

# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO GEORGIA  
FROM 21 TO 24 FEBRUARY 2022



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## SUMMARY

Commissioner Dunja Mijatović and her team visited Georgia from 21 to 24 February 2022. The present report focuses on the following issues raised during the visit: combating discrimination against Lesbian Gay Bisexual Transgender Intersex (LGBTI) people and those belonging to religious minorities and promoting tolerance; labour rights; and the environment and human rights.

### **Combating discrimination and promoting tolerance**

The Commissioner welcomes measures taken by the authorities to bring the anti-discrimination legal framework in line with relevant international standards and the efforts made to strengthen the capacity of the competent law enforcement authorities to combat impunity for hate crimes committed on the grounds of sexual orientation and gender identity, and religion. She notes however that the inadequate implementation of legal standards and the persistent deficiencies in combating impunity for hate crime and incitement to violence has had a detrimental impact on the ability of LGBTI people and persons belonging to non-dominant (non-Eastern Orthodox Christian) religious denominations to exercise their human rights in an environment free from violence and discrimination.

LGBTI people remain affected by instances of hate crimes and pervasive discrimination in the fields of education, work, healthcare, and social services and they experience serious challenges in safely exercising their right to peaceful assembly and association. The Commissioner therefore calls on the competent authorities to step up efforts to combat impunity for human rights violations against LGBTI people, and to make it their priority to continuously raise awareness among the general public and to carry out training activities for targeted professional groups on the anti-discrimination legal framework, as well as on the importance of their role in promoting equality, dignity, and non-discrimination.

Hate speech against LGBTI people in the public sphere is an issue of concern, with several examples of intolerant speech voiced by high-level officials, as well as by religious and community leaders and some media professionals. The Commissioner calls for appropriate responses to hate speech, including the use of effective law enforcement channels and other mechanisms to counter its harmful effects, such as prevention, monitoring, self-regulation, and counter-speech.

Since 2012, LGBTI activists have been repeatedly denied their right to peaceful assembly, largely due to the passive attitude adopted by the competent authorities. Authorities should adopt a set of comprehensive measures enabling LGBTI people to express their views and to hold their events in an environment which is free from violence, threats of violence, and intimidation. They should also make it possible to obtain legal gender recognition without invasive medical requirements and in a quick, transparent, and accessible manner.

Regarding religious minorities, in addition to ensuring effective investigation, prosecution, and proportionate and dissuasive sanctioning for hate crimes committed on the grounds of religion, the authorities should develop and implement concrete measures to address the deficiencies and to remove discriminatory barriers to the enjoyment of religious freedoms by those practicing non-dominant religions. Their access to religious property and places of worship, including via recourse to the appropriate restitution mechanisms and the construction of new religious facilities, should be ensured in a non-discriminatory, clear and fair manner. The competent authorities at the national and local levels should establish and pursue an open dialogue with all religious communities. To facilitate this dialogue, a meaningful partnership should be established between the State Agency for Religious

Issues and the Council of Religions operating under the Public Defender's Tolerance Centre. The Commissioner considers it important for the authorities to adopt a comprehensive approach in addressing all the issues which negatively impact the exercise of religious freedoms by members of non-dominant religious denominations. This approach includes introducing changes to the relevant regulations and carrying out training and awareness raising activities which target national and local government officials, professional groups, and members of the public in general.

The authorities should remain vigilant regarding displays of religious intolerance and use all available means to address these attitudes, including dissuasive and proportionate sanctions. Regarding the public school system, the authorities should pursue their efforts in eliminating any religious biases and stereotyping from school textbooks.

### **Labour rights**

The Commissioner welcomes the comprehensive legal and institutional labour reform recently implemented in Georgia and she urges the authorities to close the remaining gaps in the legislation by establishing a minimum wage at a level which is fully compatible with international standards, by ensuring that parental leave is equally accessible (including simultaneously to both parents), and by developing clear guidelines for overtime work in terms of its duration and its compensation. It is now important to ensure a full implementation of the labour standards, including the anti-discrimination provisions. To this end, the Labour Inspectorate should be provided with sufficient human and budgetary resources to be able to effectively carry out its duties and the labour inspectors should receive continuous training on the relevant labour rights standards, including safety and anti-discrimination standards.

While welcoming recent progress in the reduction of workplace accidents, the Commissioner calls on the authorities to remain vigilant and bolster efforts to further improve safety conditions in the workplace, notably in sectors such as manufacturing, mining, and construction.

To eliminate discriminatory attitudes in employment, the authorities and business community should increase their efforts to promote and support diversity and equality in the workplace, giving particular attention to addressing the challenges encountered by persons with disabilities in relation to their integration in the labour market. There is a need to continuously raise awareness, including among targeted groups of professionals, of the concept of sexual harassment and of the mechanisms provided in the law to report it, as well as to ensure access to effective remedies. The Commissioner is particularly concerned about instances of child labour exploitation and trafficking, and she calls on the authorities to take resolute action to combat this illegal activity. Other areas where improvement is needed include addressing discriminatory gender stereotypes in the field of employment and the reduction of the gender pay gap.

### **Environment and human rights**

While welcoming a well-established national legal framework in the field of environmental protection, the Commissioner encourages the authorities to strengthen its implementation, particularly by adopting targeted measures to extend the scope and to improve the quality and effectiveness of environmental impact assessments and subsequent environmental decision-making processes. It is crucial that the authorities guarantee meaningful and transparent public participation in the design, implementation and monitoring of environmental policies at various levels of government and that they improve public access to information. Further measures should be taken to improve the air quality and tracking of air pollution and emissions and to prevent internal displacement caused by climate

change, including mitigating its impact on individuals. Finally, environmental activists and human rights defenders should be able to operate in a space which is free from intimidation and harassment and the authorities should engage with and support them.

### **Other human rights issues**

During her visit, the Commissioner addressed the procedural aspects of the selection and appointment of the next Public Defender as the mandate of the current post holder ends in December 2022. She encourages the authorities to start this process early to ensure a smooth transition between the outgoing and incoming Ombuds and to make sure that it is competence-based; transparent and participatory; and based on clear, predetermined, objective and publicly accessible criteria.

As regards the situation of internally displaced persons, the Commissioner urges the authorities at the national and local levels to continue working closely with them and their representative organisations to achieve durable solutions to their situation and to ensure that they can fully enjoy their human rights such as rights to housing, work, education and healthcare.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), and her team carried out a visit to Georgia from 21 to 24 February 2022. The visit focused on combating discrimination against LGBTI people and those belonging to religious minorities and promoting tolerance (part I of the present report), labour rights (part II) and the environment and human rights (part III).
2. During her visit, the Commissioner met the President of Georgia, Salome Zourabichvili; the Prime Minister, Irakli Garibashvili; the First Deputy Minister of Foreign Affairs of Georgia, Lasha Darsalia; the Minister of Internal Affairs, Vakhtang Gomelauri; the State Minister for Reconciliation and Civic Equality, Tea Akhvlediani; the Deputy Ministers of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, Tamila Barkalaia and Ilia Ghudushauri; and the Minister of Environmental Protection and Agriculture, Otar Shamugia and his Deputy Minister, Nino Tandilashvili. The Commissioner also met the Vice-Chairman of the Parliament of Georgia, Archil Talakvadze and other Members of Parliament. Furthermore, she held meetings with the Public Defender, Nino Lomjaria; and her Deputies, Giorgi Burjanadze and Ekaterine Skhiladze; as well as with representatives of civil society and international organisations.
3. The Commissioner also travelled to Zugdidi where she met with the Chairman of the Government of the Autonomous Republic of Abkhazia, Ruslan Abashidze and had a discussion with internally displaced persons.
4. The Commissioner wishes to thank the Georgian authorities in Strasbourg and Tbilisi for their assistance in organising and providing support during her visit. She also thanks the authorities for providing additional information after her visit.
5. The Commissioner expresses her gratitude to all her interlocutors in Georgia for sharing with her their knowledge, experiences, and insights.<sup>1</sup>

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<sup>1</sup> This report was finalised on 17 June.

## 1 COMBATING DISCRIMINATION AND PROMOTING TOLERANCE

### 1.1 LGBTI PEOPLE

6. In his 2016 [Observations](#), the Commissioner's predecessor addressed the situation of LGBTI people, recommending that the Georgian authorities further amend the anti-discrimination law, *inter alia* by reinforcing the Public Defender's mandate and role in responding to cases of alleged discrimination within the private sector; by combating hate crimes and hate speech on the basis of sexual orientation and gender identity; and by continuously raising public awareness of the anti-discrimination legal framework and promoting tolerance. Significant legislative and institutional measures to combat discrimination have been introduced in recent years, including changes which address some of the concerns and recommendations made in 2016.

#### 1.1.1 LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

7. Georgia has a well-developed anti-discrimination legal framework which covers discrimination based on sexual orientation, gender identity, and expression (SOGIE). The principle of equality is enshrined in Article 11 of the Georgian [Constitution](#) and although it does not specifically list sexual orientation and gender identity among the prohibited grounds for discrimination, the Constitutional Court of Georgia ruled in 2008 that the list of protected grounds is not exhaustive<sup>2</sup> and in 2014 that protected grounds should be interpreted as including sexual orientation, among other grounds.<sup>3</sup> Prohibition of discrimination on the basis of sexual orientation was incorporated into the Labour Code (Article 2) in 2006 and this protection was extended to pre-contractual relations in 2013 (see Part II). In 2012, sexual orientation and gender identity were introduced, among others, in the Criminal Code as a discriminatory ground and as an aggravating circumstance. In the same year, the prohibition of broadcasting programmes which humiliate or defame a person or a group on the basis of their sexual orientation, among others, was included in the Law on Broadcasting (Article 56).
8. Furthermore, in 2014, SOGIE were incorporated as prohibited grounds of discrimination in the Law on the Elimination of All Forms of Discrimination (Article 1) and the Criminal Code was amended to include the violation of equality with a non-exhaustive list of protected grounds, carrying a sentence of up to two years (Article 142). Finally, the prohibition of incitement to violence with a non-exhaustive list of protected grounds was introduced in the Criminal Code in 2015 (Article 239<sup>4</sup>).
9. In 2014, the Public Defender's Office was mandated to act as the monitoring body for the implementation of the Law on the Elimination of All Forms of Discrimination; and in 2019 its mandate was further expanded to empower the Public Defender to apply to a court, as an interested person requesting an administrative measure.<sup>4</sup> In addition, the time-limit for submitting discrimination cases before a court was prolonged from three months to one year. Both the strengthening of the Public Defender's mandate and the extension of the time-limit for lodging discrimination cases before the courts were among the recommendations made by the Commissioner's predecessor in 2016.
10. The National [Strategy](#) for the Protection of Human Rights in Georgia for 2014-2020 included an objective to combat discrimination on the basis of sexual orientation or gender identity. The National Human Rights [Action Plan](#) for 2018-2020 envisaged a special chapter on "gender identity and equality". However, activities falling under this topic (raising awareness about hate crimes against LGBTI people, developing trans-specific healthcare services, mapping SOGIE-related social and healthcare services) were only approved in February 2020. Furthermore, the implementation of these activities was reportedly hampered by the COVID-19 related restrictions. The Commissioner was informed that a new national human rights action plan is in preparation, however it was not yet made public at the time of drafting this report.

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<sup>2</sup> Shota Beridze and others v. The Parliament of Georgia, case No. 2/1/392, [judgment](#) of 31 March 2008.

<sup>3</sup> Levan Asatiani, Irakli Vatcharadze, Levan Berianidze, Becka Buchashvili and Gocha Gabodze v. the Ministry of Labour, Health and Social Affairs of Georgia, case No. 2/1/536, [judgment](#) of 4 February 2014.

<sup>4</sup> The [Law](#) of Georgia on the Elimination of All Forms of Discrimination, Article 6(2).

11. Despite the above-mentioned efforts to bring the legal and institutional framework in line with international standards, its implementation remains problematic. This has a noticeable impact on the everyday lives of LGBTI people, who continue to be subjected to pervasive discrimination and who face significant barriers in accessing education, work,<sup>5</sup> healthcare, and social services. As noted by the Public Defender in her 2021 special report on the situation of LGBTI people in Georgia, failure by the authorities' to recognise and acknowledge the systemic nature of discriminatory patterns and inequalities affecting LGBTI people has resulted in significant gaps in the measures taken to address these concern.<sup>6</sup>

#### 1.1.2 VIOLENCE AND HATE CRIMES AGAINST LGBTI PEOPLE

12. Violence against LGBTI people, their supporters, and the defenders of their rights has been a long-standing issue of concern in Georgia which is compounded by a failure to hold perpetrators to account, in particular the organisers of acts of violence. This persisting impunity reinforces biased and hateful attitudes within certain segments of Georgian society. Impunity has also contributed to the unprecedented rise of well-organised and well-funded ultra-conservative and far-right groups with anti-LGBTI, anti-gender, and anti-minorities agendas whose members have participated in violent acts. The Commissioner's impression, based on her discussions with various interlocutors during her visit, is that the Georgian authorities are not fully cognizant of the detrimental effect that the violence and hate speech (see paragraphs 22 and 23 below) perpetuated by members of these groups can have on the enjoyment of human rights by the LGBTI people, as well as on social cohesion and tolerance in society more generally.

13. There is a persistent failure to address violent attacks led by ultra-conservative and far-right groups against participants at events held in the context of the yearly International Day Against Homophobia, Transphobia and Biphobia (IDAHOBIT) and Pride Marches. Since 2012, these events have been repeatedly interrupted by these groups or cancelled by organisers due to violent attacks and/or serious threats of violence coming from these groups. The fact that the authorities fail to ensure safety and protection in this context only exacerbates these attacks.

14. This spiral of violence and impunity against LGBTI people has also been reflected in important judgments of the European Court of Human Rights against Georgia. In particular, in its 2015 judgment in the case of *Identoba and Others v. Georgia*, the Court found that the domestic authorities did not ensure that the Pride March organised in May 2012 could take place peacefully by failing to sufficiently contain homophobic and violent counter-demonstrators, thereby falling short of their positive obligations under Article 11 (freedom of assembly and association) taken in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.<sup>7</sup> The Court also established a violation of Article 3 (prohibition of torture and ill-treatment). Similar conclusions were reached by the Court in its 2021 judgment in the case of *Women's Initiatives Supporting Group and Others v. Georgia* where the Court considered that the authorities had never made it their priority to put in place effective measures to protect the applicants attending the 2013 IDAHOBIT event.<sup>8</sup> The authorities had not evaluated the resources necessary in the planning phase of the event and they had limited their role to designing a dispersal plan.<sup>9</sup> Furthermore, the Court established that there were indications of official acquiescence, connivance and even active participation of individual police officers in acts motivated by prejudice.<sup>10</sup> The Court also pointed out that the unprecedented scale of the violence had been influenced by the authorities' failure to carry out a timely and objective investigation into similar attacks on the LGBTI community during the previous year's event (which led to the judgment in the case of *Identoba and Others v Georgia*).<sup>11</sup>

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<sup>5</sup> See also below under Labour Rights, §83.

<sup>6</sup> [The Rights of LGBT+ People in Georgia](#), Public Defender of Georgia, 2021, p.7.

<sup>7</sup> *Identoba and others v. Georgia*, application no. 73235/12, [judgment](#) of 12 May 2015, §100.

<sup>8</sup> *Women's Initiatives Supporting Group and Others v. Georgia*, applications nos. 73204/13 and 74959/13, [judgment](#) of 16 December 2021, §83.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, §75-78.

<sup>11</sup> *Ibid.*, §76.

15. Events in many ways similar to those in 2012 and 2013 also occurred in 2019 and 2021.<sup>12</sup> The failure by the authorities to punish those who were inciting hatred and calling for violence against the LGBTI activists and supporters involved in the organisation of the 2019 Pride March<sup>13</sup> reportedly contributed to a perception of impunity and resulted in vicious attacks and other acts of violence carried out by ultra-conservative and far-right groups in July 2021.<sup>14</sup> 55 people, including 53 journalists and camera operators working for various media outlets who gathered to cover the events, were injured. One of them was found dead several days later, [reportedly](#) due to unrelated causes. While the police arrested and [charged](#) 27 persons for their participation in these acts in the aftermath of these events, the Commissioner [understands](#) that the organisers of these acts were never prosecuted.
16. Failure to ensure accountability for serious human rights violations against LGBTI people and activists has become a recurrent human rights concern in Georgia. According to information provided to the Commissioner by civil society organisations, there is a significant gap between the number of hate crimes and incidents documented by the Prosecutor's Office and the Ministry of Internal Affairs and the number of cases documented by the organisations advocating for the rights of LGBTI people. For instance, according to a study which was carried out in 2020 among LGBTI people in Georgia, 73.5% of respondents (155 persons) stated that they had been victims of hate motivated crimes or similar incidents in the period between 2018 and 2020, whereas according to official statistics, the authorities prosecuted 27 cases of hate crimes committed on the grounds of SOGIE in 2018, 32 cases in 2019, and 17 cases in 2020. In 2020, a [memorandum](#) was signed between the Ministry of Internal Affairs, the Prosecutor's Office, the National Statistics Office, and the Supreme Court of Georgia to strengthen co-operation between the agencies and to ensure the annual publication of combined statistical data on hate crimes.
17. One of the challenges identified in relation to the investigation and prosecution of hate crimes in Georgia relates to the failure by the authorities to identify and correctly qualify hate motives. Furthermore, the Code of Administrative Offences does not provide for discriminatory motives which impedes the proper categorisation of administrative offences. This state of play is exacerbated by the reluctance of the victims of LGBTI-related hate crimes to report them due to a lack of trust in the police and in the justice system as a whole, and to a fear of forcible outing or secondary victimisation. According to a 2020 study, 55% of respondents belonging to the LGBTI community had experienced physical, psychological, and sexual violence in the last two years. 69.6% of those who had experienced physical violence refused to contact the police due to the lack of trust.<sup>15</sup>
18. Regarding the institutional framework that covers offences committed against LGBTI people, the establishment of the Department of Human Rights Protection and Investigation Quality Monitoring in the Ministry of Internal Affairs in 2018 has been positively assessed by the Commissioner's interlocutors. However, the Commissioner notes that the European Commission Against Racism and Intolerance (ECRI) in its 2016 report recommended that the Georgian authorities set up a specialised unit within the police to investigate hate crimes.<sup>16</sup> In its 2018 follow-up conclusions, ECRI positively assessed the establishment of this department, although it noted that it was "not a substitute for a specialised investigative unit within the police [...]".<sup>17</sup>
19. Regarding victim protection and support, a Witness and Victim Coordinator system was set up in the Prosecutor's Office in 2011 and in the Ministry of Internal Affairs in 2019. The Witness and Victim Coordinators are charged with providing psychological support to the witnesses and victims of all crimes, preventing re-victimisation and secondary victimisation, providing information about available services and updates about the investigation and trial, and promoting effective co-operation between different law

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<sup>12</sup> In 2022, a decision was taken not to organise the Pride March (see more information in § 26 of this report).

<sup>13</sup> Faced with such threats, the organisers of the Pride March decided to cancel the event.

<sup>14</sup> In 2020, only online events were organised due to COVID-19 related restrictions on the assemblies.

<sup>15</sup> [Social Exclusion of LGBTQ Group in Georgia](#), Social Justice Center, 2020, p.76.

<sup>16</sup> See ECRI [report](#) on Georgia (fifth monitoring cycle), CRI(2016)2, adopted on 8 December 2015, §68.

<sup>17</sup> See ECRI [Conclusions](#) on the implementation of the recommendations in respect of Georgia subject to interim follow-up, CRI(2019)4, adopted on 5 December 2018 and published on 5 March 2019.

enforcement agencies. While this system has been assessed as a positive step by the Commissioner's interlocutors, it was nevertheless reported that the number of coordinators is not sufficient to enable them to provide effective communication and practical support to all who are in need of assistance.<sup>18</sup> According to information provided to the Commissioner's Office by the Ministry of Internal Affairs, the Witness and Victim Coordinator service currently prioritises psychological support to juveniles who have been victims of sexual violence.

### 1.1.3 VIOLENCE AND BULLYING AT SCHOOLS

20. The Law on General Education places an obligation on schools to ensure a safe environment for students during school hours, both on the premises of educational establishments, as well as on the school grounds or in the adjacent areas.<sup>19</sup> According to the above-mentioned 2020 research, 32.2% respondents mentioned homophobic discrimination by teachers and/or school administration and 41.9% referred to homophobic bullying by classmates/schoolmates as a barrier to receiving general education at schools, with verbal abuse, harassment, or hostile comments being the most common manifestations.<sup>20</sup> The Commissioner was also informed by civil society organisation representatives that the situation is further exacerbated by the absence of qualified professionals, such as school psychologists. As the Commissioner explained in a [human rights comment](#), comprehensive, age-appropriate sexuality education in schools helps to build a safe and inclusive society (free from violence and discrimination), and benefits all children, including LGBTI children. While certain elements of sexual education have been included in the relevant educational curricula, notably information on sexual and reproductive health and rights and gender equality, full integration of the SOGIE inclusive sexuality education in the formal educational setting has not yet been achieved.

### 1.1.4 HATE SPEECH AND OTHER MANIFESTATIONS OF INTOLERANCE

21. The concept of hate speech is commonly understood to refer to the advocacy, promotion, or incitement to hatred, violence and intolerance against a person or group of persons, on account of their personal characteristics or status. Hate speech against LGBTI people is an important issue of concern in Georgia. Repeated surveys carried out in 2018 and 2021 show that hate speech is increasingly recognised as a problem in Georgian society; with 45% of the public reporting that hate speech was a problem in the country in 2018, and 56% reporting in 2021. The data also indicates that people continue to believe that LGBTI people are most often targeted by hate speech (45% in 2021).<sup>21</sup>
22. The Commissioner was informed of several instances of hate speech and manifestations of intolerance in the public sphere, and she was particularly struck by the manifestations of intolerance displayed by high-level officials, as well as by religious and community leaders. Certain media outlets, notably those associated with the above-mentioned ultra-conservative and far-right movements, have also reportedly engaged in hate speech or have contributed to its dissemination. The Commissioner learned that while hate speech against LGBTI people used to intensify at election time in the past, it has now become part of everyday discourse. This is in part due to ultra-conservative and far-right groups placing increasing claims on the public space, increasing their access not only to privately owned, but also to public broadcaster media. In this context, counter-speech by high-level public figures gains particular importance, for instance, when the President of Georgia spoke in support of freedom of expression of LGBTI people.<sup>22</sup> According to the Public Defender's assessment, hate speech propagated by politicians and public officials is particularly problematic in Georgia. Hate speech not only has a significant negative impact on social cohesion, but it also contributes to legitimising violence by ultra-conservative and far-right groups and their supporters (even when this speech

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<sup>18</sup> At the time of the drafting of this report, twenty coordinators were employed in the Prosecutor's Office and eleven in the Ministry of Internal Affairs.

<sup>19</sup> The [Law](#) of Georgia on General Education, Article 9.

<sup>20</sup> [Social Exclusion of LGBTQ Group in Georgia](#), Social Justice Center, 2020, pp. 95-100.

<sup>21</sup> Hate Crime, Hate Speech and Discrimination in Georgia: Attitudes and Awareness, [report](#) on the Public Survey Conducted for the Co-operation Project "Fight against Discrimination, Hate Crimes and Hate Speech in Georgia", Council of Europe, 2022, p.32.

<sup>22</sup> See the [statement](#) of the President of Georgia, 1 July 2021 (available in Georgian).

does not contain an incitement to act) and to perpetuating negative attitudes towards the LGBTI community.<sup>23</sup>

23. In addition to the prohibition of incitement to violence on protected grounds under the Criminal Code, Article 2(5) of the Law on the Elimination of All Forms of Discrimination prohibits incitement to discrimination. This provision applies in cases when hate speech does not meet the criminal liability standard. However, both provisions are rarely used in practice. For instance, the Commissioner was informed that a television station – which is notorious for spreading misogynistic, anti-minority, homophobic, and other discriminatory messages – was granted an authorisation by the Georgian National Communications Commission to broadcast nationwide in September 2021.<sup>24</sup> Furthermore, individuals allegedly implicated in inciting hatred and carrying out violent attacks during the events of 2019 and 2021 (see paragraph 15 above) officially registered a political party in December 2021. As a political party, these individuals have access to public funding and the ability to increase their presence across mainstream media, including the public broadcaster, unless the relevant provisions of the Broadcasting Code prohibiting such discourse (see paragraph 7 above) are rigorously applied.
24. During her meetings with members of the Parliament, the Commissioner was informed that while the parliamentary Code of Ethics prohibiting hate speech by parliamentarians was adopted in December 2018, the establishment of the mechanism envisaged to oversee its implementation, the Ethics Commission, has been delayed.

#### 1.1.5 FREEDOM OF ASSEMBLY, EXPRESSION, AND ASSOCIATION

25. Since 2012, LGBTI activists, their supporters, and the defenders of their rights have been repeatedly denied their right to peaceful assembly, largely due to the passive attitude adopted by the competent authorities. Furthermore, the Commissioner considers that some public statements made by certain politicians and government officials during the events of July 2021 served only to exacerbate this problem and to provide some legitimacy for attempts by ultra-conservative groups to prevent LGBTI people from expressing themselves in the public space.
26. At the time of drafting this report, leading civil society organisations involved in the preparation of the IDAHOBIT events [announced](#) that the planned March for Dignity will not be held in 2022, due to repeated failures by competent authorities to guarantee security and ongoing threats and incitement to violence by members of ultra-conservative and far-right groups involved in the 2021 attacks. This decision shows that unfortunately the exercise of the right to freedom of assembly and expression by LGBTI people in Georgia remains as challenging as it was a decade ago, despite initial signs of optimism in 2018.

#### 1.1.6 TRANSGENDER PEOPLE

27. Transgender people in Georgia are exposed to high levels of social exclusion and violence. The proper identification of transgender people on their identity documents, including the legal recognition of their gender, is essential to protect them from discrimination in all aspects of their lives, including employment, housing, social security, freedom of movement, as well as in case of identity checks by police or deprivation of liberty.
28. There is still no mechanism to regulate legal gender recognition in Georgia. The only regulatory statute dealing with this issue is the Law on Civil Status Acts which includes “sex reassignment” as one of the grounds for amending civil records.<sup>25</sup> However, it neither defines “sex reassignment” nor outlines any procedures associated with it. The existing arrangements, established by the practice of local courts and administrative agencies, require individuals applying for a change of legal gender marker to provide proof that they have undergone multiple medical procedures, including hormonal therapy and sex reassignment surgery. There are no clinical guidelines or protocols that clarify procedural rules of gender affirming procedures. As stressed

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<sup>23</sup> [The Rights of LGBT+ People in Georgia](#), Public Defender of Georgia, 2021, p.15.

<sup>24</sup> *Ibid.*, p.16.

<sup>25</sup> The [Law](#) on Civil Status Acts, Article 78(g).

by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) in his 2019 [report](#) on the visit to Georgia, these medical treatments and procedures can lead to severe and lifelong physical and mental suffering. If conducted against the will of the persons concerned, they can violate the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.<sup>26</sup>

29. The Commissioner draws attention to the decision of the World Health Organisation in 2019 to take steps toward de-pathologisation transgender people by removing the term “gender identity disorder” from the list of mental illnesses included in its International Classification of Diseases ICD-11. As such, access to legal gender recognition should not be conditional upon a medical diagnosis. Furthermore, the European Court of Human Rights has found that making sex reassignment surgery a condition to obtain legal gender recognition is a violation of the right to respect for private life (Article 8) of the European Convention on Human Rights because it puts transgender people who do not consent to this surgery in the impossible position of having to choose between the right to respect for their physical integrity and the legal recognition of their gender identity.<sup>27</sup>
30. The IE SOGI in his 2019 report recommended that the competent authorities ensure that the process of legal recognition of gender identity is based on self-determination by the applicant and that it is a simple administrative process that is exempt from abusive requirements, inclusive of non-binary identities, and accessible to minors.

#### 1.1.7 ADDRESSING PREJUDICES AND CHANGING ATTITUDES

31. There is a persisting stigma among Georgian society associated with LGBTI people that is closely associated with deeply rooted perceptions about the need to maintain “traditional” values and family units. As noted in the 2019 report of the IE SOGI, there remains a pervasive attitude in Georgian society that being LGBTI is “sinful, shameful, or pathologic”. These perceptions, as noted above, are fuelled and reinforced by members of far-right groups, some religious leaders, some politicians and some media outlets. On a positive note, a study commissioned by the Council of Europe indicated a change in attitudes and a growing recognition among Georgian society of the importance of diversity and of protecting the rights of minority communities, as well as an increased level of awareness of the problems which minorities, including sexual minorities, face. In particular, the number of respondents who think that it is important to protect the rights of LGBTI people increased from 33% in 2018 to 47% in 2021.<sup>28</sup> Another positive change, according to the Commissioner’s interlocutors, is the improved dialogue between various state agencies, including police and other law enforcement authorities, and the non-governmental organisations engaged in the protection of the human rights of LGBTI people.

#### 1.1.8 CONCLUSIONS AND RECOMMENDATIONS

32. While the Commissioner welcomes recent efforts to bring the legal and institutional framework in line with international standards, she notes with concern that LGBTI people continue to be subjected to pervasive discrimination in the field of education, work, healthcare, and social services notably due to shortcomings in the implementation of the existing legal provisions. The Georgian authorities should urgently address their persisting failure to protect LGBTI people from hate crimes and speech. As a new Human Rights Action Plan is under preparation, it is important that it includes concrete, measurable, and time-bound indicators to address the issues of concern outlined above and that it is drafted in close co-operation with the community, LGBTI organisations, and other representatives of civil society.

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<sup>26</sup> [Report](#) of the IE SOGI on Georgia, §67.

<sup>27</sup> See, for instance, [Judgment X and Y v. Romania - refusal by authorities to record a change in sexual identity without surgery breached the Convention \(coe.int\)](#) and [Factsheet](#) on gender identity.

<sup>28</sup> Hate Crime, Hate Speech and Discrimination in Georgia: Attitudes and Awareness, [report](#) of Public Survey Conducted for the Co-operation Project “Fight against Discrimination, Hate Crimes and Hate Speech in Georgia”, Council of Europe, 2022, p.8.

33. Regarding discrimination against LGBTI people specifically, the Commissioner urges the Georgian authorities to develop and implement a zero-tolerance policy and practice towards all forms of discrimination and incitement to discrimination, both online and offline. She also recommends that the authorities proactively use all available means to combat such manifestations.
34. In light of the scope and serious impact of violence and hate crimes on the enjoyment of human rights by LGBTI people, the Commissioner calls on the Georgian authorities to show commitment in fulfilling their obligation to combat impunity for serious human rights violations committed against LGBTI people, in line with the [Council of Europe Committee of Ministers' Guidelines on eradicating impunity for serious human rights violations \(2011\)](#). The authorities should ensure their protection, so that they can enjoy a full range of applicable human rights, including freedom of peaceful assembly and expression, in an environment free from violence, intimidation, harassment, or threats.
35. The Commissioner stresses that the failure of the police, prosecutors, and courts to apply the provisions of the Criminal Code relating to incitement to violence on the ground of sexual orientation and gender identity as aggravating circumstance results in impunity for serious human rights violations. An effective action against acts of violence against LGBTI people in combination with efforts to increase trust in the police and the judicial system is therefore key in curbing the devastating social effects of hate crimes and incitement to violence against LGBTI people. All instances of threats or violence against LGBTI people and their organisations, including by non-state actors, should be firmly condemned, adequately investigated, and sanctioned by the Georgian authorities.
36. Investigative, prosecutorial, and judicial authorities should be made aware of the leading role they play in ensuring accountability for serious human rights violations committed against LGBTI people and LGBTI rights activists. They should be provided with continuous training on how to appropriately identify hate motives, in accordance with the case-law of the European Court of Human Rights. Any existing patterns of institutional culture within law enforcement agencies or within the criminal justice system as a whole which may directly or indirectly contribute to promoting impunity for hate crimes against LGBTI people should also be addressed. The Commissioner also recommends that the authorities create a specialised unit within the police to investigate hate crimes and to promote their reporting.<sup>29</sup>
37. The Commissioner furthermore considers the fight against hate speech as a priority, on account of both the fact that it often prepares the ground for other manifestations of intolerance, including acts of violence, and because of the harm caused to the persons concerned and to social cohesion more generally. Appropriate responses to hate speech must include both effective law enforcement channels and other mechanisms to counter its harmful effects, such as prevention, monitoring, self-regulation, and counter speech. [ECRI General Policy Recommendation 15 on Combating Hate Speech](#) provides comprehensive guidance in this matter.
38. The Commissioner wishes to stress in the first place that public officials should not engage in hate speech. In line with the [Committee of Ministers' Recommendation CM/Rec\(2010\)5 on measures to combat discrimination on grounds of sexual orientation or gender identity](#), they should also publicly disavow hate speech whenever it occurs, including when it comes from religious leaders. In this connection the Commissioner also stresses that according to the same Recommendation “[p]ublic officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities”. In her 2021 joint [statement](#) with several other human rights experts, the Commissioner has stressed that hate speech is not protected by either freedom of expression or by freedom of religion or belief. The Commissioner calls on the Georgian authorities to adopt a comprehensive approach towards preventing and combating hate speech, both online and offline, and in the present circumstances to attach particular importance to addressing the most serious instances of the incitement to hatred and violence which may warrant a criminal

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<sup>29</sup> [Compendium](#) of good practices on local and regional level policies to combat discrimination on the grounds of Sexual Orientation and Gender Identity, Council of Europe, June 2016.

liability, in line with the [Council of Europe Committee of Ministers' Recommendation CM/Rec\(2022\)16\[1\] on combating hate speech](#).

39. The Commissioner stresses that the Georgian Constitution and international legal instruments ratified by the country permit the imposition of criminal and other sanctions and restrictions on the activities of individuals and organisations, including political movements and media outlets, which advocate for and are involved directly or indirectly in acts of violence, or incitement to hatred against minorities.<sup>30</sup> The Commissioner calls on the authorities to use the measures available to them to urgently address this matter, which is of grave concern. It is furthermore important that media outlets and journalists are encouraged to practice ethical and responsible journalism and to provide factual, objective, and professional reporting, including in their coverage of LGBTI people and issues.
40. To effectively combat intolerance and prejudices against LGBTI people, it is necessary that the Georgian authorities recognise such occurrences as a systemic problem in the country and address it through comprehensive measures including proactive education and awareness raising activities. This requires, among others, outreach campaigns and education in schools to promote understanding of and respect for the human rights of LGBTI people. By [providing](#) factual, non-stigmatising information on sexual orientation and gender identity, comprehensive sexual education contributes to the elimination of prejudices and stereotypes, at school and beyond, and to the creation of a safer and more inclusive learning environment for all. Therefore, the Commissioner recommends that the Georgian authorities integrate comprehensive sexuality education in the educational curriculum imparting objective information on sexual orientation and gender identity.
41. Regarding the enjoyment of the rights to freedom of expression and peaceful assembly, the Commissioner stresses that the well-established case-law of the European Court of Human Rights requires states to guarantee adherence to the principles of pluralism and tolerance. This implies that effective enjoyment of the rights to freedom of peaceful assembly requires positive measures to be taken to uphold this right and to take reasonable and appropriate measures to enable demonstrations to proceed peacefully. Therefore, the Commissioner calls on the Georgian authorities to develop and implement a comprehensive set of measures enabling LGBTI people to hold their events and rallies in safety and security and to adequately protect them from violence and threat of violence.
42. Regarding transgender people, the Commissioner recommends that the authorities take measures to facilitate legal gender recognition in a timely, transparent, and accessible way and without medically invasive requirements, in line with the Council of Europe Committee of Ministers' Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination on the grounds of sexual orientation or gender identity.

## 1.2 RELIGIOUS MINORITIES

43. Continuous monitoring by the [Commissioner's Office](#),<sup>31</sup> the [Advisory Committee](#) on the Framework Convention for the Protection of National Minorities, and [ECRI](#) has identified a number of issues of concern in relation to the human rights situation of religious minorities in Georgia. Concerns include the lack of effective investigations into acts of violence or other cases of human rights violations against members of religious minorities; structural discrimination in access to places of worship; inadequate transparency and an absence of clear and objective criteria for restitution and construction permit procedures; insufficient dialogue between the authorities and the religious denominations; and low levels of trust in the State Agency for Religious Issues. Based on her discussions with various interlocutors, the Commissioner considers that limited progress has been achieved in resolving these issues of concern since 2016 when the Commissioner's Observations addressing *inter alia* this topic were published. At the same time, she takes note of positive trends which could be further enhanced by the authorities at national, regional, and local level.

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<sup>30</sup> The Constitution of Georgia, Article 23(3).

<sup>31</sup> See in particular the relevant parts of [2014 Commissioner's report](#) and [2016 Commissioner's Observations](#).

### 1.2.1 LEGAL AND REGULATORY FRAMEWORK

44. As noted in the previous chapter, Georgia has a well-developed anti-discrimination legal framework which prohibits discrimination and manifestation of intolerance on the ground of religious beliefs. Article 16 of the Georgian Constitution guarantees the right to freedom of belief, religion, and conscience. The Criminal Code prohibits the unlawful obstruction to holding worship and religious rites (Article 155); violation of equality (Article 142); and interference with the establishment of religious associations (Article 166). In addition, religious intolerance is an aggravating circumstance under the Criminal Code (Article 53<sup>1</sup>).
45. According to the 2014 census, 83.4% of the Georgian population identified themselves as Eastern Orthodox Christians, 10.7% Muslim, 3.9% Armenian Apostolic, and 0.5% Catholic. Orthodox churches serving other non-Georgian ethnic groups, such as Russians and Greeks, are subordinate to the Georgian Orthodox Church. According to the 2002 Constitutional Agreement between the State of Georgia and the Apostle Autocephalous Orthodox Church of Georgia, known as the Concordat, the Georgian Orthodox Church (GOC) enjoys a privileged status in Georgia, including in relation to tax and property regulations.
46. In 2018, the Constitutional Court of Georgia delivered two judgements: one in relation to the tax exemption for the construction, restoration, and painting of churches and cathedrals commissioned by the GOC; and another in relation to the free-of-charge transfer of state-owned property to the GOC. The Court highlighted that: *"Recognition of the Church's special role is linked to her historical merits and does not serve to create a privileged legal position for the Orthodox Christian religion in the present. Historical merit cannot be considered as a source of legitimacy for privilege. Differentiation and the creation of a legally preferential position for the Church is not and cannot be the goal of the Constitution. [...] Granting certain rights to the Church does not imply the prevention of the use of the same right by other religious organisations."*<sup>32</sup> It therefore concluded that such privileges were discriminatory and that they should be abolished or extended to "other comparably equal religious organisations" by 31 December 2018, after which the contested provisions would be considered invalidated. As no new provisions were adopted by that date in relation to the free-of-charge transfer of state-owned property to the GOC, this provision has been repealed, however civil society organisations have reported that the state now transfers property to the GOC for symbolic payment.<sup>33</sup>
47. In 2019, religious organisations submitted complaints to the Constitutional Court in relation to the discriminatory provisions of the Tax Code granting tax exemption only for land owned by the GOC and import tax exemption on religious items imported by the GOC, as well as in relation to the provisions of the State Property Law which prevent minority religious communities from acquiring or exchanging state-owned property, including property which was confiscated from them during the Soviet period. At the time of drafting the report, these complaints were still pending before the Constitutional Court.

### 1.2.2 INVESTIGATIONS INTO HATE CRIMES ON THE BASIS OF RELIGION OR BELIEF

48. The Commissioner's predecessor and the relevant Council of Europe monitoring bodies have identified the lack of effective investigations and the failure to establish a hate motive in the crimes committed on the basis of religion as systemic problems. The European Court of Human Rights in its 2021 decision in the case of *Mikeladze and Others v. Georgia*<sup>34</sup> found that there had been a discrimination on the ground of religious belief, as well as ineffective investigations into the complaint of applicants belonging to the Muslim minority about the excessive use of force and the use of discriminatory language by the police during their arrest and initial detention. In particular, the Court has observed that despite the applicants' repeated complaints concerning the use of derogatory language by the police during their arrest, the national authorities failed to

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<sup>32</sup> Decision of the Constitutional Court of Georgia №1/1/811, 3 July 2018, §24 ([available](#) in Georgian).

<sup>33</sup> TDI, Forum 18, joint stakeholders' [submission](#) for third Universal Periodic Review of Georgia, 2020, §20.

<sup>34</sup> *Mikeladze and Others v. Georgia*, application no. 54217/16, [Judgment](#) of 16 November 2021. The case relates to the circumstances of arrest and mistreatment of local Muslims by police in the village of Mokhe in October 2014 which took place during protests and clashes involving local residents belonging to Orthodox Christian and Muslim confession. The Court found violations of Articles 3 (prohibition of torture, inhuman and degrading treatment) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

take all reasonable steps to investigate any possible religious motive and to establish whether or not religious prejudice may have played a role in the events. Similar findings were established in earlier judgements by the Court in cases concerning hate crimes against Jehovah's Witnesses.<sup>35</sup>

49. The Public Defender questioned the effectiveness of the investigations in several past cases of attacks and violence against people belonging to religious minorities,<sup>36</sup> especially the failure to grant victim status to several individuals who were subjected to physical violence and who were not allowed to have access to the relevant investigative materials.<sup>37</sup> According to the Public Defender, some progress has been achieved in taking into account the bias motive in the investigations of hate crimes, including those committed on the grounds of religious intolerance. However, she stressed that the authorities should take effective measures to prevent the (re)occurrence of such incidents, including by ensuring timely and effective investigations into all allegations of discriminatory treatment and hate-motivated violence. She underlined that the failure to prosecute perpetrators may further aggravate the sense of injustice and insecurity experienced by the victims of such crimes and it may reduce their trust in the law enforcement authorities.<sup>38</sup>
50. The Commissioner notes with concern that incidents of physical confrontations between members of different religious communities persist,<sup>39</sup> such as in the conflict which occurred between Muslims and Orthodox Christians in the village of Buknari in 2020. On a positive note, the authorities' response to this incident involved a timely police mobilisation and the initiation of a mediation process between the two groups. Furthermore, at least one person was convicted and five were granted victim status.
51. Measures including continuous training and awareness raising for police officers, as well as the establishment of the Human Rights Protection and Investigation Quality Monitoring Department and the Witness and Victim Coordinator system, have contributed to the strengthening of the capacity of law enforcement authorities to ensure the effective investigation and prosecution of hate crimes, including on the grounds of religion (see also paragraphs 18 and 19). However, as was previously mentioned in the report (paragraph 18), the establishment of a specialised unit within the police to investigate hate crimes, as recommended by ECRI, would be another important step in this regard.

### 1.2.3 ACCESS TO PLACES OF WORSHIP, RESTITUTION OF PROPERTY, AND CONSTRUCTION PERMITS

52. The Commissioner notes that minority religious denominations continue to experience difficulties and they are subjected to discriminatory treatment in accessing places of worship, *inter alia* due to the absence of clear, non-discriminatory, and fair regulation in relation to the issuing of construction permits and the restitution of religious property confiscated during the Soviet period. For instance, the construction of a new mosque in Batumi has been stalled since 2013 following a decision by the local council not to issue a construction permit – despite rulings by the First Instance and Appeal Court establishing discrimination. At the time of drafting this report, this case was pending before the Supreme Court.
53. Even when some minority religious congregations obtain a temporary right to use some of these places of worship, the property rights over such premises cannot be transferred to them due to flaws in the Law on State Property.<sup>40</sup> In 2020, the Public Defender examined the situation regarding the Evangelical Lutheran

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<sup>35</sup> *Begheluri and Others v Georgia*, application no 28490/02, [judgment](#) of 7 October 2014; 97 members of the *Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, application 71156/01, [judgment](#) of 3 May 2007.

<sup>36</sup> Such as in cases concerning violations of the rights of Muslims in Samtsatskaro (in 2013), Nigvziani (in 2012), Tsintskaro (in 2012), Kobuleti (in 2014); the village of Mokhe (in 2014) and in Adigeni (in 2016). All of these cases were addressed by the Commissioner's predecessor in the 2014 [report](#) and 2016 [Observations](#), except for the last one which took place after the publication of the relevant documents.

<sup>37</sup> [Report](#) of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, p. 171.

<sup>38</sup> Special [report](#) of the Public Defender of Georgia on the situation of equality and combatting and preventing discrimination, 2022, pp. 45-46.

<sup>39</sup> *Ibid*, page 5.

<sup>40</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third [Opinion](#) on Georgia adopted on 7 March 2019, ACFC/OP/III(2019)002, §82.

Church, a cultural heritage monument situated in the village of Asureti, Tetrtskaro municipality.<sup>41</sup> Despite repeated requests by the Evangelical Lutheran congregation to be allowed to use the church to perform religious rituals, the local authorities decided to grant the right to use parts of the premises of the church to the Patriarchate of the GOC, reportedly on the grounds that there was no Lutheran community living in the village.

54. In her 2022 [special report](#) on equality and non-discrimination, the Public Defender also raised the problem of the absence of places of worship in the penitentiary establishments for prisoners of non-dominant religions.<sup>42</sup>

#### 1.2.4 THE ROLE OF THE STATE AGENCY FOR RELIGIOUS ISSUES

55. ECRI in its 2015 [report](#) recommended that the Georgian authorities scale up their support to the Council of Religions,<sup>43</sup> which operates under the auspices of the Public Defender's Tolerance Centre and which enjoys a high degree of trust among the relevant stakeholders. To this end, the State Agency for Religious Issues, established in 2014, should cooperate with the Council of Religions and utilise the Council's expertise and recommendations to tackle the problem of religious intolerance. In 2018, ECRI [concluded](#) that this recommendation was not implemented. During her meeting with representatives of civil society, the Commissioner was informed that there is a lack of trust in the State Agency as it is perceived to promote a state-centric and a national security-focused approach to religious issues and not to pursue genuine co-operation with the minority denominations and their representative organisations, or with the Council of Religions.

#### 1.2.5 RELIGIOUS NEUTRALITY IN SCHOOLS

56. The Law on General Education, adopted in 2005, recognises religious neutrality and non-discrimination as core principles of the public education system.<sup>44</sup> However, civil society representatives informed the Commissioner about prejudice and stigma against religious minority groups in school textbooks.<sup>45</sup> The Ministry of Education and Science, in partnership with the Public Defender's Office and local non-governmental organisations, initiated a [review of the school textbooks](#) in 2018 with the goal of ensuring that these books are free from bias on ethnic/religious grounds and that they are not written from a particular religious perspective.

#### 1.2.6 GENERAL PUBLIC ATTITUDES TOWARDS RELIGIOUS MINORITIES

57. The 2022 study quoted above (see paragraph 31) suggests that people in Georgia tend to express relatively positive attitudes towards minority groups that have a longer presence in the country (such as Jews and Muslims) and more negative attitudes towards groups who have established a presence in more recent times (such as Jehovah's Witnesses). Nevertheless, respondents expressed the opinion that attitudes are changing positively towards religious minorities in general.<sup>46</sup> In support of this, the study indicates that between 2018 and 2021 there was a 7% increase in the share of people who think that it is important to protect the rights of people belonging to religious minorities.<sup>47</sup> Despite these positive developments, the Commissioner was informed that, regrettably, incidents involving members of the public harassing or intimidating those belonging to religious minorities still occur.

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<sup>41</sup> [Report](#) of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, p. 169.

<sup>42</sup> While Orthodox chapels are available in all penitentiary establishments, only two of them have places of worship allocated to prisoners belonging to other religions; in the rest of the establishments, prisoners perform religious rites in their cells.

<sup>43</sup> The [Council of Religions](#), which brings together more than 30 religious associations, aims at protecting religious freedoms; facilitating a constructive multilateral dialogue involving various religious groups; promoting a tolerant, fair, and peaceful environment for different religious confessions; and engaging religious minorities in the process of civic integration. It produces an annual report on the status of religious freedoms in the country that includes policy recommendations.

<sup>44</sup> The [Law](#) of Georgia on General Education, Article 13.

<sup>45</sup> TDI, Forum 18, joint stakeholders' [submission](#) for third Universal Periodic Review of Georgia, 2020, §47.

<sup>46</sup> Hate Crime, Hate Speech and Discrimination in Georgia: Attitudes and Awareness, [report](#) on the Public Survey Conducted for the Co-operation Project "Fight against Discrimination, Hate Crimes and Hate Speech in Georgia", p.20.

<sup>47</sup> *Ibid.*, p.24.

### 1.2.7 CONCLUSIONS AND RECOMMENDATIONS

58. The Commissioner welcomes recent efforts to enhance the capacity of the competent law enforcement authorities to effectively investigate and prosecute hate crimes on the grounds of religion or belief. However, she notes with concern that religious minorities continue to face significant difficulties in practicing the religion of their choice in an environment free from violence and intimidation, and that they continue to be subjected to discriminatory treatment in relation to their access to places of worship. She urges the authorities to develop, in close consultation with religious organisations, comprehensive measures to address the shortcomings mentioned in this report and to remove discriminatory barriers in the exercise of religious freedoms. This requires pursuing a meaningful and sustained dialogue with all religious denominations with a view to establishing clear non-discriminatory, and fair procedures and mechanisms for the restitution of property and the issuance of construction permits; ensuring non-discriminatory access to religious property and places of worship, including in the penitentiary establishments; facilitating regular interaction and collaboration between the State Agency for Religious Issues and the Council of Religions; and bringing the legislative and regulatory framework on tax and property matters in line with applicable international human rights standards. The Commissioner also encourages the authorities to carry out regular awareness raising campaigns with the public about religious diversity and about the importance of tolerance, as well as to train all competent authorities, including at the local level, on how to fulfil their obligation to ensure equal treatment of all religious denominations.
59. In relation to ongoing and past investigations of hate crimes on the grounds of religion, the Commissioner urges the authorities to continue their efforts to build the capacity of the investigative, prosecutorial, and judicial authorities and to make them increasingly aware of the fundamental role they play in preventing and combating impunity for hate crimes committed against people belonging to minority religious denominations. Any acts of violence on the grounds of religion should be firmly condemned, adequately investigated, and prosecuted by the competent authorities and those responsible should be brought to account.<sup>48</sup>
60. The Commissioner encourages the Georgian authorities to effectively address perceptions in relation to the police and other law enforcement officials not always appropriately responding to manifestations of religious intolerance or attacks on religious groups or being sympathetic to those who have expressed hostility towards religious minorities, particularly in relation to members of the Muslim community and Jehovah's Witnesses. The authorities should identify and address any existing patterns of institutional culture within the police and other law enforcement agencies, as well as across the criminal justice system in general, which may directly or indirectly impede the effective investigation, prosecution, and proportionate sanctioning of hate crimes, incitement to violence, and similar manifestations of religious intolerance.
61. The Georgian authorities should remain vigilant in relation to any incidents of hate speech and incitement to violence or discrimination on the grounds of religion and effectively investigate, prosecute, and sanction those responsible in line with the [ECRI General Policy Recommendation 15 on Combating Hate Speech](#) and the [Council of Europe Committee of Ministers' Recommendation CM/Rec\(2022\)16\[1\] on combating hate speech](#).
62. The Commissioner urges the authorities to continue their efforts to remove any prejudice against members of religious minority groups in school textbooks. She also draws attention to the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools.<sup>49</sup>

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<sup>48</sup> See also the recommendations concerning hate crimes made in the section on LGBTI people.

<sup>49</sup> [Toledo Guiding Principles](#) on Teaching about Religions and Beliefs in Public Schools prepared by the ODHR Advisory Council of Experts on Freedom of Religion or Belief, 2007.

## 2 LABOUR RIGHTS

63. Labour rights are an essential component of social rights. Georgia has been a member of the International Labour Organization (ILO) since 1993. It has ratified eight fundamental Conventions and two of the governance Conventions.<sup>50</sup> Georgia ratified the Revised European Social Charter in 2005, accepting 63 out of 98 paragraphs, including those of relevance in the context of labour rights (Articles 1, 2, 4, 5, 6, 21, 22, 26, 28 and 29). It has not yet ratified the Additional Protocol providing for a system of collective complaints.<sup>51</sup>
64. A decade of deregulation and the abolishment of the Labour Inspectorate in 2006 led to a significant deterioration in the protection of labour rights in Georgia. More recently, the Georgian authorities have taken measures to reform labour legislation and create mechanisms for ensuring its full implementation. However, the Commissioner wishes to address several remaining issues of concern, focusing more particularly on occupational safety and health, labour discrimination, the gender gap, difficulties in accessing the labour market for persons with disabilities and the situation of other vulnerable groups.

### 2.1 LABOUR REFORMS AND REMAINING ISSUES OF CONCERN

65. In September 2020, the Parliament of Georgia approved a package of comprehensive labour reforms, with amendments to the Labour Code entering into force in 2021. The newly-adopted amendments introduced regulation in areas such as work breaks and rest periods, strengthened anti-discrimination provisions, obliged employers to apply the principle of reasonable accommodation in relation to persons with disabilities, defined legal framework for internships and established mechanisms for enforcing agreements reached through labour mediation.
66. The Labour inspectorate was abolished in 2006, and then re-established in 2015. However, until recently, its supervisory competences were limited to the oversight of compliance with occupational safety norms. On 1 January 2021, the powers of the Labour Inspectorate were extended to include labour rights and conditions. The Labour Inspectorate is now mandated to inspect workplaces without employers' consent and to impose sanctions when it finds violations of national labour rights standards.
67. The National [Strategy](#) for Labour and Employment Policy of Georgia for 2019-2023 aims to improve the system around the enforcement of workplace safety and the protection of the rights of employees. It includes objectives such as ensuring the protection of labour rights in accordance with internationally recognised standards, strengthening labour inspections, enhancing social dialogue and partnership, and reinforcing the institutional mechanisms for labour mediation.
68. The Commissioner's interlocutors from civil society and representatives of the trade unions welcomed the recent reforms, describing them as significant and positive. However, they pointed out several remaining gaps which must be addressed as a matter of priority in order to better protect labour rights in Georgia. In particular, the established minimum wage should be adjusted to meet international standards.<sup>52</sup> Furthermore, equal and simultaneous parental leave for both parents should also be made available. The current legislation should also be amended to limit the amount of overtime work for adult employees and to require additional and proportional rest periods.

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<sup>50</sup> ILO Conventions ratified by Georgia: Forced Labour Convention (No. 29); Freedom of Association and Protection of the Right to Organise Convention (No. 87); Right to Organise and Collective Bargaining Convention (No. 98); Equal Remuneration Convention (No. 100); Abolition of Forced Labour Convention (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Minimum Age Convention (No. 138); Worst Forms of Child Labour Convention (No. 182); Employment Policy Convention (No. 122); Tripartite Consultation (International Labour Standards) Convention (No. 144).

<sup>51</sup> European Social Charter, Country [factsheet](#) on Georgia.

<sup>52</sup> The current monthly minimum wage (which since 1999 amounts to 20 GEL~6 EUR) ([available](#) in Georgian), is substantially lower than the [subsistence minimum](#) (monthly 241GEL), the level of pensions for the elderly (monthly~300GEL) ([available](#) in Georgian), and all other [social benefits](#).

69. According to a 2019 survey, respondents identified the most common violation of labour rights in Georgia as inadequate salary (71%), violation of labour safety rules (64%) and breach of the length of working hour standards (57%).<sup>53</sup>
70. Informal labour remains an important challenge in Georgia. This has become particularly evident during the COVID-19 pandemic, when those working in non-formalised contractual relations were deprived of protection and identified as not eligible for the state supports provided to other employees.<sup>54</sup>

## 2.2 OCCUPATIONAL SAFETY AND HEALTH

71. An insufficient level of occupational safety and health remains a key challenge in relation to protection of labour rights, according to interlocutors who met with the Commissioner during her visit. Under the 2020 Public Defender’s report, 39 fatal occupational accidents (down from 59 in 2018, and 45 in 2019) and 249 occupational injuries were documented in that year.<sup>55</sup> In its 2020 report on the visit to Georgia, the UN Working Group on the issues of human rights and transnational corporations and other business enterprises noted that “occupational safety and health of workers [was] one of the most serious human rights concerns” and encouraged the government to “adopt effective measures to prevent and address sector-specific risks related to the health and safety of workers and their labour rights, especially in construction and mining sites”.<sup>56</sup>
72. The Commissioner was also informed that the Labour Inspectorate appeared to focus on general awareness-raising activities among employers in the field of occupational safety and health. While awareness-raising is important, the Commissioner’s interlocutors stressed that, in addition, the Labour Inspectorate should step up the number of initial and follow-up inspections<sup>57</sup> to ensure the enforcement of relevant occupational safety and health standards, particularly in the construction and mining industries where the number of the workplace accidents remains high. Furthermore, several interlocutors observed that the Labour Inspectorate does not have the necessary human and financial resources to be able to conduct its mandated tasks in line with international labour standards.<sup>58</sup> There is also the need to enhance the capacity of the Labour Inspectorate, including by providing training to labour inspectors and by strengthening follow-up procedures in cases when violations of labour standards are detected at companies.<sup>59</sup>

## 2.3 PROHIBITION OF LABOUR DISCRIMINATION

73. Georgia has a well-developed legislative framework to ensure equal treatment in the sphere of employment and occupation and to prohibit any form of discrimination on grounds such as race, colour, language, sex, age, nationality, origin, place of birth, residence, property or title, religion or faith, national, ethnic or social belonging, profession, marital status, health condition, disability, SOGIE, and political or other beliefs. The law

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<sup>53</sup> Sociological [poll](#) was conducted in 2019 by the Caucasus Research Resource Center (CRR) with the support of Open Society Georgia Foundation (OSGF) and Institute for Democracy and Electoral Assistance (International IDEA).

<sup>54</sup> [Report](#) on the needs assessment in respect of social rights in Georgia, conducted within the framework of the Council of Europe project “Strengthening protection of social and economic rights in Georgia”, 2021, pp. 11-12.

<sup>55</sup> [Report](#) of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia, 2020, p.17.

<sup>56</sup> [Report](#) of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, A/HRC/44/43/Add.1, 2020, p.19.

<sup>57</sup> According to its 2021 activity [report](#) (available in Georgian, p.20), the Labour Inspectorate conducted 1074 (initial and follow up) inspections in 446 facilities in relation to occupational safety in 2021.

<sup>58</sup> In Georgia, the minimal amount of labour inspectors needed has been determined as not less than 80 inspectors in line with the International Labour Organization methodology, establishing one inspector per 20 000 workers (see: [Report on the needs assessment in respect of social rights in Georgia](#), p.32). According to the letter (# 09/525, 12.03.2021) from the Labour Inspectorate, referred to in the mentioned report, while there were 112 positions of labour inspectors (including 26 in the territorial offices), only 54 labour inspectors were employed.

<sup>59</sup> [Report on the needs assessment in respect of social rights in Georgia](#), p. 62. (The Council of Europe Project “Strengthening the Protection of Social and Economic Rights in Georgia” completed four two-day trainings from 13-21 May 2022 for the staff of the Labour Inspection Office of Georgia on communication and social skills, in order to reinforce effective communication, proactive positioning of the institution and to enhance its institutional capacity.)

prohibits both direct and indirect discrimination and it includes the concept of multiple discrimination and the principle of equal treatment under the Labour Code applicable to pre-contractual relations, including the selection criteria and the conditions of recruitment.<sup>60</sup> Both the Labour Inspectorate (since 2021) and the Public Defender of Georgia are entitled to take action in relation to cases of discrimination in employment, within the remits of their respective mandates. While the Labour Inspectorate is mandated to oversee compliance with all relevant labour standards, including cases of alleged discrimination, the Public Defender has in principle no power to directly respond to cases of reported violation of labour rights in the private sector, except for cases of alleged discrimination.

74. The above-mentioned National Strategy for Labour and Employment Policy for 2019-2023 aims to promote the involvement of women and vulnerable groups in the labour market through targeted social and inclusive employment policies. However, several issues remain around non-discrimination. According to the Public Defender, one concern is the existence of discriminatory vacancy notices. The most frequent acts of discrimination in the employment market reported to the Public Defender concerned inequalities in remuneration based on discriminatory criteria and discriminatory dismissals.<sup>61</sup> Furthermore, according to the 2022 special report on the situation of Equality and Combating and Preventing Discrimination, the Public Defender indicated having received complaints regarding the dismissal of individuals, allegedly for their political views or for the views of their family members or associates.<sup>62</sup>

## 2.4 GENDER EQUALITY IN EMPLOYMENT

75. The Labour Code establishes an obligation on the employer to ensure equal pay for equal work among male and female employees.<sup>63</sup> Despite this and other similar measures undertaken in the previous years to enhance legislative and institutional mechanisms, the protection of women against discrimination in the area of employment and labour rights remains a challenge, primarily due to persisting patriarchal attitudes and stereotypes regarding the roles of men and women in the family, at work, and in society at large. A UNDP-UNFA 2020 [study](#) revealed that 48% of Georgians (including 59% of men and 38% of women) believe that a woman's main duty is to take care of her family rather than to pursue a professional career. While the research unveils lingering biases in the social perceptions of gender roles, it also points to a change in attitudes as a majority of the respondents (50.4%) do not agree with the opinion that a woman's primary duty is to take care of the family, a significant increase since 2013 when this opinion was held by only 11% of respondents.
76. According to the World Economic Forum's 2021 Global Gender Gap [Index](#), Georgia ranks 64<sup>th</sup> out of 153 countries in terms of women's economic participation and opportunities. The labour force participation rate is 61.5% for women and 77.8% for men (it ranks 88<sup>th</sup> out of 153 on this indicator). Georgia ranks 115<sup>th</sup> in relation to estimated earned income and 30<sup>th</sup> in terms of wage equality for similar work. According to the national statistical data, the average monthly salary for women accounts only for two thirds of men's average monthly salary.<sup>64</sup>
77. Legislative provisions prohibiting sexual harassment were introduced in the anti-discrimination and labour legislation. In 2019, the [Law](#) on the Elimination of Discrimination was amended to include a definition of sexual harassment as a form of discrimination and it mandated the Public Defender to review workplace harassment cases. Sexual harassment committed in public space is an administrative offence under Article 166-1 of the Administrative Offences Code of Georgia. There appears to be a growing awareness among employers and employees about the relevant applicable standards and the national legal framework. According to the Public Defender, the rise in the number of persons submitting complaints about sexual harassment to her Office is a positive sign of the increased awareness about this phenomenon among the

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<sup>60</sup> The Labour [Code](#) of Georgia, Article 5.

<sup>61</sup> [Report](#) of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia, 2020, p.138.

<sup>62</sup> Special [Report](#) of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 2022, pp. 5; 35-36.

<sup>63</sup> The Labour [Code](#) of Georgia, Article 454.

<sup>64</sup> [Women and men in Georgia](#), National Statistics Office of Georgia, 2021.

public. However, levels of awareness remain uneven across different sectors. For instance, a 2020 study conducted among women employed in the health sector revealed that they had an extremely low level of awareness about sexual harassment in the workplace, its nature, and the relevant response mechanisms.<sup>65</sup> There is a growing awareness among employers. In a marked change from previous years, in 2020 employers responded to findings - by anti-discrimination mechanism under the Public Defender's Office - establishing sexual harassment by dismissing the perpetrator or by amending internal regulations to prohibit sexual harassment. Furthermore, several private enterprises proactively expressed their intention to introduce an internal mechanism for the prevention of sexual harassment. With the active involvement of the Human Rights Secretariat under the Government of Georgia, internal sexual harassment mechanisms were also introduced in public institutions. These allow for better awareness raising and the prevention of sexual harassment in the workplace, while enabling the management of these organisations to address cases of alleged harassment themselves.

78. However, there appears to be shortcomings in the implementation of the new legislation.<sup>66</sup> The Public Defender concluded that the problem of sexual harassment is still commonplace within the workplace.<sup>67</sup>
79. In addition to the challenges mentioned in formal employment, unemployment remains a major problem in Georgia and disproportionately affects women. They reportedly spend three times more time than men on unremunerated domestic work.<sup>68</sup> The COVID-19 pandemic further exacerbated this situation by placing an even heavier burden of unpaid domestic work on women.<sup>69</sup>

## 2.5 PERSONS WITH DISABILITIES AND OTHER VULNERABLE GROUPS

80. Both the 2020 Law on the Rights of Persons with Disabilities and the Labour Code cover issues pertaining to the protection and promotion of the right to work for persons with disabilities, including in contractual and pre-contractual employment relationships.<sup>70</sup> They also include requirements in relation to reasonable accommodation. According to these laws, the employer is bound to take measures, where needed, to enable persons with disabilities to access employment, to access promotion and to undergo skills training, vocational training or retraining, unless such measures would impose a disproportionate burden on the employer.
81. The 2020 Law on Facilitating Employment also outlines measures to promote equal access to the labour market and state employment support programmes for certain vulnerable groups, including the population of the mountainous regions who experience difficulties with finding employment.<sup>71</sup> In addition to its anti-discrimination clause, this law provides for measures to facilitate access to labour market for persons with disabilities, such as the provision of a short-term vocational education course for the purpose of changing or maintaining a job.<sup>72</sup>
82. One of the main challenges in relation to the integration and retention of persons with disabilities in the labour market is the reported difficulty in accessing educational institutions and services (such as housing, transport, and communication technologies) which hinder their equal performance in the labour market. While the legislation outlines targeted training and vocational education opportunities to facilitate their

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<sup>65</sup> [Report](#) of the Public Defender of Georgia on the situation of protection of human rights and freedoms in Georgia, 2020, p.152.

<sup>66</sup> According to a 2021 [study](#), 34% of civil servants stated they had experienced sexual harassment, with 93% of women and only 44% of men considering it a societal problem.

<sup>67</sup> [Report](#) of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, p.14.

<sup>68</sup> *Ibid.*, p. 6.

<sup>69</sup> According to [the Rapid Gender Assessment of the COVID-19 Situation in Georgia](#), women disproportionately suffered from an increased burden of domestic work. Fewer women than men report that their partners have increased their role in domestic work.

<sup>70</sup> The Labour [Code](#) of Georgia, Article 9; The [Law](#) of Georgia on the Rights of Persons with Disabilities, Article 11§2.

<sup>71</sup> The [Law](#) of Georgia on Facilitating Employment, Article 5.

<sup>72</sup> *Ibid.*, Articles 7 and 34.

access to employment, as noted by the European Committee of Social Rights, persons with disabilities have no guaranteed right to vocational career advice and training.<sup>73</sup>

83. Members of the LGBTI communities face a dual barrier in accessing employment. They are disadvantaged by discriminatory practices and other forms of unequal treatment at the structural level. On a personal level, they are sometimes reluctant to put themselves forward for educational and professional development opportunities, often suffering from low self-esteem and past trauma. Consequently, a significant number of them chooses to work in an environment that allows them the freedom to express themselves without the risk of being discriminated which, with few exceptions, reportedly pushes them towards low-income jobs and traps them in a “spiral of precariousness”.<sup>74</sup> Access to and discrimination in employment is therefore one of the most important issues of concern for the LGBTI community, in particular for transgender people. These problems are grounded in existing societal prejudices against LGBTI people in the country. As was noted by the IE SOGI, many members of the community conceal their sexual orientation and/or gender identity in order to have decent work. Transgender women in particular have few chances of finding a formal job, exacerbated by difficulties in obtaining legal gender recognition. Many among them therefore work in the informal economy, including as sex workers, and they are subjected to poor working conditions and remuneration.<sup>75</sup> Pandemic-related restrictions, and subsequent economic crises, have made their conditions even more dire.<sup>76</sup>
84. Poor children, in particular those living on the street, are at risk of becoming victims of labour exploitation and trafficking in Georgia. In 2021, the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (GRETA), while welcoming the adoption of the new Child Protection Referral Mechanism, urged the authorities to strengthen their efforts to prevent child trafficking, including for the purposes of labour exploitation.<sup>77</sup> In her 2021 special [report](#) on child labour, the Public Defender deplored the lack of empirical data and in-depth research on the issue of child labour in Georgia. She emphasised that this is an acute and pressing problem, with many children involved in various labour activities due to poverty, poor living conditions, and other factors. Furthermore, the risk of child labour exploitation has significantly increased in the context of the Covid-19 pandemic.

## 2.6 CONCLUSIONS AND RECOMMENDATIONS

85. The Commissioner welcomes the comprehensive labour reform which was carried out in Georgia and she urges the authorities to close the remaining gaps in the legislation by establishing a minimum wage at a level which is fully compatible with international standards, ensuring that parental leave is equally accessible (including simultaneously to both parents), and developing clear guidelines for overtime work in terms of its duration and its compensation.
86. The Commissioner recommends that the Georgian authorities ensure the effective implementation of the labour legislation. To this end, the Labour Inspectorate should be provided with sufficient human and budgetary resources to be able to effectively carry out its duties and labour inspectors should receive continuous training on the relevant labour rights standards, including safety and anti-discrimination standards.
87. In addition to already ratified international standards in the field of labour rights, the Commissioner calls on the authorities to ratify and fully implement the following ILO Conventions: Weekly Rest (Industry) Convention (No 14); Minimum Wage Fixing Convention (No 131); Safety and Health in Mines Convention (No 176); Domestic Workers Convention (No. 189); Violence and Harassment Convention (No 190); and the 2014 Protocol to the ILO Convention on Forced Labour; as well as the Additional Protocol to the Revised European

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<sup>73</sup> European Committee of Social Rights, [Conclusions 2020 on Georgia](#), March 2021, p.19.

<sup>74</sup> [Social Exclusion of LGBTQ Group in Georgia](#), Social Justice Center, 2020, pp. 11-12.

<sup>75</sup> [Report](#) of the IE SOGI, §73.

<sup>76</sup> From Prejudice to Equality: [Study](#) on Public Knowledge, Awareness and Attitudes Towards LGBT(Q)I Community and Legal Equality, Women’s Initiatives Supporting Group, 2022.

<sup>77</sup> Group of Experts on Action against Trafficking in Human Beings, [Evaluation Report on Georgia](#) (third evaluation round), GRETA(2021)02, 16 March 2021, §§70 and 154.

Social Charter. The Commissioner also encourages Georgia to consider accepting additional provisions of the Charter as soon as possible.<sup>78</sup>

88. While welcoming recent progress in the reduction of workplace accidents, the Commissioner calls on the authorities to remain vigilant and bolster efforts to further improve safety conditions in the workplace, notably in sectors such as manufacturing, mining, and construction. In this regard, the Commissioner recalls the case-law of the European Court of Human Rights according to which states have a positive duty to take reasonable and appropriate measures to secure the enjoyment of the relevant human rights under Articles 2 (right to life) and 8 (right to private and family life) of the Convention in respect of dangerous activities at the workplace.<sup>79</sup>
89. The Georgian authorities should further adopt and implement targeted, and where appropriate, sector-specific measures to prevent and address occupational health and safety risks for all those who are employed in hazardous or heavy industries, including training programmes and other awareness raising measures for workers and employers on existing safety rules and standards.
90. Regarding non-discrimination in the field of employment, the Commissioner welcomes the extension of the anti-discrimination clause to pre-contractual relations, as well as the introduction of sexual harassment as a form of discrimination in the legislation and the progress achieved to date in addressing this phenomenon in the workplace. She calls on the authorities to continuously raise awareness of both the concept of sexual harassment and the mechanisms provided by law to report harassment and to access effective remedies, by developing targeted campaigns and training for different professional groups such as lawyers, investigators, judges, and other professionals.
91. Concerning gender equality, the Commissioner stresses the importance of continuing efforts to combat discriminatory gender stereotypes, which influence women's choices, prospects, and opportunities in the field of employment. She invites the authorities to regularly monitor the gender pay gap situation, to design and implement targeted measures to address the structural factors, and to run a public awareness campaign aimed at closing the gender gap.
92. In relation to the situation of persons with disabilities, the Commissioner welcomes the introduction of the reasonable accommodation-related obligation and she recommends that the authorities ensure its effective implementation in practice, together with other measures to ensure access to employment. This requires improved access to education and vocational training and addressing other important barriers (in fields such as housing, transport, communication technologies) which prevent persons with disabilities from accessing the labour market on an equal footing.
93. The Commissioner further urges the authorities to take effective measures to eliminate any discriminatory practice in employment by ensuring the rigorous enforcement of relevant labour and anti-discrimination standards. She invites the authorities and businesses to consider adopting targeted measures to encourage and support diversity in the workplace, including for [LGBTI people](#) and persons belonging to other vulnerable groups.
94. The Commissioner highlights the need for resolute action to address child labour and prevent and combat child trafficking for the purpose of labour exploitation, including the implementation of relevant [recommendations](#) made by GRETA in its report on Georgia.

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<sup>78</sup> See the [report](#) of the European Committee of Social Rights on the non-accepted provisions of the European Social Charter.

<sup>79</sup> *Brincat and Others v. Malta*, application nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, [Judgment](#) of 24 July 2014, §85.

### 3 ENVIRONMENT AND HUMAN RIGHTS

95. The Commissioner has repeatedly emphasised the close link between the environment and human rights in her work.<sup>80</sup> According to the 2018 UN Framework Principles on Human Rights and Environment, a safe, clean, healthy, and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standards of physical and mental health, to an adequate standard of living, and to housing.<sup>81</sup> Furthermore, the exercise of human rights such as freedoms of expression and association, and the right to an effective remedy are vital to the protection of the environment.

#### 3.1 RELEVANT INTERNATIONAL STANDARDS AND NATIONAL LEGAL FRAMEWORK

96. Georgia ratified the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ([Aarhus Convention](#)) in 2000. It has signed but not yet ratified the 2003 Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention.

97. The European Court of Human Rights has developed case-law relating to environmental matters given that the exercise of certain rights may be undermined by the existence of harm to the environment and exposure to environmental risks. The Court has so far handed down approximately 300 environment-related judgments in cases concerning pollution, man-made or natural disasters, and access to environmental information. For instance, it has established that states have a positive obligation to prevent environmental misconduct, including through general and precautionary measures which address environmental risks in a systematic manner.<sup>82</sup>

98. As noted above (Part II), Georgia ratified the Revised European Social Charter in 2005 and accepted 63 of the Revised Charter's 98 paragraphs including Article 11 (health, social security and social protection), which is of particular relevance in the context of the environment and human rights. The European Committee of Social Rights has found that neglect by states of environmental issues may amount to non-compliance with their obligations to fulfil particular Charter rights.<sup>83</sup> For instance, in its 2013 conclusions on Georgia, the Committee highlighted that "having access to safe drinking water is central to living a life in dignity and upholding human rights. It therefore requires States to take measures to improve access of rural populations to safe water".

99. At the national level, Georgia has a well-developed legal framework regulating environmental protection. Article 29 of the Georgian [Constitution](#) is dedicated to environmental protection and provides for the right to live in a healthy environment and enjoy the natural environment and have access to public space; the right to receive full information about the state of the environment in a timely manner; the right to care for the protection of the environment; and the right to participate in the adoption of decisions relating to the environment in accordance with the law. It also provides that environmental protection, and the rational use of natural resources shall be enshrined in law, taking into account the interests of present and future generations. The [Law on Environmental Protection](#) defines the rights and obligations of citizens and regulates relations between state bodies and natural and legal persons in the field of environmental protection and the use of natural resources.

100. In 2017, the [Environmental Assessment Code](#) was adopted to bring the national legislation further in line with international standards. It has introduced a mandatory screening and assessment procedure to prevent risks

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<sup>80</sup> See for instance, the Commissioner's 2019 Human Rights Comment "[Living in a clean environment: a neglected human rights concern for all of us](#)" and [Third party intervention](#) by the Council of Europe Commissioner for Human Rights, application No 39371/20, Cláudia DUARTE AGOSTINHO and others v. Portugal and 32 other States.

<sup>81</sup> UN Special Rapporteur on Human Rights and the Environment, [Framework Principles on Human Rights and Environment](#), 2018, §4.

<sup>82</sup> *Oneryıldız v. Türkiye*, application no. 48939/99, [judgement](#) of 30 November 2004, §90. See also more generally [Factsheet](#) on Environment and the European Convention on Human Rights.

<sup>83</sup> See the [Manual](#) on Human Rights and the Environment containing principles emerging from the case law of the European Court on Human Rights and the conclusions and decisions of the European Committee of Social Rights" (3rd edition), Council of Europe, 2022.

and to improve the planning of mitigating measures for any activity which may have a significant impact on the environment, human life, or health. Furthermore, the [Law on Environmental Liability](#), adopted in 2021, regulates issues relating to environmental damage based on the “polluter pays” principle.

### 3.2 POLICY DOCUMENTS AND PENDING INITIATIVES

101. The Georgian [Human Rights Action Plan for 2018-2020](#) devoted a chapter to the protection of environmental rights. Its objective was to ensure the implementation of the three pillars guaranteed by the Aarhus Convention: access to information, public participation, and access to justice. Furthermore, the [National Environment and Health Action Plan for 2018-2022](#) pursues the following strategic objectives: 1) improving access to safe water and sanitation; 2) improving access to healthy and safe environment for children and youth; 3) reducing harmful effects of air pollution on human health; 4) preventing morbidity caused by exposure to chemical substances; 5) integrating health-related issues into climate change adaptation and mitigation policies.
102. Additionally, the [Third National Environmental Action Programme for 2017-2021](#) focused on improving the status of the environment, ensuring the protection/sustainable use of natural resources, and preventing/minimizing risks that threaten human health and the welfare of the population. It also aimed to increase compliance with environmental agreements and promote sustainable development. The draft text of the Fourth National Environmental Action Programme for 2022-2026 has opened for public consultations.<sup>84</sup> During her meeting with the Minister of Environmental Protection and Agriculture, the Commissioner was informed about the plans, as part of the Action Programme, to launch a Portal for Environmental Impact Assessment which would provide timely and accurate information to the public and facilitate their participation in decision-making processes.

### 3.3 ISSUES OF CONCERN

103. In spite of the existence of the above-mentioned legal and policy framework, in her 2019 annual [report](#) to the Parliament, the Public Defender of Georgia noted that environmental matters remained one of the main human rights challenges in the country, including issues such as implementing measures concerning air quality and advancing the right to clean air, improving the safety of natural gas consumption, and addressing existing gaps in the regulatory framework relating to the construction of hydro power plants (such as the absence of a strategic energy policy document). She also noted gaps in the process of environmental impact assessment.
104. In her 2021 alternative [report](#) on the status of the implementation of the Aarhus Convention, the Georgian Public Defender further emphasised that members of the public most frequently challenged the robustness of environmental impact assessments and the quality of assessment reports, especially in relation to the assessment of a project’s impact on individuals, or society as a whole. Representatives of civil society working on environmental protection issues raised similar concerns with the Commissioner during her visit. They also insisted on the need for the above-mentioned environmental impact assessment reports to include social impact assessments.
105. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises in its 2020 [report](#) on its visit to Georgia raised concerns about the reported lack of effective and meaningful participation of affected individuals and communities in environmental decision-making processes. It cited examples where stakeholders had not been involved in the decision-making before a binding decision was made to implement certain projects with a potentially negative environmental impact.<sup>85</sup>
106. On the basis of her discussions with civil society and the Public Defender, the Commissioner formed an impression that despite the adoption of the above-mentioned Environmental Assessment Code and the 2018

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<sup>84</sup> The draft project and the dates for public consultations [available](#) in Georgian.

<sup>85</sup> [Report](#) of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/44/43/Add.1, 24 April 2020, §32.

Ministerial Order on the Rule of Public Discussion,<sup>86</sup> meaningful public participation in the decision-making processes remains problematic, particularly in relation to spatial planning, as well as in the planning and implementation of large-scale infrastructural projects in the energy sector and in the mining industry. This is due in part to the provisions contained in Article 9 §13 of the order which stipulate that public discussions shall be considered “conducted” whether or not they were attended by members of the public.

107. The construction of a large-scale energy infrastructure project – the Namakhvani hydro power plant – which is forecasted to be the largest energy project with a direct foreign investment of \$800 million USD, provides an illustration of the issues described above. The execution of this project has been accompanied by public protests against it, initially held at the local level by the inhabitants of the valley where construction was envisaged and by environmental activists. By early 2021, these local demonstrations had transformed into nation-wide protests against the construction of the plant, resulting in the [termination](#) of the contract between the construction company and the Government of Georgia. Some of the peaceful protests were [reportedly](#) interrupted or dispersed by the police and restrictions were introduced on freedom of movement in the area, prompting [criticism](#) from the Public Defender.
108. Regarding air quality, in 2017, the European Court of Human Rights found a violation of Article 8 (right to private and family life) of the Convention in the case of *Jugheli and Others v. Georgia*. The Court concluded that the regulatory framework was inadequate and the attitude of the authorities to air pollution was passive when dealing with hazardous conditions at a thermal power plant. The Court found that the lack of environmental rules had allowed the power plant to carry out potentially dangerous activities without the necessary safeguards being put in place to avoid or reduce air pollution and the impact of this pollution on the applicants’ health and well-being. The examination of this case was closed by the decision of the Committee of Ministers in December 2020, in part due to the adoption by Georgia of the new legislative framework described in para 3.1 above.<sup>87</sup>
109. The Commissioner notes that the Public Defender published in 2019 a [special report](#) on the right to clean air, concluding that sufficient information about the impact of air pollution on human health in the country was not yet available. This issue seems to persist as it was also raised during the Commissioner’s exchanges with environmental human rights defenders in Tbilisi.
110. The Commissioner stresses that access to an effective remedy is central to the human-rights approach to combating environmental pollution. She considers that strategic litigation by environmental activists and non-governmental organisations, as well as relevant judgments by national courts have played an important role in raising awareness of the existing problems and have compelled the competent authorities to look for appropriate solutions. The Commissioner commends the active role played by civil society, as well as by the Public Defender<sup>88</sup> in this regard. However, environmental activists referred to several important impediments to their work, including the length of judicial proceedings which prevents decisions being delivered within time-frames which are necessary to prevent and/or mitigate ongoing environmental damage (for instance, to prove the causal link between emission of pollutants and its impact on the life and health of affected individuals); as well as the tendency to favour private business interests; and the lack of available resources to solicit quality impact assessment studies. Civil society representatives working on environmental protection also reported to the Commissioner that they had been subjected to defamation campaigns, including via social media, as well as to sporadic acts of intimidation and harassment in relation to their professional activities, particularly in the context of protests against the construction of the Namakhvani hydro power plant mentioned above.

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<sup>86</sup> Ministerial Order on the Rule of Public Discussion [available](#) in Georgian.

<sup>87</sup> See [Resolution CM/ResDH\(2020\)255](#) on the Execution of the judgment of the European Court of Human Rights in the case of *Jugheli and others* against Georgia, adopted on 3 December 2020 at the 1390<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>88</sup> See, for instance Amicus Curiae [filed](#) by the Public Defender with Tbilisi City Court on 5 May 2022, in a case where plaintiffs are seeking compensation from the Georgian Ministry of Environmental Protection and Agriculture for the damages caused due to failure to take effective measures to prevent emissions from the factories in the city of Rustavi.

111. Awareness raising is an important element of environmental protection. The Environmental Information and Education [Centre](#) was established in 2013 under the authority of the Ministry of Environmental Protection and Agriculture and it is tasked with raising awareness on environmental issues and ensuring the continuous professional development of experts. During her meeting with the Minister of Environmental Protection and Agriculture, the Commissioner learned that working with young people is one of the Ministry's priorities and that special [educational resources](#) have been developed for schoolchildren in order to raise their awareness of various environmental issues, including from a human rights perspective.
112. During her meetings with environmental non-governmental organisations and the Public Defender of Georgia, the Commissioner heard about the need to improve awareness of environmental matters and technical expertise around complex issues pertaining to environment and human rights protection, both among the general population (including representatives of civil society and private companies) and among professionals (including civil servants, experts involved in the preparation of environmental impact assessments and reports, and judges).
113. The situation of eco-migrants also continues to raise a number of concerns. Georgia has a significant number of internally displaced persons (IDPs)<sup>89</sup> (see paragraphs 122-125 below), including approximately 8,000 "eco-migrants" (families who were forced to move due to climate change-induced loss of livelihoods or similar changes with environmental impact). During his 2015 visit to Georgia, the Commissioner's predecessor visited a semi-formal settlement on the outskirts of the Batumi called "dream town", which was inhabited by 900 families who relocated from the high mountainous areas of Adjara because of poverty, difficult living conditions, and natural disasters. He subsequently [urged](#) the authorities to address the situation of eco-migrants who settled in the area of Tsalka. The 2013 ministerial decree,<sup>90</sup> which sets out rules for the resettlement of eco-migrants, was further amended in 2015 to determine the criteria for the accommodation of these persons.<sup>91</sup> A dedicated state programme exists for the resettlement of eco-migrant families,<sup>92</sup> who are also eligible to receive support under state programmes open to all IDPs, notably in areas such as access to healthcare, vocational education, and business support. However, in her [2019 report](#) to the Parliament, the Public Defender identified insufficient funding to support the resettlement of Georgia's eco-migrants and failure to take preventive measures to address the root causes of displacement as the two major challenges resulting from internal displacement induced by climate change in Georgia.

### 3.4 CONCLUSIONS AND RECOMMENDATIONS

114. The Commissioner welcomes Georgia's well-developed legal framework aimed at promoting environmental protection in line with relevant human rights standards, as well as efforts by the authorities to keep pace with evolving international legal standards. She encourages the authorities to build upon lessons learnt from the implementation of sections of the previous Human Rights Action Plan relating to the environment, especially as preparations continue around the drafting and adoption of a new Human Rights Action Plan which should include targeted, time-bound, impact-oriented, and tailor-made indicators to measure awareness raising and public participation in decision-making processes.
115. The Commissioner invites the Georgian authorities to guarantee meaningful and transparent public participation in the design, implementation and monitoring of environmental policies at the national, regional and local levels. In this regard, the Commissioner recalls the relevant case-law of the European Court of Human Rights which recognises the importance of the meaningful and transparent involvement of all stakeholders (particularly persons and communities directly affected by projects with an environmental impact), in all stages of the relevant decision-making processes from the early stages onwards, with full respect for their rights to freedom of peaceful assembly, association and expression. The meaningful participation of the public in these processes requires that comprehensive and timely information be provided to the members of the public concerned. The Commissioner stresses that meaningful public

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<sup>89</sup> Most of those were forcibly displaced in the context of the conflicts.

<sup>90</sup> Ministerial decree N779 [available](#) in Georgian.

<sup>91</sup> Amendment to the decree [available](#) in Georgian.

<sup>92</sup> Details [available](#) in Georgian.

participation is particularly crucial when it comes to large-scale infrastructural projects, as the scale and risk of potential human rights violations are much greater.

116. The Commissioner calls upon all competent authorities to further improve the effective implementation of the existing legislative and policy framework and to take measures to improve the quality and effectiveness of environmental impact assessments, especially those concerning large-scale infrastructural projects.
117. In the Commissioner's view, it is of crucial importance to ensure public awareness on environmental matters and to educate people from an early age about the need to preserve the environment. In this regard, she welcomes the existing initiatives in Georgia aimed at increasing public awareness in relation to environmental protection and human rights. She encourages the Georgian authorities to further develop and implement a comprehensive set of measures to promote public knowledge, education and awareness on issues related to environmental protection and human rights, including targeted training for specific professional groups such as judges.
118. The Commissioner recommends that the Georgian authorities take further legal and practical steps to continuously improve their air quality and to track air pollution and emissions, including by ensuring an effective monitoring system and by providing timely and comprehensive information to the public. To this end, she invites the authorities to ratify, as soon as possible, the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention.
119. In the context of internal displacements caused by natural disasters and climate change, the Commissioner emphasises that the increasingly negative impact of climate change on human rights places a burden on states to take a preventative rather than a reactive approach. She therefore calls on the Georgian authorities to develop and implement comprehensive, long-term strategies with preventive measures for disaster risk reduction and climate change adaptation and improved access to judicial and non-judicial remedies for affected persons. The authorities should also make sufficient funding available for the implementation of these strategies, including for the resettlement and housing of eco-migrants.
120. Lastly, the Commissioner recommends that the Georgian authorities provide a safe and enabling environment for environmental human rights defenders, so that they can operate efficiently and free from any form of intimidation or harassment, including online. This implies that the authorities should regularly engage with human rights defenders on environmental matters and fully support their work, including financially. The authorities should also swiftly and firmly condemn any case of harassment against environmental activists and defenders and ensure that such cases are subject to effective investigations, prosecution, and sanctioning of perpetrators.

## 4 OTHER HUMAN RIGHTS ISSUES

### 4.1 ELECTION OF THE PUBLIC DEFENDER

121. As the mandate of the current Public Defender ends in December 2022,<sup>93</sup> the Commissioner discussed the selection and appointment of the next Ombuds and the functioning of the Ombudsman institution with the incumbent Public Defender and the competent Georgian authorities, including the Prime Minister and members of the Parliament. As the Public Defender is a central pillar of the human rights protection system in Georgia, the Commissioner stressed the importance of ensuring that the selection and appointment process is competence-based; transparent and participatory; and based on clear, predetermined, objective, and publicly accessible criteria. It should be fully in line with the United Nations [Paris Principles on National Human Rights Institutions](#),<sup>94</sup> and the Council of Europe standards including the [Venice Principles](#)<sup>95</sup> and the Council of Europe Committee of Ministers' [Recommendation \(2021\)1](#) on the development and strengthening of effective, pluralist, and independent national human rights institutions. The Commissioner also invited the authorities to start this process early to ensure a smooth transition between the outgoing and incoming post holders. She further encouraged the authorities to continue providing the Ombudsman institution with sufficient and sustainable resources and to ensure that the institution can carry out its mandate in a fully independent manner and freely determine its priorities and activities, as foreseen in the relevant international standards mentioned above.

### 4.2 SITUATION OF INTERNALLY DISPLACED PERSONS

122. Georgia has a large population of IDPs amounting to 286,442 individuals and 92,079 families who are officially registered.<sup>96</sup>
123. The Commissioner was informed by her interlocutors in the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs that the government's key priority is to ensure access to housing and adequate socio-economic conditions for IDPs. To this end, the government-run programmes offer a variety of support options to IDPs ranging from purchasing an apartment in a newly constructed apartment building; to buying a house in a village; to constructing a house on the land owned by the IDP family. They also provide IDP families with the required documentation to avoid potential eviction from their current accommodation as long as it remains in their lawful possession. The current target is to resettle all IDPs who are still living in collective centers and close them down by 2024.
124. The Commissioner was further informed about targeted governmental programmes and initiatives aimed at providing access to education and vocational training for IDPs, supporting business ventures and other livelihood opportunities, and ensuring access to healthcare.
125. In Zugdidi, the Commissioner and her team met with IDPs, including young people, and she learned about their everyday concerns, including their integration into the Georgian society and their access to housing, education, and healthcare. The Commissioner encourages the authorities at the national and local levels to continue working closely with IDPs and representative organisations to achieve durable solutions to their situation<sup>97</sup> and to ensure that they can enjoy the full spectrum of human rights, including to housing, work, education, and healthcare, in line with the [UN Guiding Principles on Internal Displacement](#).

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<sup>93</sup> According to Article 35 of Georgian [Constitution](#), the Public Defender is elected for a non-consecutive term of 6 years.

<sup>94</sup> Principles relating to the status of national institutions (the Paris Principles), adopted by the United Nations General Assembly on 20 December 1993 in its Resolution 48/134 on national human rights institutions for the promotion and protection of human rights.

<sup>95</sup> [Principles](#) on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), CDL-AD(2019)005-e, adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March 2019.

<sup>96</sup> The statistical data on IDPs, Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, [available](#) in Georgian.

<sup>97</sup> An IDP's choice of local integration or settlement elsewhere in the country, in the absence of the option to return, must not be regarded as a renunciation of his/her right to return should that choice later become feasible ([IASC Framework](#) on Durable Solutions for Internally Displaced Persons).