobs when these jobs relate to a minor’s vocational/professional training instead of being absolutely necessary for it. Moreover, this exception is incompatible with the wording of the Labor Code’s absolute prohibition of employing minors at arduous, harmful or hazardous work. Thus, the exception seems redundant as the Labor Code is a superior legal act and takes precedence over it, according to the Law of Georgia on Normative Acts.

### Paragraph 3 of article 7

In its previous conclusions, the Committee considered that, in the light of the principles on permitted duration of light work, mentioned under Article 7§1, “the daily and weekly duration of light work permitted to children subject to compulsory education is excessive and therefore cannot be qualified as being light work”.<sup>25</sup> Thus, the reasoning stated above with respect to paragraph 1 of article 7 of the Charter is applicable here as well. As mentioned, paragraphs 8 and 9 of article 24 of the Labor Code fail to take into account the school term in regulation of permissible work hours which are not determined and differentiated according to whether the labor happens during or outside school term. Thus, the non-conformity has not been remedied.

### Paragraph 5 of article 7

The Committee has requested updated information on net minimum wages and allowances payable to persons under 18 years of age.<sup>26</sup> Unfortunately, the minimum wage applicable to all enterprises and organizations in Georgia is still 20 GEL according to the decree N351 of the President of Georgia issued on June 4, 1999.<sup>27</sup> Although the decree contains a norm that serves to revise the minimum wage according to the country’s socio-economic situation, the amount

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<sup>24</sup> Digest of the Case Law of the European Committee of Social Rights, 2022, page 95.

<sup>25</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 8.

<sup>26</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 3.

<sup>27</sup> The №351 Decree on the Amount of Minimum Wage adopted by the President of Georgia on June 4, 1999, available at: <https://tinyurl.com/nbv25e9c> [last seen 15.06.2023]; The Public Defender of Georgia, Special Report on the Rights of LGBT+ People in Georgia, 2021, pages 37-38, available at: <https://bit.ly/39g0b7P> [last seen 15.06.2023].

of minimum wage has not undergone actual changes to date.<sup>28</sup> Thus, the current retrograde norm is detrimental to the interests of employees and violates the principle of decent work.<sup>29</sup>

## Paragraph 10 of article 7

The National Report mentions the adoption of the Law of Georgia on Combating Crimes against Sexual Freedom and Inviolability in March 2020. While introduction of this law is a welcomed step, there have remained shortcomings in national legislation addressing sexual violence against children. In particular, article 137 of the Criminal Code of Georgia defines rape as any penetration of a sexual nature into the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a vulnerable condition of a person affected while such a penetration committed against a juvenile knowingly or by abusing trust, authority or influential position constitutes an aggravating circumstance.<sup>30</sup> Thus, penetration of a sexual nature into the body of a juvenile cannot be classified as rape if it is not perpetrated with violence, threat of violence or abuse of vulnerable condition.<sup>31</sup> However, penetration of a sexual nature into the body of a juvenile, if committed by abusing trust, authority or influence, should constitute rape independently, without preconditions of violence, threat of violence or abuse of vulnerable condition.<sup>32</sup> Similarly, article 138 of the Criminal Code unfortunately includes the same preconditions in definition of other actions of a sexual nature that do not contain signs of a crime referred to in article 137.<sup>33</sup> Moreover, article 139 is also problematic. Paragraph 1 thereof criminalizes coerced penetration of a sexual nature into the body of a person or any other coerced action of a sexual nature, when committed under the threat of damaging property, disclosing defamatory information, information representing private life or such information that may substantially affect a right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence. Thus, the Criminal Code criminalizes two offences in articles 137 and 139 that both actually equal rape but provides lighter punishment for the latter.<sup>34</sup> Such an approach was strongly criticized by the Council of Europe Group of

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<sup>28</sup> The №351 Decree on the Amount of Minimum Wage adopted by the President of Georgia on June 4, 1999; The Public Defender of Georgia, Special Report on the Rights of LGBT+ People in Georgia, 2021, pages 37-38.

<sup>29</sup> The Public Defender of Georgia, Special Report on the Rights of LGBT+ People in Georgia, 2021, pages 37-38.

<sup>30</sup> Article 137 of Criminal Code of Georgia.

<sup>31</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 13, available at: <https://tinyurl.com/3yubwja5> [last seen 15.06.2023].

<sup>32</sup> Ibid.

<sup>33</sup> Ibid, pages 13-14.

<sup>34</sup> Ibid, page 16.

Experts on Action against Violence against Women and Domestic Violence (hereinafter GREVIO) in case of Spain. According to the GREVIO, absence of freely given consent amounts to rape.<sup>35</sup> Accordingly, the action referred to in article 139 of the Criminal Code of Georgia should be qualified as rape and not coercion. Furthermore, article 140 of the Criminal Code is also flawed. It criminalizes penetration of a sexual nature into the body of a person below 16 years of age, committed knowingly by an adult. This crime is interpreted as an act committed with the consent of a juvenile, but still punishable due to the age of the victim.<sup>36</sup> Such an interpretation means that no lower limit for valid consent is established and indicates the law makers' position that a minor can, in fact, give consent to sexual intercourse at any age.<sup>37</sup> In absence of violence, threat of violence or vulnerability, it is considered that the minor consented and the action in question is qualified under Article 140.<sup>38</sup> Indeed, in such cases, the victim is unfortunately always asked to clarify whether the sexual intercourse was based on her free will and whether she has complaints against the accused.<sup>39</sup>

With respect to national legislation, the previous conclusions of the Committee also sought "confirmation that persons using the services of a child engaged in prostitution may be prosecuted".<sup>40</sup> The Committee found non-conformity as not all forms of sexual exploitation were criminalized.<sup>41</sup> This problem has remained unsolved. In particular, buying (voluntary and not coerced) sex from a minor engaged in prostitution and aged 16 or 17 is not criminalized and thus buyers cannot be prosecuted and held criminally liable for buying sex. In case of a minor under the age of 16, buying sex from him/her will constitute one of the crimes of sexual nature (such as article 140) under the Criminal Code but is still not criminalized as a separate crime.<sup>42</sup> In addition, under articles 13 and 172<sup>3</sup> of Administrative Offences Code, administrative liability for prostitution can be imposed from the age of 16. Accordingly, juveniles aged 16 and 17 are not considered victims but offenders.

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<sup>35</sup> GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Spain, 2020, paragraphs 220-222, available at: <https://tinyurl.com/ytj6vpx2> [last seen 15.06.2023].

<sup>36</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 17.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, page 18.

<sup>40</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 16.

<sup>41</sup> Ibid, page 18.

<sup>42</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 19.

The National Report describes various measures undertaken to train law enforcement officers on sexual crimes/exploitation and human trafficking.<sup>43</sup> However, more effort is required in this direction. The 2021 parliamentary report by the PDO pointed to the need to train law enforcers to identify victims of trafficking.<sup>44</sup> Moreover, the 2022 report by the U.S. Department of State reads that “observers reported the government lacked the knowledge and capacity to investigate forced labor; and authorities continued to require training on corroborating victim testimonies and evidence collection in complex cases involving financial crimes, organized crime, and digital evidence”.<sup>45</sup>

The National Report describes steps taken for the purpose of proactive identification and investigation of cases of human trafficking.<sup>46</sup> Unfortunately, these measures are not enough. In particular, the permanent group under the Inter-Agency Council on Combatting Trafficking in Human Beings did not identify a trafficking victim in 2022.<sup>47</sup> The low number of beneficiaries of shelters for trafficking victims and the 2022 statistics of trafficking cases also indicate the insufficient detection of trafficking and low reporting.<sup>48</sup> In particular, investigations and prosecutions were launched into 16 alleged cases and 4 alleged facts of trafficking respectively and 3 individuals were granted victim status.<sup>49</sup> According to the 2022 report by the U.S. Department of State, the authorities “convicted fewer traffickers and identified the lowest number of victims since 2016. Police conducted some ad hoc raids on commercial sex establishments without a clear strategy on victim identification”.<sup>50</sup> Similarly, the 2021 report states that the government “investigated and prosecuted fewer suspects and identified fewer victims”.<sup>51</sup>

The National report also addresses the topic of sexual abuse against children. It mentions the adoption of the standard operating procedures for the investigation of the facts of sexual abuse

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<sup>43</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, pages 12-13.

<sup>44</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 118.

<sup>45</sup> U.S. Department of State, 2022 Trafficking in Persons Report: Georgia, available at: <https://tinyurl.com/548rvve2> [last seen 15.06.2023].

<sup>46</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 15.

<sup>47</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 201.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> U.S. Department of State, 2022 Trafficking in Persons Report: Georgia, available at: <https://tinyurl.com/548rvve2> [last seen 15.06.2023].

<sup>51</sup> U.S. Department of State, 2021 Trafficking in Persons Report: Georgia <https://www.state.gov/reports/2021-trafficking-in-persons-report/georgia/>

against a child is mentioned.<sup>52</sup> While the PDO welcomes such efforts, shortcomings were nevertheless identified in administration of justice in cases of sexual abuse against children during the reporting period. The PDO monitoring covering the period from July 2020 to March 2021 revealed the inconsistency of practice of making decisions on the termination of an investigation and criminal prosecution in cases of sexual abuse against children.<sup>53</sup> In particular, often such decisions did not contain complete information on measures adopted and thereby hindered a full evaluation of the response of the authorities.<sup>54</sup> Moreover, it is also concerning that participation of a psychologist in cases of sexual abuse of children depended on an investigators or a prosecutor's assessment of the need of involvement.<sup>55</sup> However, the involvement of a psychologist should follow a pre-prescribed procedure and not be subject to an assessment by an investigator or a prosecutor. Moreover, the PDO monitoring report pointed to a sharp inadequacy of the number of specialists, social workers and psychologists and their lack of qualifications/knowledge.<sup>56</sup> Against this background, it is unfortunately not surprising that the presence of psychologists and social workers during interviews with child victims of sexual abuse or their questioning at the trial was mostly formal (in monitored cases).<sup>57</sup> The PDO monitoring also indicated the absence of services specifically focused/oriented on child victims of sexual abuse and needed to plan and implement long-term rehabilitation measures based on the identification of individual needs.<sup>58</sup> Lack of a child-friendly environment in the buildings of the law enforcement agencies and courts was also criticized.<sup>59</sup> In this connection, the PDO welcomes establishment of the center of psychological and social services (the Barnahus) which provides the opportunity to interview minors in presence of a psychologist only, in a child friendly environment and under remote observation by other relevant persons.<sup>60</sup> However, the current regulations and practice do not accept the video-audio recording of an interview with a child and the corresponding record of the interview as evidence.<sup>61</sup> Thus, no adequate use is made of the aforesaid opportunity.<sup>62</sup>

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<sup>52</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 12.

<sup>53</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 9.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, pages 9-10.

<sup>57</sup> Ibid, page 10.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid, page 9.

<sup>60</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 269.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

Moreover, the center of psychological and social services only functions in Tbilisi and thus its geographic coverage is not enough.<sup>63</sup>

Apart from the Barnahus, the National Report lists the state-run services for victims/statutory victims of trafficking, including shelters.<sup>64</sup> It should be noted that the PDO monitored all state shelters and crisis centers for the victims of domestic violence and trafficking in 2019 and 2020. The monitoring revealed challenges in, inter alia, carrying out psycho-social rehabilitation of victims, ensuring reparation and safety of infrastructure, observing sanitary-hygienic norms in the shelters and providing medicines, adequate living conditions and proper shoes and clothes for the beneficiaries.<sup>65</sup> The PDO has also identified the problem of low level of awareness of both the public and potential victims of trafficking on assistance/support as well as protection measures,<sup>66</sup> despite awareness raising measures described in the National Report.<sup>67</sup> Moreover, the 2022 report by the U.S. Department of State reads that “while the government organized a mock court competition for students and awareness campaigns targeting students and the public, an international organization continued to report Georgian authorities were reluctant to implement large-scale awareness campaigns in major cities due to the negative impact they believed it would have on the tourism industry”.<sup>68</sup>

The Committee asked for information on the impact of the Covid-19 pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen monitoring mechanisms.<sup>69</sup> In this connection, a special report by the PDO on the impact of the Covid-19 pandemic on children’s rights assessed the effect of the preventive measures (which were adopted against the coronavirus) on violence against children. The report revealed that switching to remote learning, being in isolation and prohibition of economic activities of private enterprises increased risks of violence against children.<sup>70</sup> Switching to

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<sup>63</sup> Ibid.

<sup>64</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 16.

<sup>65</sup> The Public Defender of Georgia, Special Report on Monitoring Report on Service Centers (Shelters) for Victims of Violence Against Women, Domestic Violence and Trafficking, 2020, pages 5-6, available at: <https://tinyurl.com/44eydt3c> [last seen 15.06.2023].

<sup>66</sup> The Public Defender of Georgia, Special Report on Monitoring Report on Service Centers (Shelters) for Victims of Violence Against Women, Domestic Violence and Trafficking, 2020, page 6; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 118.

<sup>67</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, pages 14-15.

<sup>68</sup> U.S. Department of State, 2022 Trafficking in Persons Report: Georgia, available at: <https://tinyurl.com/548rvve2> [last seen 15.06.2023].

<sup>69</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 6.

<sup>70</sup> The Public Defender of Georgia, Child Rights Impact Assessment of Covid-19 related state Measures in Georgia, 2022, page 38, available at: <https://tinyurl.com/ycc84as8> [last seen 15.06.2023].

remote learning also reduced notifications from schools regarding violence, made it harder to observe emotional and behavioral signals among children and detect signs of violence.<sup>71</sup> Despite the increased risks, there was no significant rise in reporting or referring violence to the authorities.<sup>72</sup> Moreover, carrying out relevant procedures in response to violence against children became more difficult and protracted and changing to the remote work regime placed the efficiency of state services under risk.<sup>73</sup>

## Article 8 - The right of employed women to protection of maternity

### Paragraph 4 of Article 8

The Committee has requested updated information to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.<sup>74</sup> In this regard, paragraph 7 of article 20 of the Labor Code reads that “where the employment conditions of an employee who is a pregnant woman, or a woman who has recently given birth or is breastfeeding, cannot be made less burdensome, or such an employee cannot be transferred to light work, taking account of the dates specified in the medical report, or of the fact of pregnancy, of having recently given birth or breastfeeding, the employee shall be released from the performance of the duties under the employment agreement”.<sup>75</sup> The same provision stipulates that in such a case, “the issue of remuneration of an employee during the period of release from the performance of duties shall be decided by agreement between the employee and the employer”.<sup>76</sup> Thus, in such a case, the receipt of remuneration is not guaranteed as a right or entitlement for the women concerned. Such a regulation contradicts the Committee’s standard that, “in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay”.<sup>77</sup> With regards to

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 6.

<sup>75</sup> Paragraph 7 of article 20 of the Labor Code.

<sup>76</sup> Paragraph 7 of article 20 of the Labor Code.

<sup>77</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 5.

protection from loss of pay resulting from the changes in the working conditions or reassignment to a different post, please view the information provided below in relation to paragraph 5 of article 8 of the Charter.

### Paragraph 5 of Article 8

The Committee asked whether the law provided for the temporary reassignment of women during pregnancy and maternity period to work suitable to their condition without loss of pay or they were granted paid leave if such reassignment was not possible and whether, in the event of reassignment to another post for reasons related to pregnancy/maternity, the women concerned retained the right to return to their post at the end of the protected period.<sup>78</sup> In terms of temporary reassignment of women during pregnancy and maternity period to work suitable to their condition without loss of pay, the right to reassignment is granted by paragraph 6 of article 20 of the Labor Code without explicitly including a guarantee to retainment of the pay. Thus, this provision is silent on the matter of pay. Although remuneration as an essential condition of an employment agreement may only be changed by agreement between the parties,<sup>79</sup> it would be better and clearer to explicitly stipulate the guarantee against loss of pay in case of the temporary reassignment to suitable work in paragraph 6 of article 20 of the Labor Code. With regards to granting paid leave in case of impossibility of reassignment, please view the information provided above in relation to paragraph 4 of article 8 of the Charter.

## Article 16 - The right of the family to social, legal and economic protection

The Committee asked for “updated information on measures taken to reduce all forms of domestic violence against women including information on incidence and conviction rates”.<sup>80</sup> In response, the National Report only provides information on support services, including shelters and crisis centers, provided by the State Care Agency and awareness raising and educational measures.<sup>81</sup> Thus, the government’s reply cannot be considered as depicting the full picture with regards to adequacy of measures against domestic violence against women. Even the aforesaid measures described in the National Report are insufficient. In particular,

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<sup>78</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 6.

<sup>79</sup> Paragraph 2 of article 20 of Labor Code of Georgia.

<sup>80</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 7.

<sup>81</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, pages 30-31.

the PDO monitoring conducted in 2019 and 2020 in shelters and crisis centers for the victims of domestic violence and trafficking revealed challenges in, inter alia, carrying out psychosocial rehabilitation of victims, ensuring reparations and safety of infrastructure, observing sanitary-hygienic norms in the shelters and providing medicines, adequate living conditions and proper shoes and clothes for the beneficiaries.<sup>82</sup> The aforesaid monitoring pointed out the lack of psychosocial rehabilitation, educational and employment programs, recreational, sports and cognitive activities as well as insufficient number of support and assistance programmes for beneficiaries after leaving the shelters.<sup>83</sup> Moreover, the PDO monitoring conducted in 2021 in shelters and crisis centers for victims of domestic violence indicated that beneficiaries victim of domestic violence lack information about the available services.<sup>84</sup> Moreover, within research recently published by the PDO, women living in various municipalities stated that they did not have information about reaction mechanisms and services designed for victims of domestic/gender violence.<sup>85</sup>

In terms of adequacy of support services, there are also shortcomings in activities of social workers and coordinators of the Witness and Victim Coordinator's Office. In particular, the involvement of the coordinators in cases of violence against women and domestic violence is very low and formalistic due to, inter alia, the insufficient number of the employed coordinators, heavy workload and lack of geographic coverage.<sup>86</sup> Similarly, the involvement of social workers in cases of domestic violence tends to be low and formalistic in nature.<sup>87</sup>

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<sup>82</sup> The Public Defender of Georgia, Special Report on Monitoring Report on Service Centers (Shelters) for Victims of Violence Against Women, Domestic Violence and Trafficking, 2020, pages 5-6.

<sup>83</sup> Ibid, page 5.

<sup>84</sup> Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination

of Discrimination against Women, 2022, page 19, available at: <https://bit.ly/3L1xCrL> [last seen 15.06.2023].

<sup>85</sup> The Public Defender of Georgia, Special Report on Evaluation of Gender Equality Policies of Municipalities, 2022, page 7, available at: <https://tinyurl.com/yru8ssy5> [last seen 15.06.2023].

<sup>86</sup> Report by the Public Defender of Georgia and the non-governmental organization Rights Georgia on Monitoring Interviews of Female Victims of Domestic Violence in Court, 2021, page 30; Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination

of Discrimination against Women, 2022, page 17; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 120; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204.

<sup>87</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 119.

As to incidence, the number of murders/attempted murders of women in 2022 was larger than the statistics in the previous years.<sup>88</sup> Out of 25 cases of murders of women revealed in 2022, 15 were committed with the sign of domestic violence while 28 out of 37 cases of attempted murders were committed with the sign of domestic violence.<sup>89</sup>

Effective preventive measures are crucial to reduce all forms of domestic violence against women. However, there are significant shortcomings in prevention of domestic violence. In particular, the law enforcers have often been unable to perceive systematic nature of cases of violence against women and domestic violence and the police reaction has been fragmental, incapable of preventing repetition of violence.<sup>90</sup> The law enforcement agencies need to improve efforts to properly assess risks in cases of violence against women and domestic violence as they failed to prevent repetition of violence despite having launched investigations into some cases.<sup>91</sup> One of the tools of risk assessment and prevention is the use of electronic surveillance system. However, the rate of application of the electronic surveillance system in tandem with a restraining order has been extremely low.<sup>92</sup> A possible reason of this low rate may be wrong and stereotypical attitudes towards the electronic surveillance system among the society or the victims.<sup>93</sup>

The lack of due diligence in violence prevention also pertains to the judiciary. When applying conditional sentences or short prison terms, the judges often failed to assess whether there was a risk of continuation/repetition of violence and whether the causes of domestic violence were eliminated.<sup>94</sup>

To reduce all forms of domestic violence against women, it is also necessary to work on behaviour change of the offenders. However, only few of those who were found guilty have

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<sup>88</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 203.

<sup>89</sup> Ibid.

<sup>90</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 119.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204.

<sup>93</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 204; Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning

enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination

of Discrimination against Women, 2022, page 16.

<sup>94</sup> Alternative Report of the Public Defender of Georgia on the 2021 Reports by the Ministry of Justice concerning enforcement of decisions issued by the European Court of Human Rights and the UN Committee on the Elimination

of Discrimination against Women, 2022, page 19.

participated in the behaviour change course due to its voluntary character while no course/program has been developed for abusers against whom a protection order is launched.<sup>95</sup>

Within the scope of article 16, the Committee also requested updated information on the availability of adequate affordable housing for families.<sup>96</sup> In response, the National Report states that the Georgian Law on Social Assistance defines a homeless person and tasks the local self-government bodies to provide shelter for the homeless and to register them in the shelter.<sup>97</sup> However, both the current legislative framework and policy fail to appropriately address the problem of homelessness. First of all, the assessment of the scale of the problem and corresponding needs is a precondition for developing an evidence-based policy and legal framework. However, the government does not process information to study the causes and extent of homelessness.<sup>98</sup> Although the Law on Social Assistance obliges the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs to collect registration data on homeless individuals and create a unified central database of homeless persons,<sup>99</sup> no such unified data base has been developed on central level.<sup>100</sup> Similarly, there is no comprehensive, fully-fledged local data base of homeless persons on the municipal level.<sup>101</sup> One of the obstacles to gathering data and evaluating the scale of the problem lies in the flawed definition of homelessness. As mentioned in the National Report,<sup>102</sup> the current legislation defines a homeless person as "an individual without a permanent, defined residence, who is registered as homeless with the local self-government body".<sup>103</sup> By requiring a permanent and defined residence, this definition excludes from its scope such groups as

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<sup>95</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 119-120; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 202-203.

<sup>96</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 7.

<sup>97</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 31.

<sup>98</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 241; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 178; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 240, available at: <https://tinyurl.com/mu7kh3zp> [last seen 15.06.2023].

<sup>99</sup> Law of Georgia on Social Assistance, Chapter IV, Article 17, Clause "d".

<sup>100</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 241; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 178.

<sup>101</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 241; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 178.

<sup>102</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 32.

<sup>103</sup> Law of Georgia on "Social Assistance", Article 4.

individuals living in inadequate or overcrowded housing or those temporarily living with relatives.<sup>104</sup> Moreover, it is unclear whether this definition encompasses individuals without housing and living in special facilities (e.g., shelters for women victim of violence, institutions for persons with disabilities).<sup>105</sup>

As to policy on homelessness, the fulfilment of the right to adequate housing was among the goals in the National Human Rights Strategy (2014-2020). However, none of the governmental human rights action plans envisaged any measures for the fulfilment of the objectives set out in the Strategy and none of these objectives have been achieved.<sup>106</sup> Moreover, the National Report mentions the "Open Government Action Plan of Georgia for 2018-2019" within which one of the obligations was to create a housing policy document.<sup>107</sup> However, this obligation has not been fulfilled.<sup>108</sup> The Georgian government also did not fulfill the recommendations contained in the conclusion issued by the Thematic Inquiry Group of the Regional Policy and Self-Government Committee of the Parliament and assessing the situation and challenges in the field of housing.<sup>109</sup> As to the National Human Rights Strategy for 2022-2030, matters concerning realization of the right to adequate housing were not included in the document.<sup>110</sup> Thus, the state has to yet develop a comprehensive national strategy and corresponding action plan(s) on the issue of homelessness.

As to situation in practice, the social housing buildings monitored by the PDO do not provide adequate living conditions which would enable the beneficiaries to live in safety and dignity.<sup>111</sup> To name some examples, the problems identified include lack of space, impossibility of sound isolation, dampness, cracks, inaccessibility of clean water, insanitariness, etc.<sup>112</sup> The PDO has

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<sup>104</sup> The Public Defender of Georgia, Special Report on Implementation of Housing Services in the Context of the Rights of Persons with Disabilities, 2022, page 26, available at: <https://tinyurl.com/3juzuzjp> [last seen 15.06.2023].

<sup>105</sup> Ibid.

<sup>106</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 240.

<sup>107</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 32.

<sup>108</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, 178.

<sup>109</sup> Ibid; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, 240.

<sup>110</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 241.

<sup>111</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021 pages 179-181; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 244.

<sup>112</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 179-181; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 244.

also pointed out lack and, in case of some municipalities, absence of socio-economic-educational support programs for the housing beneficiaries.<sup>113</sup>

Within the scope of article 16, the Committee is also interested in whether family or child benefits provided subject to a means-test and what the percentage of the covered families is.<sup>114</sup> In response, the National Report refers to the targeted social assistance program and the methodology for assessing the socio-economic status of socially vulnerable families.<sup>115</sup> For years, the PDO has indicated shortcomings in this methodology and the need to reassess the methodology and effectiveness of the targeted social assistance program based on research of households.<sup>116</sup> However, the effectiveness of the program and formula for calculating the consumer index has not been reevaluated and the needs of households have not been studied.<sup>117</sup> Moreover, the PDO has also pointed out the problems with respect to calculating the index of status of the main place of residence of families living in Tbilisi and leaving the value of the consumer basket in the socioeconomic assessment methodology unchanged.<sup>118</sup> As to the percentage of the covered families, 1,176,588 individuals and 369,515 families (respectively 31.5% and 34.7% of the whole population) were registered in the targeted social assistance program as of December 2022, while about half of those registered - 535,343 individuals and 149,864 families - were recipients of the subsistence allowance.<sup>119</sup>

The Committee also inquired about measures taken to ensure that vulnerable families can meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services).<sup>120</sup> In this connection, the 2020 parliamentary report of the PDO pointed out the problem of delays in appointing subsistence allowance as it took about 3-4 months to

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<sup>113</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 179; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 245.

<sup>114</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 7.

<sup>115</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page, 32.

<sup>116</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2019, pages 223-224 available at: <https://tinyurl.com/4c3jr3yf> [last seen 15.06.2023]; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 175; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 238.

<sup>117</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 175.

<sup>118</sup> Ibid.

<sup>119</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 238.

<sup>120</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 7.

receive allowance from the moment of applying for it.<sup>121</sup> Such delays also hindered receipt of other social benefits and services, including the firewood and utility subsidies as they were tied to receipt of the subsistence allowance.<sup>122</sup>

## Article 17 - the right of children and young persons to social, legal and economic protection

### Paragraph 1 of Article 17

The Committee requested information on measures taken to reduce statelessness.<sup>123</sup> In response, the National Report mentions, inter alia, the implementation of the “door to door campaign” as part of the pledge taken at the UNHCR ExCom Session.<sup>124</sup> While the PDO welcomes this campaign, it should be noted that the government has not fulfilled other commitments undertaken at the UNHCR ExCom Session to reduce statelessness and improve the situation of the stateless persons. In particular, despite expiry of deadlines, the government has not fulfilled the obligations to reduce the 10-year term for obtaining Georgian citizenship through naturalization and to ensure free legal aid in the process of status determination before common courts and administrative bodies.<sup>125</sup>

In response to the Committee’s question about measures taken to reduce statelessness and facilitate birth registration, the National Report describes activities of the mobile groups within a sub-program for providing shelter for homeless children within the framework of the Social Rehabilitation and Child Care Program.<sup>126</sup> Elsewhere, the National Report reads that “within the mentioned sub-program, eight mobile groups work with children living and working on the street - Tbilisi (4 mobile groups), Rustavi (1 mobile group), Kutaisi (one mobile group) and Batumi (2 mobile groups).<sup>127</sup> This number is not enough to satisfy the needs

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<sup>121</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 237.

<sup>122</sup> Ibid.

<sup>123</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 9.

<sup>124</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 38.

<sup>125</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 313.

<sup>126</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, pages 39-40.

<sup>127</sup> Ibid, page 23.

throughout the country. Apart from Tbilisi, Rustavi, Batumi and Kutaisi, the mobile groups do not cover other territories where there are similar challenges with respect to children living and working in the streets.<sup>128</sup> As to day center services and day and night shelter services provided within the aforesaid sub-program, the monitoring of all the daycare centers and 24-hour shelters by the PDO in 2021 pointed to the need to strengthen children and their biological families, to find/mobilize community resources to this end and to address the stereotypical attitudes of the society towards homeless children and their families.<sup>129</sup> Infrastructural problems in shelters were also revealed.<sup>130</sup> The PDO also pointed out the urgent need to open 24-hour shelter for children living and/or working on the streets in Adjara region.<sup>131</sup> These issues have remained unresolved.<sup>132</sup>

In terms of activities carried out to prevent and combat violence against children, the National Report describes steps “taken in recent years in terms of fighting against violence against women and domestic violence, as well as violence against children”.<sup>133</sup> Among these steps, the National Report mentions the service of witness and victim coordinators, a recurrence risk assessment and monitoring mechanism for the violence against women and domestic violence and electronic surveillance.<sup>134</sup> For assessment of these measures, please view information provided above in relation to article 16 of the Charter.

The National Report also refers to the campaign “don't take away childhood” and thematic meetings held to address child marriage.<sup>135</sup> While awareness raising is a positive measure, the authorities need to improve their efforts in combating child marriage. In particular, the responsible authorities lack effective coordination in their work and the referral mechanism is not functioning properly.<sup>136</sup> Due to a failure to refer a child marriage case to the State Care Agency, the PDO issued a recommendation to the Ministry of Internal Affairs in 2023. Moreover, the authorities struggle to launch administrative proceedings into alleged facts of

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<sup>128</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 216.

<sup>129</sup> Ibid, page 217.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 275-276.

<sup>133</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, pages 41-42.

<sup>134</sup> Ibid, page 42.

<sup>135</sup> Ibid.

<sup>136</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 205; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 122.

early marriage or engagement, to identify coercion in cases of engagement of underage girls and to react to those cases of child marriage which do not contain signs of a crime.<sup>137</sup>

In terms of the juvenile justice process, the National Report mentions implementation of infrastructural projects creating child-friendly spaces in the territorial divisions of the Ministry of Internal Affairs.<sup>138</sup> While such efforts are welcomed, the PDO monitoring conducted between July 2020 and March 2021 indicated the lack of a child-friendly environment in the buildings of the law enforcement agencies and courts.<sup>139</sup> According to the monitoring report, “with few exceptions, the lack of special interviewing and interrogation rooms tailored to the needs of children in the law enforcement agencies and court buildings creates a high risk of secondary victimization of children during the already uncomfortable process”.<sup>140</sup> To be more specific, only 5 court buildings have environment tailored to children’s needs children.<sup>141</sup> Child friendly spaces are only in only 5 territorial units of the Ministry of Internal Affairs.<sup>142</sup> Similarly, the State Care Agency has only 5 territorial units with a room tailored to children’s needs.<sup>143</sup>

In terms of juvenile justice process, the National Report refers to active involvement of witness and victim coordinators of the MIA in juvenile justice system.<sup>144</sup> According to the findings of PDO’s monitoring report on cases of sexual violence and sexual exploitation against children, the involvement of the witness and victim coordinator prior to interviews is up to an individual assessment of an investigator and is not regulated/determined by any standard or guideline.<sup>145</sup> Such an approach creates the risk of leaving the needs of some victims beyond the witness and victim coordinator’s attention and support.<sup>146</sup>

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<sup>137</sup>Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 205; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 122-123

<sup>138</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 43.

<sup>139</sup> PDO Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, page 9

<sup>140</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 71.

<sup>141</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 267.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 43.

<sup>145</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 42.

<sup>146</sup> Ibid.

The National Report also mentions the development of the guidelines on national juvenile justice law, practice and psychological aspects for investigators for cases of human trafficking.<sup>147</sup> Although preparation of this document is a positive step, it is nevertheless concerning that there are no protocols and guidelines, procedures and evidence-based standardized methodology for psychological and psychiatric assessment of juvenile witnesses-victims.<sup>148</sup> The formal nature of the presence of psychologists during interviews with child victims of sexual abuse or their questioning at the trials (monitored by the PDO) is also a problem.<sup>149</sup>

Within the scope of paragraph 1 of article 17 of the Charter, the Committee asked for information on measures taken against “child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.)”.<sup>150</sup> In this connection, the National Report reads that “targeted social assistance program is an important in terms of poverty reduction, which is a method of assessing the needs of families to identify those households that should be given monetary allowances and certain material assistance”.<sup>151</sup> For the PDO’s position on the targeted social assistance programme, please view information provided above in relation to article 16 of the Charter. Moreover, the National Report mentions the social rehabilitation and child care state program.<sup>152</sup> In this connection, the PDO published a special report “Analysis of the State Programs for Social Rehabilitation and Childcare for 2018-2020”. The report revealed various shortcomings, including absence of standard for provision of services within the programs, inadequate government oversight over implementation of services, lack of geographic coverage, unspent amounts left yearly in the program budget and low awareness about the program services among children, parents and child development specialists.<sup>153</sup>

Unfortunately, child poverty has been increasing. The number of families with at least one child registered in the Unified Database of Socially Vulnerable Families increased by 28% in 2021 compared to the previous year while the number of children registered in this database

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<sup>147</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 43.

<sup>148</sup> The Public Defender of Georgia, Special Report on the Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children, 2021, page 73.

<sup>149</sup> Ibid, page 10.

<sup>150</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 9.

<sup>151</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 45.

<sup>152</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 46.

<sup>153</sup> The Public Defender of Georgia, Special Report on Analysis of the State Programs for Social Rehabilitation and Childcare for 2018-2020, 2021, page 6, available at: <https://tinyurl.com/mr2882zj> [last seen 15.06.2023].

increased by 40% in 2022 compared with 2021.<sup>154</sup> Cases studied by the PDO reveal that families with children face such challenges as not having adequate and safe housing and basic personal necessities.<sup>155</sup> Thus, children have to perform heavy and dangerous labor.<sup>156</sup> Despite the increasing poverty, central and local state support services for preventing and overcoming child poverty are not efficient enough to ensure development of skills of children's parents/guardians and independent life of families.<sup>157</sup> Unfortunately, harsh socio-economic conditions in biological families has often become a reason of placement of children in state care.<sup>158</sup>

Within the scope of paragraph 1 of article 17 of the Charter, the Committee also asked for "information on measures taken to combat discrimination and promote equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care".<sup>159</sup> In this connection, the PDO would like to emphasize inequality in opportunities of children from ethnic minorities in the field of education. Children from ethnic minorities face various obstacles in receiving adequate early and pre-school education, such as: insufficient territorial coverage, lack of bilingual teaching and qualified personnel.<sup>160</sup> There are not enough kindergartens in villages populated by ethnic minorities.<sup>161</sup> As an example, almost all communities, with only one exception, densely populated by ethnic minorities in Bolnisi do not have a kindergarten.<sup>162</sup> Unfortunately, children with disabilities also face challenges in receiving high quality education, including inaccessibility of infrastructure and lack of specialists of inclusive education.<sup>163</sup> As to Roma children, Roma community is one of the most discriminated ethnic groups in Georgia.<sup>164</sup> The society's unfavorable attitude towards this group is clearly noticeable. As an example, representatives of the Roma community find it difficult to rent an apartment due to being

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<sup>154</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 212; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 270.

<sup>155</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 270.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 9.

<sup>160</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 263.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid, pages 250-251; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 222-223.

<sup>164</sup> The Public Defender of Georgia, the 2022 Special Report on Combating and Preventing Discrimination and the Situation of Equality, page 12, available at: <https://tinyurl.com/ycjcv38x> [last seen 15.06.2023].

Roma.<sup>165</sup> They also recall cases when they were told by providers of public services that they preferred to assist Georgians.<sup>166</sup> Moreover, inadequate knowledge of the official language is also a serious problem. Due to illiteracy, Roma parents cannot assist their children in doing their homework and this has a negative impact on children's education.<sup>167</sup>

Within the scope of paragraph 1 of article 17 of the Charter, the Committee requested the state to "provide information on any measures adopted to protect and assist children in crisis situations and emergencies".<sup>168</sup> In reply, the National Report states that a child subject to abuse and unfavorable environment in biological family is placed in state care where support in preparing for independent life is provided.<sup>169</sup> However, this statement is not completely true in case of implementation of state care in large residential institutions as such facilities hinder socialization of children and their readiness to leave state care due to a closed and isolated environment therein. Despite this, several children remained in the NNLE Javakheti Ninotsminda St. Nino Boarding School as of 2022.<sup>170</sup> The PDO monitoring of the latter boarding school indicated that its institutional nature and closed environment made children unhealthily attached to the boarding school and hindered them from socializing, developing skills for independent living or getting ready to leave the state care.<sup>171</sup> The monitoring conducted by the PDO in the Ninotsminda Boarding School in 2021 revealed systemic violations of the rights of children, including behavior possibly equal to torture, degrading and humiliating treatment, systemic violence, labor exploitation, etc.<sup>172</sup> Despite this, children have still remained there and their placement in alternative, family-like forms of care has been protracted/delayed.<sup>173</sup>

Within the scope of paragraph 1 of article 17 of the Charter, in the previous conclusions, the Committee found non-conformity on the ground that not all forms of corporal punishment

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<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Appendix Revised Charter, Questions on Group 4 provisions (Conclusions 2023), Children, families and migrants, page 10.

<sup>169</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 48.

<sup>170</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 272-273.

<sup>171</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 215.

<sup>172</sup> Special Report of the Public Defender of Georgia on the Rights of Children in NNLE Javakheti Ninotsminda St.

Nino Boarding School, pages 4, 17-18, available at: <https://bit.ly/3Mqn3iZ> [last seen 15.06.2023].

<sup>173</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 273.

were prohibited in all settings.<sup>174</sup> In this connection, paragraph 2 of article 53 of the Code on the Rights of the Child prohibits physical punishment of a child in the family, in a pre-school educational institution or a general educational institution, when providing alternative care services, in a medical institution and/or psychiatric institution, a penitentiary institution or any other place. However, incomplete enforcement of this prohibition is a problem as cases of physical punishment and ineffective reaction to such cases have remained one of the pressing challenges in educational facilities.<sup>175</sup> Moreover, corporal punishment was commonly used in the NNLE Javakheti Ninotsminda St. Nino Boarding School, according to the PDO's monitoring report.<sup>176</sup> The beneficiaries stated that they were punished by kneeling for hours on corn and wheat grains, beating with sticks and rulers, squatting, holding a large chair while standing on one leg, being hit in the head with a chair, etc.<sup>177</sup>

Within the scope of paragraph 1 of article 17 of the Charter, in the previous conclusions, the Committee asked “whether the precarious financial situation of a family can be the sole ground for suspension or deprivation of parental rights”.<sup>178</sup> While not equal to deprivation of parental rights, separation of children from their biological families has often been connected to parents' harsh economic situation as the main basis or one of the important factors of separation.<sup>179</sup> Unfortunately, the state does not have specific and effective mechanisms to prevent children's separation from biological families and to ensure timely reintegration.<sup>180</sup>

Within the scope of paragraph 1 of article 17 of the Charter, in the previous conclusions, the Committee asked “what measures have been taken to ensure that children irregularly present are accommodated in appropriate settings”.<sup>181</sup> In response, the National Report refers to detention/placement at the Temporary Accommodation Centre (hereinafter TAC) of the Migration Department of the Ministry of Internal Affairs and states that “the infrastructure of the TAC is adapted for placement and adequate treatment”.<sup>182</sup> On May 18, 2022 the PDO's special preventive group visited and monitored the TAC where 13 individuals (9 men, 3

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<sup>174</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 26.

<sup>175</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 267.

<sup>176</sup> PDO Special Report On the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School Tbilisi 2021, page 18.

<sup>177</sup> PDO Special Report On the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School Tbilisi 2021, pages 17, 19.

<sup>178</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 24.

<sup>179</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 272.

<sup>180</sup> Ibid.

<sup>181</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 25.

<sup>182</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 50.

women and 1 minor) were placed to be later expelled from Georgia.<sup>183</sup> The monitoring revealed that no sports activities or other organized activities (such as lecture, crafting/DIY, cooking lessons) had been held in the TAC.<sup>184</sup> Thus, the minor placed at the TAC could not be involved in such activities.<sup>185</sup> The yard intended for walks did not have chairs and equipment for exercise.<sup>186</sup> This problem has remained unresolved for years in spite of promises from the TAC administration.<sup>187</sup> Moreover, persons interviewed by the PDO's special preventive group at the TAC did not have information about the possibility to replace products in the food menu with other products.<sup>188</sup> They also complained about not having clothing to change their clothes and the monitoring revealed that the matter of provision of clothing was not regulated/decided at the TAC.<sup>189</sup> It is also problematic that a psychologist was called in only when needed and the persons placed at the TAC, including the minor, had not met a psychologist.<sup>190</sup> This contravenes the standard set by the European Committee for the Prevention of Torture, according to which "steps should be taken to ensure a regular presence of, and individual contact with, a social worker and a psychologist in establishments holding children in detention".<sup>191</sup>

Within the scope of paragraph 1 of article 17 of the Charter, in the previous conclusions, the Committee asked "whether all children, irrespective of their residency status, including those in an irregular situation, have the right to access compulsory education".<sup>192</sup> The PDO assessed realization of the right to education within the sub-program "Ensuring Access to General Education for Minor Asylum Seekers, Those with International Protection and Minors Placed in the Migration Department of the Ministry of Internal Affairs" implemented by the Ministry of Education and Science of Georgia. Within the framework of the sub-program, the beneficiaries were enrolled in 3 public schools for a one-year course twice a year (in September and January).<sup>193</sup> In terms of geographic availability and time flexibility, the PDO criticized

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<sup>183</sup> The Public Defender of Georgia, the 2022 Report of the National Preventive Mechanism, page 172, available at: <https://tinyurl.com/bp6ajwjk> [last seen 15.06.2023].

<sup>184</sup> Ibid, page 175.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid.

<sup>188</sup> Ibid, page 176.

<sup>189</sup> Ibid, page 177.

<sup>190</sup> Ibid, page 178.

<sup>191</sup> CPT Safeguards for irregular migrants deprived of their liberty, Extract from the 19th General Report of the CPT,

published in 2009, paragraph 99, available at: <https://rm.coe.int/16806cce8e> [last seen 15.06.2023].

<sup>192</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 24.

<sup>193</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 43, available at: <https://tinyurl.com/38thu64r> [last seen 15.06.2023].

implementation of the program in only 3 public schools and enrollment only twice a year.<sup>194</sup> Moreover, the interviews conducted by the Public Defender's representatives with school teachers and persons with international protection and asylum seekers revealed that the language barrier made it especially difficult for children to actively participate in the learning process and prevented them from fully mastering the educational program.<sup>195</sup> According to the parents, minors, despite being included in the language course, found it difficult to understand the curriculum, especially in science subjects.<sup>196</sup>

In the previous conclusions, the Committee also asked for information on measures taken to facilitate “access to mainstream education for children with disabilities”.<sup>197</sup> In this connection, the National Report reads that “an inclusive educational environment is provided at the pre-school, general, professional and higher education levels in Georgia”.<sup>198</sup> However, ensuring adequate quality and continuity of inclusive education has remained a problem.<sup>199</sup> In particular, challenges at the early and pre-school educational level include, inter alia, insufficient number of specialists of inclusive education, inaccessibility of infrastructure of pre-school educational facilities, inadequate monitoring of inclusive pre-school education in most municipalities and lack of research on needs of children with disabilities.<sup>200</sup> As to general education, there have remained obstacles in terms of parents’ and schools’ awareness on matters of inclusive education, access to internet and technology for remote learning, creation of adapted learning and audiovisual materials, accessibility of school infrastructure and number of specialists of inclusive education in the regions.<sup>201</sup> At the higher education level, the problems include non-uniform practice in provision of supportive services, lack of involvement of specialists of inclusive education, lack of accessibility of infrastructure, the need to adopt university websites and digitalize learning materials.<sup>202</sup> In terms of vocational education, the challenges are insufficient geographic coverage of vocational educational

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<sup>194</sup> Ibid, page 44.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 24.

<sup>198</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 55.

<sup>199</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 249.

<sup>200</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, pages 222-223; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 250.

<sup>201</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 223; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 251.

<sup>202</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 224; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 252.

establishments, lack of accessibility of infrastructure, the need to diversify offered professions and lack of specialists supporting students with disabilities and students with special educational needs.<sup>203</sup>

Within the scope of paragraph 1 of article 17 of the Charter, the Committee also wished “to receive information on the measures taken to encourage school attendance”.<sup>204</sup> In reply, the National Report states that “the Ministry of Education and Science of Georgia has implemented effective measures to ensure school attendance of all children in Georgia and prevent student absenteeism”.<sup>205</sup> However, suspension and termination of student status is still a problem. The rate of suspension/termination of student status increased yearly between 2020 and 2022 and was the highest in 2022.<sup>206</sup> The statistics on the grounds for suspension/termination of student status still need to be refined and clarified. In particular, the ambiguous grounds for suspending/terminating student status, such as the "parent's application" or the "limit of absences", do not provide accurate information about the real reason behind the child's exclusion from the educational process.<sup>207</sup> Apart from the grounds indicated in the statistics of the Ministry of Education and Science, common causes of discontinuance of education include family situation, change of living place and absence of wish to continue education and there are many applications without stipulating the reason of terminating student status.<sup>208</sup> With respect to pupils with disabilities, the data was not fully processed within the framework of the State Programme for Monitoring Out-of-School Children as of 2021.<sup>209</sup> 445 children with disabilities were out of school as of January 10, 2022, while this number increased to 611 as of August 2022.<sup>210</sup> Thus, ensuring inclusion of all school-age children with disabilities in education remains a challenge. The National Report reads that “each school is required to exercise strict control over systematic student absenteeism, more specifically, it must make enquiries in case of 10 days of absence in a row, and invite social workers to get involved - in

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<sup>203</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 224; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, 251-252.

<sup>204</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 24.

<sup>205</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 53.

<sup>206</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 264.

<sup>207</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 265; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 207.

<sup>208</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 266.

<sup>209</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 223.

<sup>210</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 223; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 251.

case of 20 days of absence in a row”.<sup>211</sup> In practice, however, schools do not apply to social workers in case of neglect by parents of children’s right to education.<sup>212</sup>

## Paragraph 2 of article 17

The Committee is interested in measures “taken to introduce anti-bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention”.<sup>213</sup> In this connection, the PDO would like to note the online meetings held with civic education teachers from regions in 2020 to assess their needs and damage caused by the Covid-19 pandemic.<sup>214</sup> The teachers highlighted the necessity to raise awareness about the prevention of cyber bullying, which became highly pressing as classes shifted to the online format during the Covid-19 pandemic.<sup>215</sup> In terms of violence against/among children, 928 beneficiaries applied or were referred to the Centre for Psychosocial Services of the Resource Officer of the Educational Institutions to receive services in 2020, while 221 minors and/or their parents/legal representatives refused to receive services.<sup>216</sup> In the same year, the data base of the Office of the Resource Officers of the General Educational Institutions recorded 657 cases of violence against/among children, out of which 432 were cases of violence (physical abuse) among pupils.<sup>217</sup> 210 cases were referred to the Agency for State Care and Victims of Trafficking.<sup>218</sup> Unfortunately, referrals to the Psychosocial Center of the Resource Officers on the basis of violence against children are increasing every year, reaching 315 in 2022 and making up 16% of the total applications.<sup>219</sup> Challenges remain in terms of prevention of violence against and among children and reacting to cases of violence in accordance with the referral procedures.<sup>220</sup>

Within the scope of paragraph 2 of article 17 of the Charter, the Committee requested information on measures “taken by the State to facilitate child participation across a broad

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<sup>211</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 53.

<sup>212</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 251.

<sup>213</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 10.

<sup>214</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 269.

<sup>215</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, pages 269-270.

<sup>216</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 277.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 266.

<sup>220</sup> Ibid, pages 266-267.

range of decision-making and activities related to education”.<sup>221</sup> In response, the National Report mentions, inter alia, the New National Strategy of Education and Science 2022-2030 and the action plan envisaging development and piloting of a methodological guide for school democratic governance.<sup>222</sup> Despite steps taken by the state, the PDO monitoring and interviews with children and teachers indicate that children do not have sufficient information on their rights, protection mechanisms, their right to participate in decision making and the possibility to appeal decisions they do not agree with. Children lack information even on their right to familiarize themselves with school bylaws and on the importance of their voice during the decision-making process at schools. Moreover, according to the PDO’s special report on impact of Covid-19 on children’s rights, the process of switching to remote learning was not inclusive and children’s opinions were not heard as the decision was made by the Coordination Council under the Prime Minister without involving neither children nor children’s rights organizations and other representatives of civil society.<sup>223</sup>

Within the scope of paragraph 2 of article 17 of the Charter, the Committee also expressed interest in measures “taken to address the effects of the Covid-19 pandemic on the education of children”.<sup>224</sup> In this connection, the PDO prepared a special report assessing the impact of Covid-19 on children’s rights, including the right to education. According to the report, the process of switching to remote learning was chaotic due to lack of experience in responding to such a crisis as well as lack of efficiency and timeliness of the government’s reaction.<sup>225</sup> The recommendations issued by the Ministry of Education and Science to general educational institutions were general and not really implementable in practice.<sup>226</sup> Although one of the main problems was the lack of access of teachers and pupils to internet and communication means, the Ministry of Education and Science did not take adequate measures to resolve this issue.<sup>227</sup> Moreover, the technical shortcomings of the online platform Teams and difficulties for teachers and pupils in using it were especially challenging at the first stage of switching to remote learning.<sup>228</sup> While a part of teachers were trained to use it, children had to learn by themselves and with the help of schools.<sup>229</sup> Furthermore, individual needs of children with disabilities were not considered during the switch to remote learning.<sup>230</sup> In particular, the

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<sup>221</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 10.

<sup>222</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 59.

<sup>223</sup> The Public Defender of Georgia, Child Rights Impact Assessment of Covid-19 related state Measures in Georgia, 2022, page 66.

<sup>224</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 10.

<sup>225</sup> The Public Defender of Georgia, Child Rights Impact Assessment of Covid-19 related state Measures in Georgia, 2022, page 66.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid, page 67.

<sup>228</sup> Ibid, page 66.

<sup>229</sup> Ibid, pages 66-67.

<sup>230</sup> Ibid, page 67.

Teams online platform was inaccessible to blind children. Similarly, the “Teleschool” broadcast by the Public Broadcaster did not fully meet the needs of blind pupils as the televised lessons were not designed so that blind pupils would have description of visual materials used during the lessons. As no subtitles were provided, the tele lessons were not accessible for students with hearing difficulties who did not know sign language. Despite the PDO’s appeal to the Public Broadcaster to better consider the needs of students with different disabilities, the “Teleschool” platform was still not fully accessible to students with disabilities. The Ministry of Education and Science failed to conduct an in-depth study to reveal the problems associated with distance learning for children with disabilities in resource schools and segregated statistics were also lacking.

## Article 19 - the right of migrant workers and their families to protection and assistance

### Paragraph 1 of article 19

The National Report describes the new Migration Strategy for 2021-2030.<sup>231</sup> While this Strategy more or less provides the state’s vision on integration, the government has still not developed “the unified approach document on immigrant integration” which should have been prepared in 2021.<sup>232</sup> In terms of integration, the National Report reads that “Georgia offers a national integration program for asylum seekers and for those holding refugee or humanitarian protection status”.<sup>233</sup> In this connection, the PDO’s special report on asylum seekers reviewed the integration programs offered by the Integration Center within the Integration-reintegration Service of the LEPL IDPs, Eco-Migrants and Livelihoods Provision Agency (hereinafter the Agency).<sup>234</sup> According to the report, the Migration Department of the Ministry of Internal Affairs informed asylum seekers about integration programs by placing brochures on an information board in the Migration Department.<sup>235</sup> Moreover, the Migration Department periodically provided updated data on asylum seekers and persons with international protection to the Agency in order to proactively communicate with the

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<sup>231</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 62.

<sup>232</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 275; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 309.

<sup>233</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 65.

<sup>234</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 26.

<sup>235</sup> Ibid.

beneficiaries of the Agency.<sup>236</sup> However, the latter did not have a unified database with the data of the beneficiaries.<sup>237</sup> Although the PDO positively evaluated both the placement of information brochures and the provision of information by the Migration Department to the Agency, it nevertheless noted the need to update the data more frequently and to verbally inform beneficiaries about the integration programs and the implementing authority in order to increase involvement in the integration programs.<sup>238</sup> Specifically in terms of integration of asylum seekers with disabilities or persons with disabilities under international protection status, the PDO notes that assessment of the situation in this direction is complicated by the absence of relevant statistics.<sup>239</sup> Although the Agency has been implementing “the integration program for persons living in Georgia under international protection, foreigners staying with legal grounds, asylum seekers and stateless persons with relevant status” since July 2020, it does not process statistical information on persons with disabilities who are involved.<sup>240</sup>

The National Report also reads that “persons with international protection status are included into the state program of targeted social assistance; as for healthcare, asylum seekers also benefit from the universal healthcare program”.<sup>241</sup> In terms of social protection, it is concerning that municipalities, apart from the municipality of Akhmeta, do not provide social benefits for persons with international protection.<sup>242</sup> Despite determination of the disability status of asylum seekers with disabilities and persons with disabilities and having international protection in some cases, these persons are not provided with appropriate social package and, thus, the state fails to address the needs arising from their disability.<sup>243</sup> As to health care, asylum seekers, refugees or people with humanitarian status enjoy funding for primary health care services. However, service providers (clinics), in some cases, did not have information about this and, therefore, persons with international protection faced obstacles in using the aforesaid services.<sup>244</sup> Specifically with regards to asylum seekers with disabilities and persons with disabilities and international protection status, the PDO monitoring revealed access to mental health care to be an issue since consultation with a psychiatrist and psychologist is not free and receiving services not covered by the universal healthcare program is also

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<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid, page 33.

<sup>240</sup> Ibid, page 34.

<sup>241</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 65.

<sup>242</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 275; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 309.

<sup>243</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 34.

<sup>244</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 275.

problematic.<sup>245</sup> Timely detection and prevention are also challenging because the state reacts only to an aggravated mental health problem, when the criteria for providing inpatient psychiatric care are met.<sup>246</sup> As to women asylum seekers and women with international protection status, they are involved in the universal health care program but they are able to receive only an initial consultation with a doctor, since a visit to a specialist and the subsequent treatment are costly and unaffordable.<sup>247</sup> Moreover, the PDO visited the reception center for asylum seekers where women mentioned the need for a gynecologist which had been unavailable to them for years.<sup>248</sup> Their request to consult a gynecologist on the spot remained unanswered by the administration of the reception center.<sup>249</sup>

## Paragraph 2 of article 19

The National Report describes various services, including the psychological-social rehabilitation service center in Tbilisi, shelter for victims of trafficking, domestic violence and gender-based violence and crisis centers for victims of domestic violence and gender-based violence.<sup>250</sup> For evaluation of these services, please view information provided above in relation to paragraph 10 of article 7 and article 16 of the Charter.

In its previous conclusions, the Committee insisted “that the next report confirms that all migrant workers, irrespectively of their status, can benefit from medical care in emergency. It underlines that should the next report not provide comprehensive information in this respect, there will be nothing to establish that the situation is in conformity with the Charter on this point”.<sup>251</sup> The National Report replies that “labour migrants, regardless of their status, are provided with emergency medical care (ambulance) service. Illegally staying labor migrants, when admitted to hospital for emergency medical aid, have to pay for their treatment themselves”.<sup>252</sup> Thus, not all migrant workers are provided and can benefit from medical care in emergency (for free) and the situation is still not in conformity with the Charter.

## Paragraph 4 of article 19

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<sup>245</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 35.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid, page 39.

<sup>248</sup> Ibid, page 40.

<sup>249</sup> Ibid, page 40.

<sup>250</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 66.

<sup>251</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 31.

<sup>252</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 67.

In its previous conclusions, the Committee found that “the situation in Georgia is not in conformity with Article 19§4 of the Charter on the ground that it has not been established that migrant workers lawfully resident in the country are treated no less favourably than nationals with regard to accommodation”.<sup>253</sup> In this connection, the PDO notes that ensuring realization of the right to housing falls within the competence of municipalities. To this end, the municipalities have developed targeted social programs (mostly provision of rent and social housing) from which foreigners are excluded. Thus, migrant workers and foreigners legally living in Georgia do not enjoy the same guarantees/benefits as the citizens in terms of right to housing.

### Paragraph 6 of article 19

In its previous conclusions, the Committee recalled that “a state must eliminate any legal obstacle preventing the members of a migrant worker’s family from joining him (Conclusions II (1971), Cyprus). Any limitations upon the entry or continued present of migrant workers’ family must not be such as to be likely to deprive this obligation of its content and, in particular, must not be so restrictive as to prevent any family reunion”.<sup>254</sup> In this connection, the PDO studied cases in which the courts, by referring to the principle of family union/unity, annulled decisions of Ministry of Foreign Affairs to expel foreigners. Despite entry into force of such decisions rejecting expulsion, the current national legislation does not envisage the possibility of issuing any type of document confirming the legality of stay in the country.<sup>255</sup> Absence of such a document negatively affects enjoyment of rights by a foreigner, such as the right to become employed, conclude agreements, etc.<sup>256</sup> A foreigner is also unable to fully enjoy family life.<sup>257</sup> Thus, the PDO hopes that the aforesaid legislative shortcoming will be addressed.

### Paragraph 7 of article 19

The Committee previously asked the government “whether the provision of assistance extended to interpretation so that the litigant is fully aware of the situation in cases where the defendant does not understand the language of proceedings”.<sup>258</sup> While not pertaining to migrant workers, the findings of the PDO’s special report on asylum seekers may nevertheless be relevant in terms of provision of interpreter’s services. The PDO’s report revealed that

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<sup>253</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 36.

<sup>254</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 312.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> European Committee of Social Rights Conclusions 2019 Georgia, page 40.

sometimes translators from the Bureau of Interpreters worked on the questionnaire and interview procedures in the Migration Department and they did not have the necessary training required for an interpreter involved in the asylum procedure.<sup>259</sup> According to the UNHCR standards, it is important that asylum seekers are provided with the services of a trained and qualified interpreter at all stages of the asylum procedure.<sup>260</sup> Moreover, the PDO's report also criticized the Georgian Law on International Protection in terms of accessibility of information on procedure of international protection since the law did not include a reference on provision of services of a sign-language interpreter for applicants with disabilities.<sup>261</sup>

## Paragraph 11 of article 19

In response to the Committees question regarding official language teaching courses for children of migrant workers and language courses for all adult migrants, the National Report states that “at the given stage, there is no such training programme at the level of preschool and general education”.<sup>262</sup> Thus, the non-conformity has not been remedied in this respect.

The National Report also describes the one-year Georgian language course program implemented since 2015 and provided free of charge to asylum seekers and persons with international protection from 6 to 18 years of age.<sup>263</sup> The PDO assessed this program in its special report on asylum seekers. Within the framework of the program, the beneficiaries were enrolled in three public schools for a one-year course twice a year (in September and January).<sup>264</sup> In terms of geographic availability and time flexibility, the PDO criticized implementation of the program in only 3 public schools and enrollment only twice a year.<sup>265</sup> Moreover, the interviews conducted by the Public Defender's representatives with school teachers and persons with international protection and asylum seekers revealed that the language barrier made it especially difficult for children to actively participate in the learning process and prevented them from fully mastering the educational program.<sup>266</sup> According to the

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<sup>259</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 16.

<sup>260</sup> UN High Commissioner for Refugees (UNHCR), UNHCR RSD Procedural Standards - Interpretation in UNHCR RSD Procedures, 2016, available at: <https://www.refworld.org/docid/56baf2634.html> [last seen 15.06.2023].

<sup>261</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 30.

<sup>262</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 73.

<sup>263</sup> Ibid.

<sup>264</sup> The Public Defender of Georgia, Special Report on the legal status of asylum seekers and persons with international protection in Georgia, 2022, page 43.

<sup>265</sup> Ibid, page 44.

<sup>266</sup> Ibid.

parents, minors, despite being included in the language course, found it difficult to understand the curriculum, especially in science subjects.<sup>267</sup>

As to teaching Georgian within the integration programs offered by the LEPL Agency of IDPs, Ecomigrants and Livelihoods Provision, the beneficiaries/participants pointed to difficulties in using electronic platform (the teaching process was remote due to the Covid-19 pandemic).<sup>268</sup> According to the beneficiaries, in some cases they had no information about the available opportunities for learning the language at all.<sup>269</sup> It was also problematic that groups for learning the language at a higher level could not be assembled due to the lack of people willing to learn Georgian.<sup>270</sup>

## Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

### Paragraph 1 of article 27

In its previous conclusions, the Committee found that the state failed to provide “information in the report on specific measures for jobseekers with family responsibilities”.<sup>271</sup> Accordingly, it asked “for the next report to specify whether there are placement services, information programmes or training measures for workers with family responsibilities”.<sup>272</sup> The National Report describes services provided by the LEPL State Employment Support Agency (SESA) and active labour market measures as defined in 2019-2023 National strategy on labor and employment policy.<sup>273</sup> However, these services and measures are general in that they are not intended for only those jobseekers who have family responsibilities. Thus, the National Report still failed to provide information on specific measures for jobseekers with family responsibilities.

The National Report also fails to answer the Committee’s request to provide information about whether the Universal Healthcare Programme which was implemented in 2013 includes any restrictions on the use of healthcare services by workers on leave owing to family

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<sup>267</sup> Ibid.

<sup>268</sup> Ibid, page 27.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 47.

<sup>272</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 47.

<sup>273</sup> 16<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 76-77.

responsibilities and whether periods of absence were taken into account for determining the right to pension and for calculating the amount of pension.<sup>274</sup>

The Committee also requested updated information on the provision of places in preschool institutions.<sup>275</sup> According to data of the National Statistics Office of Georgia, there were 1647 public preschool educational institutions and 158062 enrolled children by the start of the 2020-2021 educational/academic year.<sup>276</sup> Moreover, there were 1648 public preschool educational institutions and 154501 enrolled children by the start of the 2021-2022 educational/academic year.<sup>277</sup> Nevertheless, ensuring full access to preschool education remained one of the major challenges and the problems that had existed in kindergartens over the years became even more acute during this period and the Covid-19 pandemic. The persistent problems have included insufficient geographical coverage and lack of physical accessibility to infrastructure, overcrowding, staff shortage and the need to strengthen human resources.<sup>278</sup> During the Covid-19 pandemic, preschool educational institutions failed to designate isolations rooms, to ensure keeping distance, following sanitary-hygienic norms and wearing a mask, to fully implement the recommendations developed to prevent the spread of Covid-19 and to provide a safe learning and upbringing environment for children.<sup>279</sup> In parallel with the suspension of the functioning of kindergartens, the State failed to ensure the full implementation of distance learning mechanisms. In particular, only 207 employees of kindergartens were retrained within the framework of the distance learning training module developed in 2021.<sup>280</sup> Up to 50 kindergartens and 2,581 children from only 3 regions (i.e., less than 2% of the total number of children enrolled in early and preschool educational system) were involved in distance learning.<sup>281</sup>

## Paragraph 2 of article 27

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<sup>274</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 48.

<sup>275</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 48.

<sup>276</sup> Number of preschools by years - 2019/2020 - 1,621; 2020/2021 - 1,647; 2021/2022 - 1,648; statistics available at: <https://tinyurl.com/2p863rbz> [last seen: 14.07.2023].

<sup>277</sup> Statistics available at: <https://tinyurl.com/2p863rbz> [last seen 15.06.2023].

<sup>278</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 208; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 263.

<sup>279</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 208.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid, pages 208-209; Correspondence MES 3 22 0000057264 of the Ministry of Education and Science of Georgia, 24/01/2022.

The National Report emphasizes a large-scale labour law reform carried out in 2020.<sup>282</sup> In order to study the impact of these legislative amendments on the right to equality, the PDO analyzed the issue of exercising the right for parental leave by men in 2021. According to information from the LEPL Social Service Agency, 381 employees - 333 women and 48 men - benefited from paid part of childcare leave from January to November 2021, based on data of Unified Accounting Database of State Payments.<sup>283</sup> 46 out of these 48 men took 57 days of childcare leave and the amount to be reimbursed to them (except for 7 cases) was 1000 GEL and 45,310 GEL was paid off to 48 men in total.<sup>284</sup> As to fathers using the maternity leave days unused by mothers, there were 3 such cases (in two cases 126 days and in one case - 115 days) in 2021 and the amount of compensation for each of these fathers was 1000 GEL.<sup>285</sup> In addition, several private companies informed the PDO that no man had benefited from child care leave so far in that year.<sup>286</sup> One of the companies noted that its statute separately established the right to take parental leave for fathers based on the amendments to the Labor Code.<sup>287</sup>

In its previous conclusions, the Committee concluded that the situation in Georgia is not in conformity with Article 27§2 of the Charter on the grounds that fathers had no right to use a part of parental leave on an individual, non-transferrable basis.<sup>288</sup> According to the Committee, “domestic law should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent”.<sup>289</sup> In this connection, there are still shortcomings in the Rule of Reimbursement of Maternity and Parental Leave and Newborn Adoption Leave adopted by the №01-133/N Order of Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs.<sup>290</sup> According to article 4(1)(C) of this Rule, the employed parent (father) shall not receive assistance (reimbursement) for parental leave (monetary assistance determined by the government to be paid during the period of paid parental leave) if a mother

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<sup>282</sup> 16th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 78.

<sup>283</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 108.

<sup>284</sup> Ibid.

<sup>285</sup> Ibid; Letter of the Social Service Agency #404/11476 of 22 November, 2021.

<sup>286</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 108.

<sup>287</sup> Ibid, pages 108-109.

<sup>288</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 49.

<sup>289</sup> Digest of the Case Law of the European Committee of Social Rights, 2022, page 191.

<sup>290</sup> Rule of Reimbursement of Maternity and Parental Leave and Newborn Adoption Leave adopted by the №01-133/N Order of Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs, available at: <https://tinyurl.com/8seykxws> [last seen 15.06.2023].

who is a public servant fully used the maternity leave or parental leave or partially used it and was reimbursed at least 2000 GEL. Moreover, if the mother who is a public servant partially used her leave and was reimbursed less than 2000 GEL, then reimbursement for the employed parent (father) will be calculated so that the total amount for both parents does not exceed 2000 GEL. According to article 8(5) of the aforesaid Rule, a public servant (the father of a child) shall receive reimbursement for 90 calendar days (out of 550 days) of parental leave only if the mother of a newborn has not fully used paid maternal or paid parental or paid newborn adoption leave. If the mother partially used her paid leave, the father will receive parental leave reimbursement in proportion to paid leave days unused by the mother but for maximum of 90 calendar days. In light of the cited provisions of the aforesaid Rule, fathers still don't have a completely individual right to parental leave in that reimbursement of their parental leave days depends on the use of leave by mother and the amount reimbursed to mother.

In previous conclusions, the Committee also found non-conformity on the ground that no arrangements had been set up to remunerate parents on parental leave beyond the 183rd day or on additional childcare leave.<sup>291</sup> In this connection, the regulation has remained the same and the only exception is that 17 additional days are allocated in case of complications during childcare or the birth of twins.

## Article 31 – the right to housing

### Paragraph 1 of article 31

The National Report refers to the definition of a “homeless person” as well as current legislation in general.<sup>292</sup> In this connection, it should be mentioned that the absence of a full-fledged legal definition of a homeless person and of a framework legislation for the implementation of the right to housing has been a long-standing issue.<sup>293</sup> Unfortunately, under the current legislation, people living in substandard conditions in social houses without legal guarantees and under threat of eviction are fully excluded from the scope of right to housing.<sup>294</sup> Persons temporarily

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<sup>291</sup> European Committee of Social Rights, Conclusions 2019, Georgia, page 49.

<sup>292</sup> 16th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 79.

<sup>293</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 17; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 240; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2019, page 227, available at: <https://bit.ly/3qBN3T3> [last seen 13.06.2023].

<sup>294</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 16.

living with relatives as well as those awaiting release from institutions (such as penitentiaries, medical facilities, and orphanages) are also excluded from the scope of right to housing.<sup>295</sup> Although local self-governments are responsible for registration of the homeless persons according to the National Report,<sup>296</sup> some municipalities do not have local databases of the homeless and there is no consolidated database in the country.<sup>297</sup> Each municipality has its own standards and approaches to homeless individuals.<sup>298</sup>

The National Report mentions the "Open Government Action Plan of Georgia for 2018-2019" within which one of the obligations was to create a housing policy document.<sup>299</sup> However, the Interagency Commission<sup>300</sup> set up in 2019 to develop a policy document and action plan to tackle homelessness has not fulfilled its obligations under the 2018-2019 Action Plan for Open Governance.<sup>301</sup>

The National Report also refers to several thematic working groups for the development of the social systems and states that "a separate housing policy-working group will be set up in the frames of thematic groups".<sup>302</sup> In this connection, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia informed the PDO that a working group on matters concerning housing policy has been formed within the Ministry.<sup>303</sup> The working group has prepared a concept document to be discussed in near future.<sup>304</sup> Unfortunately, interested parties, such as homeless people, civic society members

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<sup>295</sup> Ibid.

<sup>296</sup> 16th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 79.

<sup>297</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 16.

<sup>298</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, page 16; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2018, page 177, available at: <https://bit.ly/3NurIJS> [last seen 13.06.2023].

<sup>299</sup> 16th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 79.

<sup>300</sup> N190 Resolution of the Government of Georgia of April 2019 on the Establishment of the Government Commission for the Development of the Housing Policy Document and its Action Plan and the approval of the statute, available at: <https://bit.ly/43DLgve> [last seen 13.06.2023].

<sup>301</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2021, page 178.

<sup>302</sup> 16th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 79.

<sup>303</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2022, pages 241-242.

<sup>304</sup> Ibid, page 242.

and representatives of the Public Defender were not included in the work of the aforesaid group.<sup>305</sup>

## Paragraph 2 of article 31

Unfortunately, no steps were taken in 2020 to assess the effect of Covid-19 on the right to housing and homeless persons and to collect statistical data.<sup>306</sup> The socio-economic support programs approved by the government for alleviation of damage resulting from Covid-19 did not envisage any measures for ensuring shelter or adequate living conditions specifically for homeless individuals.<sup>307</sup> Another major challenge was the exclusion of migrants from municipal shelter programs. In particular, aliens (except asylum seekers) did not have access to services such as compensation of the housing rent, social housing and/or temporary shelter services for the homeless.<sup>308</sup>

Temporary shelters for the homeless living in streets were not available in any other municipalities other than Batumi and Tbilisi.<sup>309</sup> It is noteworthy that Tbilisi Municipality City Hall accommodated homeless people during the pandemic in Lilo shelter on an exceptional basis (e.g., individuals who were not registered in Tbilisi).<sup>310</sup> However, homeless individuals unable to take care of themselves due to physical or mental health conditions lacked access/had limited access to services of the Lilo shelter and thus they were left beyond state care.<sup>311</sup> Moreover, due to the absence of a crisis unit and quarantine medical unit at the Lilo shelter, it was impossible to accommodate the drunk beneficiaries and those suffering from communicable diseases although such units are required by the minimum standards for functioning/operation of temporary shelters.<sup>312</sup> With regard to Tbilisi Municipality, it is also noteworthy that high rate of applications for registration as homeless and provision of shelter and delays in review of applications were additional challenges as the responsible Commission of the Tbilisi Municipality held only two sessions and did not use the mechanism for holding remote sessions.<sup>313</sup>

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<sup>305</sup> Ibid.

<sup>306</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 243.

<sup>307</sup> Ibid; The Government of Georgia Decree N 286 dated May 4, 2020, available at: <https://bit.ly/3X2WfvK> [last seen 13.06.2023].

<sup>308</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 361.

<sup>309</sup> Ibid, page 242.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.

<sup>312</sup> Ibid.

<sup>313</sup> Ibid, page 245.

The National Report mentions restrictions on forced evictions during Covid-19.<sup>314</sup> In this connection, it should be noted unauthorized residential buildings and structures were dismantled in Africa settlement, Tbilisi in December 2020.<sup>315</sup> Afterwards, Tbilisi Mayor stated that the families had not lived in any of the demolished buildings and some of them were not homeless since they owned registered movable and immovable property.<sup>316</sup> Despite the PDO's request, Tbilisi Municipality City Hall did not provided the PDO information/documentation that would prove that aforesaid citizens owned movable or immovable property and that citizens had not lived in buildings subjected to demolition.<sup>317</sup> Refusal to provide information gave rise to a justified assumption that Tbilisi City Hall examined the matter of dismantling unauthorized buildings and structures only in the context of state property and did not consider the need for realization of the right to housing in the process.<sup>318</sup>

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<sup>314</sup> National report page 80

<sup>315</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 246.

<sup>316</sup> Ibid; The statement is available at: <https://bit.ly/3Nr1AKh> [last seen 13.06.2023].

<sup>317</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, page 246.

<sup>318</sup> Ibid, page 247.