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## **EUROPEAN SOCIAL CHARTER**

Comments by the Public Defender's (Ombudsman) Office  
of Georgia

on the 15th National Report on the implementation of the  
European Social Charter

submitted by

**THE GOVERNMENT OF GEORGIA**

Articles 2, 4, 5, 6, 21, 26, 28 and 29

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**CYCLE 2022**



**Comments on Georgia's 15<sup>th</sup>  
National Report on the  
Implementation of the European Social Charter**

**Public Defender's Office of Georgia**

**2022**

## Introduction

The Public Defender's (Ombudsman) Office of Georgia (hereinafter PDO) oversees the observance of human rights and freedoms in Georgia. 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, whose one of the main functions is to supervise the implementation of the 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.

PDO is further authorized to exercise the Amicus Curiae function at the Common Courts and the Constitutional Court of Georgia and has an experience of intervening before 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 also has been actively contributing to the 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.

PDO welcomes the opportunity to provide to the European Committee of Social Rights comments on a number of matters regarding Georgia's 15th National Report on the Implementation of the European Social Charter and the rights that are examined in the present cycle.

## **Article 2 – The right to just conditions of work**

### **Article 2 paragraph 1**

In the 2018 and 2019 the Public Defender positively evaluated the adoption of the Law on „Occupational Safety” and amendment to the law that covered all spheres of economic activity and labor inspectors were allowed to access workplaces without undue restrictions. However, a recommendation of the Public Defender of Georgia to grant labor inspectors effective oversight on the implementation of other requirements prescribed by the labor legislation, had not been considered until 2020.

The labor legislation reform, in particular, granting a full mandate for the oversight over the protection of labor rights to the Labor Inspectorate was a prominent development in 2020. Since January 1, 2021, the Labor Inspectorate, LEPL has been empowered to inspect workplaces without employer's consent, with the aim to detect breaches of the provisions of the Labor Code of Georgia and the Law of Georgia on Public Service and to impose respective sanctions in case of detection of violation.

Regarding challenges: various problems remain in Georgian legislation and in practice in terms of reasonable daily and weekly working hours despite positive developments discussed above and the amendments to the Labor Code of Georgia mentioned in the 15<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia (hereinafter the National Report).<sup>1</sup> In particular, the regulation of working hours of minors has significant shortcomings. According to the Labor Code, the working hours of a person between the ages of 14 and 16 shall not exceed 4 hours a day and 24 hours a week, while the working hours of persons aged

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<sup>1</sup> 15<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 4.

between 16 and 18 shall not exceed 6 hours a day and 36 hours a week.<sup>2</sup> Such a regulation does not comply with the EU standard. The EU Directive (94/33/EC) differentiates between permitted working hours according to the type of activity a child is involved in. In particular, according to the Directive, the regulation of the number of maximum working hours depends on whether the work is performed during school period/term time or outside this period. The EU Directive stipulates that duration of work performed during the period outside school hours should not exceed 2 hours per day and 12 hours per week. In contrast, the above-mentioned regulation of the maximum working hours in the Labor Code of Georgia does not contain such a differentiation. Thus, it contains a legislative gap which allows a situation in which weekly duration of work performed by a school student during the period outside school hours exceeds the duration allowed by the EU directive. As a result, in some cases, a school student may work more than it is allowed by international norms.

Moreover, the Labor Code prohibits overtime work by a child without his/her consent and the duration of child's overtime work should not exceed a total of 2 hours during the working day and a total of 4 hours during the working week.<sup>3</sup> Consequently, by permitting overtime work of juveniles, even based on mutual consent, the domestic law contradicts the international standard established by the International Labor Organization (according to this standard overtime work by a child is not permitted) . In addition, the regulation of breaks under the Labour Code is general: if the duration of the working day is no less than 6 hours, the employee shall have a break of at least 60 minutes.<sup>4</sup> This rule applies to everyone irrespective of an employee's age. Thus, the Labour Code does not separately contain a special/specific rule regulating breaks for employees under the age 18 whereas the EU Directive stipulates that a child has a right to a 30-minute break if the work duration exceeds 4,5 hours.

Another legislative shortcoming lies in the absence of regulation of on-call time and service (including zero-hours contracts) which is directly mentioned in the National Report.<sup>5</sup>

Georgian legislation is also flawed in that it does not determine daily working hours for private sector. Daily working time should not exceed 12 hours due to the requirement of daily rest period of 12 hours.<sup>6</sup> However, this rule is not always respected. Despite the request by the Committee in its previous conclusions,<sup>7</sup> the National Report does not contain the confirmation that the rest period of 12 hours is observed in practice. It is also disappointing that the

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<sup>2</sup> The Labor Code of Georgia, article 24 paragraphs 8 and 9.

<sup>3</sup> The Labor Code of Georgia, article 27 paragraph 1.

<sup>4</sup> The Labor Code of Georgia, article 24 paragraph 5.

<sup>5</sup> 15<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 7.

<sup>6</sup> The Labor Code of Georgia, article 24 paragraph 4.

<sup>7</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 4.

authorities did not study and assess the impact of the COVID-19 crisis on the right to just conditions of work, specifically on enjoyment of the right to reasonable working time in the listed sectors including health care.<sup>8</sup> In response to question put by the Committee about these matters, the PDO would like to name some findings of its report on the impact of the pandemic on women working in the healthcare sector.<sup>9</sup> The report revealed several cases when a 12-hour interval between 24-hour shifts was not observed.<sup>10</sup> It also disclosed cases when employees worked night shifts for a few days in a row in contravention of the Labour Code.<sup>11</sup> Furthermore, inspections of 110 hospitals conducted by the LEPL Labor Inspection Office in September 2021 also revealed cases of absence of 12/24-hour rest period within a week and violations of schedule of shift work.<sup>12</sup>

As to enforcement measures, monitoring arrangements and proactive action taken by the authorities to ensure the respect of reasonable working hours,<sup>13</sup> the LEPL Labor Inspection Service has been authorized to observe protection of labor rights and to secure compliance with the labour rights standards, including working hours, since 2021. Before 2021 (during 2018-2021), however, it needed the consent of the entity under the inspection to monitor compliance of requirements stipulated by the labor legislation (except occupational safety norms).<sup>14</sup> Thus, during the reporting period and between 2020 and 2021, the Georgian legislation only partially complied with the requirement under Article 2§1 of the Charter that an appropriate authority, such as the labour Inspectorate, must supervise the observance of daily and weekly limits in order to ensure that the limits are respected in practice.<sup>15</sup> As to the activities of Labor Inspection Service since 2021, it issued 1766 instructions as a result of 327 inspections conducted on the basis of the Labour Code in 2021.<sup>16</sup> Most of these instructions

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<sup>8</sup> 15<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 7.

<sup>9</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, available at: < <https://bit.ly/3m6c6bx> > [last viewed 03.06.2022].

<sup>10</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 8.

<sup>11</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 7.

<sup>12</sup> № 09/1970 letter dated 06.06.2022 from the LEPL Labour Inspection Office.

<sup>13</sup> Appendix Questions on Group 3 provisions (Conclusions 2022) Labour rights, page 2.

<sup>14</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, pages 209-210, available at: < <https://bit.ly/3maQISe> > [last viewed 02.06.2022]; Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2019, page 210, available at: < <https://bit.ly/3zjD07D> > [last viewed 02.06.2022].

<sup>15</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 4.

<sup>16</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, pages 211-212.

concerned, inter alia, violations of working time.<sup>17</sup> The high rate of violations revealed by inspections indicate the need to intensify inspections and to work on raising awareness of employers.<sup>18</sup>

## **Article 2 paragraph 2**

The Government of Georgia was asked to explain whether and how the violation of article 2 paragraph 2 of the Charter found in the previous conclusion was remedied.<sup>19</sup> In particular, the Committee requested information concerning the situation in practice in terms of right to public holidays with pay, including examples of the level of the increased pay rate in different sectors and branches, both public and private.<sup>20</sup> The National Report again failed to provide this information. As to the situation in practice, cases of violations in the form of unpaid work carried out on public holidays were revealed after inspections in 2019.<sup>21</sup> Moreover, there were 10 cases in 2021 in which instructions were issued in connection with violations concerning work on public holidays.<sup>22</sup>

## **Article 2 paragraph 7**

The Committee previously found a non-conformity with article 2 paragraph 7 of the Charter on the ground that it was not established that night workers were effectively subject to compulsory regular medical examination.<sup>23</sup> In this connection, the Labor Code of Georgia stipulates that „upon the request of a night worker, the employer shall, at his/her/its own expense, provide the night worker with pre-employment and subsequent periodic medical examinations in compliance with the principle of medical confidentiality”.<sup>24</sup> Based on this provision, Order #01-79/N issued by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia establishes that an employer must ensure a medical examination of a night worker prior to employment and once a year/every 6 months if the night worker requests medical examination.<sup>25</sup> Both of these

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<sup>17</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 212.

<sup>18</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 212.

<sup>19</sup> Appendix Questions on Group 3 provisions (Conclusions 2022) Labour rights, page 3.

<sup>20</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 6.

<sup>21</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2019, page 210.

<sup>22</sup> № 09/499 Letter dates 12.02.2022 from LEPL Labour Inspection Office.

<sup>23</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 8.

<sup>24</sup> The Labor Code of Georgia, article 28 paragraph 5.

<sup>25</sup> Order #01-79/N on determination of proportional annual working time of night work, and approval of frequency and the scope of the pre-employment and subsequent periodic medical examinations for a night worker

provisions fail to adequately guarantee compulsory and regular character of medical examinations of night workers as they make the performance of medical examination conditional on an employee's request. Thus, the current regulation does not exclude such cases in which medical examinations are not performed at all due to absence of an employee's request. This contradicts the requirement that medical examinations must be compulsory.

## **Article 4 - The right to a fair remuneration**

### **Article 4 paragraph 2**

It is disappointing that the authorities did not study and assess the impact of the COVID-19 crisis on the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime.<sup>26</sup> In this connection, cases of assigning overtime work without remuneration were among frequently talked about or reported labor rights violations caused by pandemic related restrictions.<sup>27</sup> As to the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic, inspections conducted in September 2021 in 110 hospitals offering Covid-19 treatment conducted in September 2021 revealed cases of unpaid overtime work.<sup>28</sup> Furthermore, the inspections by LEPL Labor Inspection Service conducted on the bases of Labor Code revealed that the nonpayment of remuneration for overtime work was the most frequent violation.<sup>29</sup> In general, according to a 2019 study, unpaid overtime work had been an issue in case of nurses and other employees in health sector even before the Covid-19 pandemic began.<sup>30</sup> Moreover, in 2020, 13 entities were inspected for violations of labour legislation and unpaid overtime work was revealed in 4% of the cases.<sup>31</sup>

### **Article 4 paragraph 3**

The Committee previously found a non-conformity with article 4 paragraph 3 of the Charter on the ground that the statutory guarantee of equal pay only existed in public service.<sup>32</sup> This

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issued by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, article 7.

<sup>26</sup> 15<sup>th</sup> National Report on the implementation of the European Social Charter submitted by the Government of Georgia, page 23.

<sup>27</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, pages 219, 223, available at: < <https://bit.ly/3NTHMwG> > [last viewed 02.06.2022].

<sup>28</sup> № 09/1970 letter dated 06.06.2022 from the LEPL Labour Inspection Office.

<sup>29</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 211.

<sup>30</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 7; Revaz Karanadze, Neno Charkviani, Sopho Japaridze, Davit Omsarashvili -Working Conditions of Nurses in Georgia, Solidarity Network - Workers' Center. Tbilisi, 2019.

<sup>31</sup> № 09/138 Letter dated 16.02.2021 from LEPL Labor Inspection Office.

<sup>32</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 12



violation is still not remedied as the obligation to provide equal pay remains limited to public service.<sup>33</sup>

It should also be noted that despite changes, the Labor Code of Georgia did not take into account the obligation to determine anew the minimum wage by the relevant state institutions, although it was envisaged in the first package of amendments.<sup>34</sup> In order to effectively enforce the principle of equal pay, the regulation of the minimum wage is critical in ensuring decent work and eliminating labor discrimination against women.<sup>35</sup> The importance of the minimum wage, as a basic means of enforcing the principle of equal pay, is reflected in the ILO Convention N°100, since, according to the ILO, an adequate minimum wage policy creates significant leverage for people employed in low-paid jobs.<sup>36</sup> In Georgia, the issue of the minimum wage has been left out of the relevant regulation and the current retrograde norm is detrimental to the interests of employees and violates the principle of decent work.<sup>37</sup> In particular, the minimum wage in Georgia is still 20 GEL according to the decree N351 of the President of Georgia issued on June 4, 1999.<sup>38</sup> Although the decree contains a norm that serves to revise the minimum wage according to the country's socio-economic situation, it has not undergone actual changes to date.<sup>39</sup>

## **Article 5 - The right to organise and Article 6 - The right to bargain collectively**

### **Article 5 and Article 6 paragraph 4**

The Committee previously found a non-conformity with article 5 of the Charter on the ground that, inter alia, it was not established that employees were adequately protected against discrimination on grounds of trade union membership in practice.<sup>40</sup> The Committee asked to be informed about any cases before the courts concerning discrimination on grounds of trade union membership.<sup>41</sup> The PDO finds it relevant and appropriate to provide information about the case of discrimination against platform workers which the PDO reviewed. In particular,

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<sup>33</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 145; Analysis of the Gender Pay Gap and Gender in the Georgian Labor Market, UN Women, 2020, 53, available at: < <https://cutt.ly/NPu2xf7> >

<sup>34</sup> Public Defender of Georgia, The Rights of LGBT+ People in Georgia, 2021, page 37, available at: < <https://bit.ly/39g0b7P> > [last accessed 02.06.2022].

<sup>35</sup> Public Defender of Georgia, The Rights of LGBT+ People in Georgia, 2021, page 37.

<sup>36</sup> Public Defender of Georgia, The Rights of LGBT+ People in Georgia, 2021, page 37.

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

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

<sup>39</sup> Public Defender of Georgia, The Rights of LGBT+ People in Georgia, 2021, pages 37-38.

<sup>40</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 14.

<sup>41</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 14.

LTD “Fudli” (“Bolt Food”) denied delivery workers access to “Bolt” application/platform for undetermined period of time and terminated labor relationship with them because the workers had formed a trade union and held a demonstration in order to strike and voiced protest to protect their labor rights.<sup>42</sup> The PDO found that the actions of the company amounted to discrimination (on the ground of protest/opinions expressed by the delivery workers).<sup>43</sup>

## **Article 26 - The right to dignity at work**

### **Article 26 paragraph 1**

The Committee has requested information on awareness raising and prevention campaigns.<sup>44</sup> In 2018, the PDO published a video disseminating information about sexual harassment, legal remedies for victims of sexual harassment and potentially relevant evidence in such cases.<sup>45</sup> In 2018-2019, the Gender Department of the PDO, with the technical help of UN Women, held a series of trainings for labor inspectors, representatives of trade unions and employer associations on gender-based discrimination and women’s rights in the workplace. In 2018, 80 participants attended trainings, and in 2019 – 122 participants. Various issues were discussed during the trainings, including legislation on sexual harassment, mandate of the Public Defender, types and forms of sexual harassment, sexual harassment in the workplace, possible indicators and evidence, basic principles for internal organizational mechanisms to prevent sexual harassment. Participants were also introduced to the PDO’s practice of investigating sexual harassment cases. Given the feedback from the participants, agreement was made on the need to create an internal mechanism for the prevention of sexual harassment. Moreover, in 2019, the Public Defender continued to disseminate information on equality and nondiscrimination, including the issue of sexual harassment. Representatives of the Department of Equality of the PDO held up to 50 informational meetings and training throughout Georgia. The focus of educational meetings was, inter alia, sexual harassment, while the main target groups were employees of the Ministry of Internal Affairs and local self-

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<sup>42</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 140; Recommendation to the Director of LTD “Fudli” by the Public Defender regarding the finding of direct discrimination on the ground of different opinions in labour relation, available at: < <https://bit.ly/3te9exb> > [last viewed 02.06.2022].

<sup>43</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 140; Public Defender Establishes Discrimination against Bolt Couriers on Strike, available at: < <https://bit.ly/3N9vVue> > [last viewed 02.06.2022]; Recommendation to the Director of LTD “Fudli” by the Public Defender regarding the finding of direct discrimination on the ground of different opinions in labour relation.

<sup>44</sup> Appendix Questions on Group 3 provisions (Conclusions 2022) Labour rights, page 10.

<sup>45</sup> The video is available at: <https://www.youtube.com/watch?v=idRItZBgvw8> [last viewed 02.06.2022].

governments. Overall, in 2019, representatives of the Department of Equality met with approximately 110 employees of the Ministry of Internal Affairs and 150 employees of local self-governments, 25 public school teachers, as well as labour inspectors and about 80 representatives of the Employers' Association, trade unions and various public agencies.<sup>46</sup> Furthermore, from November 25 to December 20, 2019, representatives of the PDO held meetings with various target groups, including representatives of the Ministry of Environment and Agriculture, military and civil servants of the Ministry of Defense, members of the Bar Association, staff of the Lagodekhi self-government bodies and students from various universities, representatives of trade unions, members of employers' association and labour inspectors.<sup>47</sup> The topics of the meetings included the Georgian legislation on sexual harassment, legal remedies, issues related to the examination of cases of sexual harassment, standard of evidence, and the Public Defender's mandate and role in the elimination and prevention of sexual harassment.<sup>48</sup> Emphasis was placed on the importance of existence of internal policy documents/internal mechanisms against sexual harassment in the institutions and organizations.<sup>49</sup> In 2020, the Public Defender took part in a webinar on implementation of legal norms regulating sexual harassment.<sup>50</sup> Moreover, with the technical support of UN Women, PDO is operating online platform on sexual harassment. Online course is free of charge and is suggested for any interested party. PDO also operated E-course on Gender Equality and Women's Empowerment Principles (WEPs). Courses are available on the official website [www.ombudsman.ge](http://www.ombudsman.ge)

While the National Report also refers to the awareness raising activities performed by the PDO, it fails to provide information about activities carried out by other official bodies in order to inform the public about matters related to sexual harassment.

As a positive development, it should be noted that the awareness about protection mechanisms and legislation prohibiting sexual harassment has been increased.<sup>51</sup> Moreover, private entities

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<sup>46</sup> Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality 2019, available at: < <https://bit.ly/3tbmouW> > [last viewed 02.06.2022].

<sup>47</sup> Representatives of the Public Defender Hold Meetings on Sexual Harassment, available at: < <https://bit.ly/3M6mYR8> > [last viewed 02.06.2022].

<sup>48</sup> Representatives of the Public Defender Hold Meetings on Sexual Harassment, available at: < <https://bit.ly/3M6mYR8> > [last viewed 02.06.2022].

<sup>49</sup> Representatives of the Public Defender Hold Meetings on Sexual Harassment, available at: < <https://bit.ly/3M6mYR8> > [last viewed 02.06.2022].

<sup>50</sup> Webinar on Implementation of Legal Norms Regulating Sexual Harassment, available at: < <https://bit.ly/3M6FDw4> > [last viewed 02.06.2022].

<sup>51</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 136.

have shown more willingness to receive expert assistance from PDO in ensuring compliance of their internal regulations with the principle of equality, as well as to raise the awareness of their employees through training. Importantly, unlike previous years, in cases when the Public Defender found sexual harassment, employers responded by dismissing the harasser or enshrining provisions prohibiting sexual harassment in their internal regulations. At the same time, with the involvement of the Human Rights Secretariat of the Government of Georgia, internal sexual harassment mechanisms were introduced in public institutions.

In spite of the aforesaid positive developments, challenges still remain in terms of awareness raising and action to ensure that the right to dignity at work is fully respected in practice. With respect to situation in practice, the Public Defender has received 10 complaints on sexual harassment at the workplace in 2017-2022. In six of the cases, the fact of sexual harassment was established; one case was terminated due to absence of evidence; with regard to one case the Public Defender submitted an amicus brief to the Tbilisi City Court; two of the applications are pending. Moreover, 16% of 161 alleged facts of discrimination studied by the PDO in 2021 concerned alleged discrimination on grounds of sex, including sexual harassment.<sup>52</sup>

Specifically in terms of the right to dignity in the workplace during the Covid-19 pandemic and notably as regards sexual harassment, the survey by the PDO revealed a low level of awareness of women working in the health sector about the meaning of sexual harassment in general and the mechanisms for responding to such cases.<sup>53</sup> Moreover, a small number of respondents, who confirmed existence of similar cases and had more information about sexual harassment in general, stated that sexual harassment was a systemic problem in the healthcare sector and there was no woman employed in this sector, who had not become a target of at least sexual ("obscene") comments by male colleagues and/or supervisors.<sup>54</sup> The majority of respondents were not informed about the available mechanisms for responding to sexual harassment.<sup>55</sup> They stated that the employer had never talked to them about this issue and they had not been informed of the relevant mechanisms available inside or outside their medical facilities.<sup>56</sup> It is noteworthy that provision of information about sexual harassment and response mechanisms is of particular importance in health care, as women employed in this

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<sup>52</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 136.

<sup>53</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>54</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>55</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>56</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

sector have to spend more time in the workplace (due to the pandemic).<sup>57</sup> It is also noteworthy that women work at lower levels in the healthcare system (junior doctors, nurses, sanitation workers) all around the world, while male colleagues are often their supervisors and decision-makers and are more powerful not only in the context of gender but also in terms of their position at work.<sup>58</sup> This increases the risk of harassment and prevents women from applying to appropriate response mechanisms.<sup>59</sup>

The Committee previously found a non-conformity with article 26 paragraph 1 of the Charter also on the ground that it was not established that the existing framework in respect of employers' liability provided sufficient and effective measures against sexual harassment in relation to work.<sup>60</sup> In particular, the Committee stated that it must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.<sup>61</sup> In this connection, article 78 of the Labor Code, also mentioned in the National Report, stipulates that imposing liability on the offending employee for harassment and/or sexual harassment shall not release the employer from respective liability and liability may be imposed on an employer if he/she/it has become aware of the fact of harassment and/or sexual harassment and has not informed the Labour Inspection of said fact(s) and/or has not taken appropriate measures to prevent it.<sup>62</sup> In terms of sexual harassment committed by an employee and the employer's reaction, the PDO finds it relevant and appropriate to inform the Committee about a sexual harassment case which was examined by the PDO and in which a doctor sexually harassed a patient.<sup>63</sup> The examination of the case revealed absence of special guidelines, which would describe the procedures for examining quarantined persons by doctors. The contract with the doctor, who was examining quarantined citizens, was signed by LEPL the Social Service Agency. The Public Defender appealed to the Social Service Agency and the Medical Holding of Georgia to take proactive steps, inter alia, to develop an internal policy document

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<sup>57</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>58</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>59</sup> The Public Defender of Georgia, the Impact of the Pandemic on the Rights Situation of Women working in the Healthcare Sector, page 16.

<sup>60</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 21.

<sup>61</sup> European Committee of Social Rights, Conclusions 2018, Georgia, page 21.

<sup>62</sup> The Labor Code of Georgia, article 78.

<sup>63</sup> Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality 2020, pages 8-12, available at: < <https://bit.ly/3Q01ngc> > [last viewed 02.06.2022].

on sexual harassment and to raise awareness. The Public Defender called on the same organizations to provide information on the inadmissibility of sexual harassment to the contracted doctors or those to be contracted. After the issuance of this recommendation, the Public Defender was informed by the respondents that they had actively started providing relevant information/recommendations to the medical staff employed in the quarantine areas. In addition, the Social Service Agency started to work on an internal policy document on sexual harassment and in this process the Service is being consulted by the PDO as well.

## **Article 26 paragraph 2**

The Committee has requested information on action to ensure that the right to dignity at work is fully respected in practice.<sup>64</sup> In terms of situation in practice, a large number of cases of discrimination in labor relations were related to harassment against employees in public or private companies in 2020.<sup>65</sup> Creating a hostile and humiliating environment, as in previous years, was largely based on existence of different opinions.<sup>66</sup> Discriminatory actions that constituted harassment in the workplace were manifested in the use of unethical and abusive forms of communication, non-awarding of monetary rewards, creating obstacles in the performance of official rights and duties, etc.<sup>67</sup> Most often, employers tried to cover up discriminatory motives by using formal-legal grounds such as reorganization, disciplinary proceedings, absence of employment obligations.<sup>68</sup> However, examination of the circumstances revealed that after the reorganization, there were still employees with the same workload or that only one staff unit occupied by the applicant had been reduced under the systemic reorganization.<sup>69</sup> The PDO issued recommendations to employers in cases of harassment on the ground of different opinions.<sup>70</sup> The Public Defender also filed an amicus curiae brief with Rustavi City Court in a case of alleged discrimination on the ground of health

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<sup>64</sup> Appendix Questions on Group 3 provisions (Conclusions 2022) Labour rights, page 10.

<sup>65</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 139.

<sup>66</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 139.

<sup>67</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 139.

<sup>68</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 139

<sup>69</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, page 139.

<sup>70</sup> Recommendation to the joint-stock company “Telasi” by the Public Defender regarding finding of discrimination, expressed in harassment, on the ground of different opinion, available at: <<https://bit.ly/3PWL2c6>> [last viewed 02.06.2022]; Recommendation to the Director of the National Parliamentary Library of Georgia regarding finding of discrimination, expressed in harassment, on the ground of different opinion, available at: <<https://bit.ly/3x0Rt5B>> [last viewed 02.06.2022].

condition.<sup>71</sup> In the amicus curiae brief, the Public Defender focused on the test/standard of detection of harassment as one of the forms of discrimination in labour relations and the distribution of the burden of proof in discrimination cases.<sup>72</sup> In addition, the Public Defender highlighted the impact of the pandemic on equality at work.<sup>73</sup> Furthermore, in 2021 the PDO was made aware of 69 cases of dismissals and work place harassment allegedly based on political views.<sup>74</sup> The PDO informed the law enforcement authorities about 44 cases.<sup>75</sup> As a result, the Ministry of Internal Affairs and the Prosecutor's Office launched investigations into violations of labor legislation committed against employees of various public bodies.<sup>76</sup> Moreover, the PDO found political discrimination in 9 cases and issued recommendations to responsible agencies.<sup>77</sup> The PDO also submitted 2 amicus curiae briefs in cases before the courts.<sup>78</sup>

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<sup>71</sup> Public Defender's Amicus Curiae Brief relating to Alleged Discrimination on Grounds of Health Condition, available at: < <https://bit.ly/3PUGYcp> > and < <https://bit.ly/3M5H9yz> > [last viewed 02.06.2022].

<sup>72</sup> Public Defender's Amicus Curiae Brief relating to Alleged Discrimination on Grounds of Health Condition, available at: < <https://bit.ly/3PUGYcp> > and < <https://bit.ly/3M5H9yz> > [last viewed 02.06.2022].

<sup>73</sup> Public Defender's Amicus Curiae Brief relating to Alleged Discrimination on Grounds of Health Condition, available at: < <https://bit.ly/3PUGYcp> > and < <https://bit.ly/3M5H9yz> > [last viewed 02.06.2022].

<sup>74</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 244.

<sup>75</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 244.

<sup>76</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 244.

<sup>77</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, page 244.

<sup>78</sup> Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2021, pages 244-245.