



PARLIAMENT OF GEORGIA

REPORT OF THE LEGAL ISSUES COMMITTEE AND THE
HUMAN RIGHTS AND CIVIL INTEGRATION COMMITTEE
OF THE PARLIAMENT OF GEORGIA

POST-LEGISLATIVE SCRUTINY (PLS) OF LEGAL NORMS
PROHIBITING SEXUAL HARASSMENT IN THE WORKPLACE
AND PUBLIC SPACES



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POST-LEGISLATIVE SCRUTINY (PLS) OF LEGAL
NORMS PROHIBITING SEXUAL HARASSMENT IN THE
WORKPLACE AND PUBLIC SPACES

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in Georgia (PROLoG)*

Post-legislative scrutiny (PLS) of legal norms prohibiting sexual harassment in the workplace and public spaces has been carried out by the Legal Issues Committee and the Human Rights and Civil Integration Committee of the Parliament of Georgia, with the generous support of the American People through the United States Agency for International Development (USAID). The contents of this publication are the responsibility of the Legal Issues Committee and the Human Rights and Civil Integration Committee of the Parliament of Georgia. It does not necessarily reflect the views of the United States Government, the USAID or the East-West Management Institute (EWMI).

Participants of the post-legislative scrutiny:

Legal Issues Committee

Rati Ionatamishvili, Deputy Chairperson

Human Rights and Civil Integration Committee

Mikheil Sarjveladze, Chairperson

Gender Equality Council

Nino Tsilosani, Chairperson

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Introduction

On December 6, 2018, the Parliament of Georgia adopted new Rules of Procedure, setting up a **mechanism for post-legislative scrutiny (PLS)** within the reform of the oversight function of Parliament. PLS is an important instrument for implementing parliamentary oversight and control. It forms an integral part of parliamentary activities as through PLS, parliamentary committees can analyze the extent to which the laws that have been passed are implemented.

Article 38 of the Rules of Procedure of Parliament provides for a post-legislative scrutiny. Through this mechanism, committees monitor effectiveness and the status of enforcement of laws they have passed; analyze if these laws have achieved their goals and what are the flaws or obstacles in the process of their implementation. As a result, parliamentary committees are able to take adequate measures to eliminate any shortcomings. Parliament can examine and evaluate findings of post-legislative scrutiny and, if necessary, request relevant committee to prepare an appropriate amendment.

Post-legislative scrutiny of legal norms prohibiting sexual harassment in the workplace and public spaces was initiated by the Legal Issues Committee, the Human Rights and Civil Integration Committee and the Gender Equality Council (GEC) of the Parliament of Georgia. The committees were identified as subjects responsible for PLS implementation, while the GEC was actively involved in the process. PLS has been implemented with participation of experts, representatives of civil society and public authorities. Their written opinions and involvement in meetings help Parliament to conduct the PLS procedure in the most open and comprehensive way.

Post-legislative scrutiny of legal norms prohibiting sexual harassment in the workplace and public spaces has been implemented with the support of the East-West Management Institute program „Promoting Rule of Law in Georgia“ (PROLoG) funded by the United States Agency for International Development (USAID).

I. PLS Timeframe and Procedure

Post-legislative scrutiny of legal norms prohibiting sexual harassment in the workplace and in public spaces was implemented by the Legal Issues Committee and the Human Rights and Civil Integration Committee from May through October, 2021.

1. Subjects involved in the post-legislative scrutiny

PLS was implemented with involvement of different subjects that submitted written opinions about implementation of the legal norms in question and participated in public meetings:

- Common courts;
- Public Defender's Office (PDO);
- Ministry of Internal Affairs (MIA);
- LEPL Labor Inspection Office;
- Coalition for Equality;
- Experts and civil society representatives.

2. Activities conducted in the process of post-legislative scrutiny

The following activities were conducted by taking into account international best practice and national legal framework:

- In order to administer post-legislative scrutiny adequately and effectively, information about the process was published and disseminated on social media by USAID/PROLoG.
- USAID/PROLoG hired local expert Mariam Gaiparashvili to help Parliament with implementation of PLS.
- USAID/PROLoG facilitated a coordination meeting on May 28, 2021, between PDO, MIA, Labor Inspection Office, courts and civil society representatives. The meeting analyzed the process of implementation of legal norms regulating sexual harassment, existing challenges and possible solutions.¹ At the meeting the expert presented PLS scope, PLS organization methodology and procedure, analysis of legal framework and expected results.
- On May 31, 2021, Rati Ionatamishvili addressed LEPL Parliamentary Research Center with an inquiry and requested a comparative study on legal norms prohibiting sexual harassment. The Center requested information from parliamentary research centers in the EU and on May 24, 2021, it prepared a research report on certain aspects of sexual harassment legislation (**see Annex 1**).²
- For verification of effectiveness of the laws in question, on June 1, 2021, Rati Ionatamishvili requested decisions and information about implementation of these laws from the following entities: common courts, PDO, MIA, LEPL Labor Inspection Office of Georgia and Coalition for Equality.
- In June-July 2021, the entities gradually submitted to Parliament the requested information. The following has been analyzed within PLS:
 - Practice of PDO's Equality Department;
 - Practice of the MIA, which is responsible for elimination of sexual harassment in public spaces;
 - Practice of LEPL Labor Inspection Office of Georgia, which is responsible for elimination of sexual harassment in labor relations;
 - All judgments concerning sexual harassment were requested from common courts, however Parliament was provided with judgments in cases involving sexual harassment in public spaces. The present analysis therefore entails only such judgments (**see Annex N2**).
- On September 13, 2021, USAID/PROLoG organized a meeting with MIA representative to clarify practical aspects.
- On September 22, 2021, Rati Ionatamishvili sent another letter to request judgments from common courts.
- Following the activities outlined above, the local expert prepared recommendations based on the analysis of laws and practice.

¹ For additional information, please see: <http://ewmi-prolog.org/ka/news/1572-samushao-adgilze-da-sajaro-sivrceshi-segsualuri>

² Note: analytical document of LEPL Parliamentary Research Center (PRC) is a digest prepared based on Rati Ionatamishvili's inquiry and is annexed hereto with PRC's permission. The digest has been prepared by Mariam Gaiparashvili.

The report summarizes basic elements of reasoned opinions of stakeholders, formulates key findings based on them and it also provides recommendations.

II. Purpose of Post-Legislative Scrutiny

The Legal Issues Committee and the Human Rights and Civil Integration Committee identified as the subject of PLS legal norms prohibiting sexual harassment in the workplace and public spaces, with the purpose of monitoring and analyzing effectiveness of implementation of these legal norms. The scrutiny also aimed to identify any flaws and other obstacles that hinder effective implementation of such law.

For appropriate administration of PLS process, thematic questions were discussed during a public meeting and later sent to executive authorities and other stakeholders.

Thematic questions concerned the following issues:

- Effectiveness of legal norms prohibiting sexual harassment in the workplace and public spaces and trends of using them in practice;
- Possible shortcomings of legal norms prohibiting sexual harassment;
- Obstacles identified in the process of implementing legal norms prohibiting sexual harassment;
- Distribution of functions among several mechanisms of implementation and effectiveness of these mechanisms;
- Practice of courts.

III. The Scope of Post-Legislative Scrutiny

1. Legal norms scrutinized

On May 2, 2014, the Parliament of Georgia adopted the Law of Georgia „on Elimination of all Forms of Discrimination“ (hereinafter, anti-discrimination law). The law protects the right to equality for natural and legal persons. Initial version of the anti-discrimination law prohibited **all forms of discrimination**, while Article 2 of the Law defined only two forms of discrimination – direct and indirect. The anti-discrimination law and the Labor Code therefore did not directly prohibit and define sexual harassment. Before relevant amendments were introduced, the only law that prohibited sexual harassment was the Law of Georgia on Gender Equality.³

According to the 2017 special report of the Public Defender, lack of regulations for sexual harassment contributed to low rate of reporting.⁴ Despite absence of such regulations, both the Public Defender and courts handled sexual harassment cases and established discrimination.⁵

³ Article 6: *Sexual harassment in employment relationship shall be prohibited – any unwanted verbal, non-verbal or physical behavior of sexual nature with the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, humiliating or offensive environment for him/her.*

⁴ Special report on the fight against discrimination, its prevention and the situation of equality, 2017, pp. 13-14, available online at: <https://bit.ly/3zAJGvq>

⁵ For additional information, please see: <https://bit.ly/3gN2UX5>; <https://bit.ly/3jpAG6C>

In 2019, under the initiative of the GEC and with the support from USAID/PROLoG, legislative changes were introduced to prohibit sexual harassment in the workplace and public spaces. In addition, the statutory limitation period for discrimination cases has been increased from 3 months to 1 year. Under the same changes, the scope of Public Defender's powers was significantly broadened for effective use of anti-discrimination mechanism and enforcement of decisions.

Changes introduced in the field of labor in 2020 built on the 2019 amendments. These changes were based on the Association Agreement with the EU and in addition to elimination of discrimination, they also address occupational safety and create more safeguards for protection of labor rights.

The scope of PLS therefore included **the following laws/amendments** adopted by Parliament:

- Labor Code of Georgia;
- Organic Law on Public Defender of Georgia;
- Administrative Offences Code (AOC);
- Law of Georgia on Elimination of All Forms of Discrimination;
- Law of Georgia on Labor Inspection Office;
- Civil Procedure Code of Georgia (CPC).

2. Implementing entities

According to the anti-discrimination law, the Public Defender of Georgia has been entrusted with the oversight function over ensuring elimination of discrimination and equality. To exercise this authority, under Order N140 of the Public Defender of Georgia, Equality Department was set up at the Office on August 22, 2014. The department began operating on November 20, 2014.⁶ Based on changes introduced in 2019, private law entities were subjected to the same regulations as public law entities – natural persons and legal entities under private law are now required to provide the Public Defender with information necessary to examine a case of possible discrimination. In addition, the Public Defender has been given the power to file in court against a legal entity under private law or an association of such entities, seeking fulfillment of Public Defender's recommendation.⁷

Based on amendments introduced in 2019, sexual harassment in public spaces constitutes an administrative offence, which gives possible victims of such offence access to a new legal remedy, the Ministry of Internal Affairs of Georgia.

According to amendments introduced in 2020, LEPL Labor Inspection Office exercises state oversight on national labor laws. These amendments have strengthened the mandate of Labor Inspection Office and its powers now extend to both public and private sector. Labor Inspection Office has the power to impose administrative sanctions for violations of anti-discrimination principle.

CPC Chapter XLIV⁹ prescribes rules specifically for handling cases that involve discrimination. According to the Code, in the process of exercising its oversight function, the Public Defender of

⁶ *Special report on the fight against discrimination, its prevention and the situation of equality, 2017, p. 5, available online at: <https://bit.ly/3zAJGvq>*

⁷ *Special report on the fight against discrimination, its prevention and the situation of equality, 2019, p. 4, available online at: <https://bit.ly/2WFgWDa>*

Georgia may file a claim in court and be a plaintiff, just as an individual citizen. In addition, as noted earlier both the Labor Inspection Office and the MIA are legally allowed to impose administrative sanctions. Cases of sexual harassment in the workplace and public places therefore fall within the competencies of courts.

In the light of the foregoing, after the amendments of 2019 and 2020, definition of sexual harassment was introduced. Sexual harassment has been prohibited both in public spaces and in labor relations. As a result, sexual harassment cases now fall within the competencies of common courts, Public Defender, MIA and Labor Inspection Office.

Implementing entities for legal norms concerned by PLS therefore include:

- Common courts;
- Public Defender's Office (PDO);
- Ministry of Internal Affairs (MIA);
- LEPL Labor Inspection Office.

IV. Analysis of Practice and Trends Identified

For comprehensive analysis of implementation of legal norms and effective identification of legal issues, parliament requested information, judgments and decisions from courts, PDO, MIA and Labor Inspection Office, and analyzed them to identify legal gaps that may create obstacles in practice.

Parliament requested information from NGOs that actively use anti-discrimination mechanisms. The purpose of Parliament's inquiry was to determine where they see most problems in practice and if these problems are caused by legislative formulations.

1. Information requested from the judiciary and analysis of court judgments

Parliament requested the following information from the Supreme Court of Georgia:

1. *What are the obstacles faced by courts when applying the legal norms in practice and how can these obstacles be eliminated?*
2. *Which area has most challenges in eliminating sexual harassment?*
3. *What measures are you taking to improve qualification of judges and court staff on sexual harassment issues?*
4. *Please, provide all judgments delivered by different court instances (city/regional courts, appellate courts and/or supreme court) in civil disputes about possible sexual harassment;*
5. *Please, provide all judgments delivered by different court instances (city/regional and/or appellate courts) in administrative dispute cases involving possible sexual harassment;*
6. *Please, provide all judgments delivered by different court instances (city/regional and/or appellate courts) in administrative cases involving possible sexual harassment (AOC art.166¹).*

The Supreme Court of Georgia responded to Parliament's inquiry with a letter that **did not provide** judgments in civil disputes about possible sexual harassment. With its September 22, 2021 letter, Parliament requested once again *all judgments from different levels of court (city/regional courts, appellate courts and/or the Supreme Court) in labor disputes about possible sexual harassment, since 2019*. According to the October 21, 2021 letter of the Supreme Court of Georgia, *data on judgments about sexual harassment complaints are not maintained at any court level and therefore, judgments in this particular area are not to be found in the available statistical information*.

PLS is therefore **unable to evaluate court decisions about sexual harassment in the workplace**. Here we must also note that **not all judgments made by courts in administrative cases** were provided. Parliament received several judgments from the Ministry of Internal Affairs. PLS analyzed all judgments received about sexual harassment in the workplace and public spaces (**see Annex N2**).

According to the Supreme Court letter, in August 2020, in cooperation with the High School of Justice, USAID/PROLoG organized a training of trainers on elimination of sexual harassment for common court judges. Judge-trainers were planning to design a training course on regulation and adjudication of sexual harassment, in order to deliver a training for judges, HSOJ listeners and court staff.

□ Identified trends

Data on judgments in cases of possible sexual harassment are not recorded at any court level. Such judgments were unavailable to respond to requests for public information.

- International standards are used as a source in judgments made about sexual harassment in public spaces, which is a positive trend. However, such arguments are often abstract and disconnected from facts of the case.
- Kutaisi Appellate Court delivered an important decision⁸ **clarifying that *any space where a person has the right to be or the possibility to obtain such right shall be considered a public space***.
- Often description of facts is missing from judgments and protocols of offence.
- In one of the decisions,⁹ court found that sexual harassment in *Facebook chat* amounted to an administrative offence. The court did not address if a chat between two persons is considered a **public space** for AOC purposes.
- Court finds a violation even if the respondent denies it and there are no witnesses of the conduct in question. However, in one of the judgments analyzed, court did not find the victim's statement to be sufficient evidence. This is one of the most controversial procedural issues in handling of sexual harassment cases.
- There are decisions that are incompliant with general practice. For example, unwanted kissing,¹⁰ offering to have a sexual intercourse and using offensive language to address someone¹¹ was considered *trivial, as such misconduct did not cause any substantial harm, and a verbal reproof was issued against the person concerned*, while most decisions imposed sanctions for identical actions.

⁸ N4/ს-39-2021

⁹ Decision of Batumi City Court N4/1670-19

¹⁰ Decision of Batumi City Court N 4-409/2020

¹¹ Decision of Kutaisi City Court N4/838-19

- Court did not explain the criteria used to evaluate the action as trivial, while other courts impose sanctions for lesser actions. For example, girl watching and touching genitals was considered a minor action by court,¹² while a fine of 300 GEL was imposed as a type of punishment for winking and blowing a kiss.¹³
- There are several decisions about sexual harassment of minors. In two cases, court imposed a fine of 300 GEL, because the offender was unaware that the victim was a minor.¹⁴ According to AOC Article 166¹, sexual harassment *knowingly against a minor or in presence of a minor* is an aggravating factor, subject to a fine ranging from 500 to 800 GEL. This demonstrates that sexual harassment **knowingly** against a minor is a legislative prerequisite of an aggravating factor, requiring examination and legal evaluation of additional facts. In particular, facts of the case and available evidence should be evaluated collectively to determine whether the offender was aware of the age of the victim, or if the age was perceivable. In these particular judgments, court did not address and evaluate if the victim's age was objectively perceivable.
- Judgments analyzed clearly suggest that forms of sexual harassment against a minor are harsh but proportionate punishments are not imposed, which is due to the following two reasons:
 - (i) Fines provided in the legislation are small;
 - (ii) Range of fines provided in the legislation are not broad and courts are reluctant to impose a maximum fine. For example, a total fine of 600 GEL was imposed for unwanted touching of the victim's waist, chest, stomach resulting in severe psychological stress against a minor;¹⁵ a total fine of 500 laris was imposed for touching the victim's backside and using sexually suggestive phrases;¹⁶ a total fine of 700 GEL was imposed for touching the victim's chest while speaking to her;¹⁷ a fine of 600 GEL was imposed for showing genitals to a minor.¹⁸

2. Information requested from PDO and analysis of PDO decisions

Information requested from PDO:

1. *What obstacles do you face when applying the legal norms in practice and how can these obstacles be eliminated?*
2. *What are the trends in obtaining evidence on sexual harassment cases and implementing recommendations after PDO mandate was strengthened?*
3. *Is PDO monitoring implementation?*
4. *Which area has most challenges in eliminating sexual harassment?*

¹² Zugdidi Regional Court decision N4/a-1249-19

¹³ Batumi City Court decision N4-1937/19

¹⁴ Gori Regional Court decision N4/1-21; Tbilisi City Court Decision N4/6777-20

¹⁵ Kutaisi Appellate Court decision N4/a-39-2021

¹⁶ Batumi City Court decision N4/255-2021

¹⁷ Tbilisi City Court decision N4/3851-20

¹⁸ Tbilisi City Court decision N4/4547-20

5. *In 2014-2021, how many applications did you receive each year about possible sexual harassment and in how many of them was sexual harassment found? (Please, provide sex-disaggregated information about applicants: how many applicants were male and how many were female);*
6. *What measures do you take to proactively identify sexual harassment cases?*
7. *Please, provide information about campaigns organized by PDO for raising awareness about sexual harassment (where did you hold such campaigns and for which groups?);*
8. *What measures do you implement to improve qualifications of your employees?*
9. *As different mechanisms exist for elimination of sexual harassment, what is the coordination like between these mechanisms?*
10. *Please, provide all decisions made by the Public Defender about applications for finding of sexual harassment.*

According to the letter of June 8, 2021, in cases filed with PDO or initiated by the Public Defender in 2014-2021, all possible victims were female. **Below are statistics for each year:**

- 2016 -1 application;
- 2017 - 1 application;
- 2018 - 11 applications;
- 2019 - 7 applications;
- 2020 - 5 applications;
- 2021 - 4 applications.

As to the trends in fulfillment of recommendations, in response to 7 decisions made since 2019, the Public Defender was informed that employment relationship with the harasser was terminated or would not be renewed (3 cases), the respondent said it was willing to create a sexual harassment prevention policy document and/or prevent sexual harassment cases in the future (2 cases). MIA did not fulfill the recommendation to effectively examine the fact of sexual harassment, as the time limit for finding an administrative offence had been expired.

According to PDO, the area of labor relations has the most challenges in eliminating sexual harassment. Receiving medical services is another problematic area in that regard.

For proactive identification of sexual harassment cases, PDO conducts trainings and working meetings with different social groups, it also produces public service announcement videos for dissemination of information. In addition, PDO organizes in-person and online trainings and working groups on sexual harassment issues with different groups: MIA employees, representatives of local self-government authorities, public sector employees, public school teachers, private sector employees, journalists.

According to the letter, lack of awareness remains a challenge and it affects the number of sexual harassment applications received. This is further intensified by the fear of victimization. In addition, although PDO mandate has been strengthened, respondents delay provision of information.

Identified trends

- PLS analyzed decisions (recommendations) made by the Public Defender about sexual harassment applications. Notably, all decisions are well-reasoned from legal perspective and are based on the most recent legal standards.
- We welcome that even in absence of sexual harassment definition in the national legislation, the Public Defender examined cases in the context of finding/not finding the fact of discrimination.
- We welcome that the Public Defender monitors fulfillment/implementation of recommendations and works with respondents that are willing to implement Public Defender's recommendations.
- Low number of applications concerning possible sexual harassment cases is due to low level of awareness.

3. Information requested from the Labor Inspection Office and analysis

Information requested from the Labor Inspection Office

1. *What obstacles do you face when applying the legal norms in practice and how can these obstacles be eliminated?*
2. *What are the trends in obtaining evidence on sexual harassment cases and implementing recommendations after the mandate of your Office was strengthened?*
3. *After enactment of the law, how many applications did you receive about possible sexual harassment and in how many of them was sexual harassment found? (Please, provide sex-disaggregated information about applicants: how many applicants were male and how many were female);*
4. *What measures do you take to proactively identify sexual harassment cases?*
5. *Please, provide information about campaigns organized by your Office for raising awareness about sexual harassment (where did you conduct such campaigns and for which groups?);*
6. *What measures do you implement to improve qualifications of your employees?*
7. *As different mechanisms exist for elimination of sexual harassment, what is the coordination like between these mechanisms?*
8. *Please, provide all decisions/protocols that your Office adopted about sexual harassment complaints or based on monitoring;*
9. *During monitoring/inspection, do you monitor implementation of Article 23.4 of the Labor Code of Georgia and what are the trends in that regard?*

In its letter of June 10, 2021, the Labor Inspection Office informed Parliament that inspections of 7 legal entities under public law and 59 private organizations were inspected and warnings were issued for them as a type of administrative punishment.

LEPL Labor Inspection Office verifies existence and effectiveness of anti-discrimination mechanisms in the workplace. A complaint of two individuals (women) was provided with regards to the mandate of oversight over sexual harassment cases. Inspection is pending in one case, while the other case has been dismissed as the complainant did not provide information.

LEPL Labor Inspection Office organized 30 working/information meetings with 1,900 individuals in the first quarter of 2021, for raising public awareness on sexual harassment issues. The Office is currently preparing a nationwide awareness campaign, including on sexual harassment issues. It has prepared videos that will be disseminated through various communication channels, on television channels and social media operating in the country.

During a meeting on May 28, 2021, the main labor inspector of Georgia spoke about challenges such as absence of anti-discrimination and sexual harassment prevention mechanisms in many organizations.

□ **Identified trends**

→ The Office's duties and responsibilities with regard to combating discrimination became operational beginning from January 1, 2021. The Office did not establish a single sexual harassment case during the period of 6 months, which is indicative of low level of public awareness about labor rights and applicable safeguards.

4. Information requested from MIA and analysis of protocols of violation

Information requested from MIA:

1. *What obstacles do you face when applying the legal norms in practice and how can these obstacles be eliminated?*
2. *What are the trends in obtaining evidence on sexual harassment cases within the new mandate?*
3. *In 2019-2021, how many reports were received each year on possible sexual harassment and in how many of these cases was sexual harassment found? (Please, provide sex-disaggregated information about applicants: how many applicants were male and how many were female);*
4. *What measures do you take to proactively identify sexual harassment cases?*
5. *Please, provide information about campaigns organized by MIA for raising awareness about sexual harassment (where did you conduct such campaigns and for which groups?);*
6. *What measures do you implement to improve qualifications of your employees?*
7. *As different mechanisms exist for elimination of sexual harassment, what is the coordination like between these mechanisms?*
8. *Please, provide all decisions/protocols adopted about complaints for finding sexual harassment in public spaces;*
9. *Please, provide internal documents and reports concerning sexual harassment cases.*

MIA provided the following to Parliament: protocols of offence and court decisions; a report presented by the MIA Human Rights Protection and Investigation Quality Monitoring Department on December 7, 2020, entitled „Sexual harassment in public spaces“; internal instructions on the topic of sexual harassment prepared for MIA employees and statistical information.

According to the 2020 report, 19 facts of sexual harassment were identified in 2019 and 43 in 2020. Among them, 42% amounted to sexual harassment in a physical form. Majority of these cases

happened during the day and in 86% of cases, harasser was a stranger. Only 2 cases involved male victims, in the remaining cases sexual harassment was perpetrated against women.

According to July 17, 2021 letter, reporting rate for sexual harassment cases remains low, and for some cases it is difficult to identify offenders when the victim is sexually harassed by a stranger. In addition, as people wear masks in most public spaces amid the pandemic, it was difficult to identify several individuals.

Regarding proactive identification of cases, the letter states that creating the institute of community officers under the MIA was a step forward. In addition, if a risk of repeat sexual harassment is identified in any public space, police officers are instructed to especially focus on that space.

According to the letter, in August 2020, 175 employees of Metro Police attended a training on legal norms prohibiting sexual harassment. Trainings were organized for 80 patrol-inspectors in different territorial units of Patrol Police Department; nearly 180 employees of different MIA units have attended training on legal norms prohibiting sexual harassment. 40 community officers have also attended such training.

To raise awareness about the topic of sexual harassment, on different occasions MIA representatives participated in informational meetings with students from regions of Ajara, Samegrelo and Samtskhe-Javakheti, as well as with local self-government representatives. Currently MIA is actively working to produce videos on sexual harassment. It is also planning to conduct information campaign on sexual harassment. Within the campaign, MIA will organize meetings and produce information materials to be disseminated by various channels.

On September 13, 2021, USAID/PROLoG organized a meeting with MIA representatives to clarify practical aspects. During the meeting, sexual harassment against minors was discussed. It was noted that courts evaluate themselves if the fact that the victim was a minor was perceivable for the purposes of the Administrative Offences Code. Majority of harassment cases against minors under the age of 16 are qualified under Article 141 of the Criminal Code of Georgia (CCG), however diversity of sexual harassment cases may warrant more specific provisions to distinguish between different areas. In addition, in some cases sexual harassment against 16- or 17-year-old minors may amount to an act punishable under CCG Article 138. However, in order to avoid ambiguity, CCG should be modified in a way that will declare sexual harassment against a minor (everyone under the age of 18) in a physical form as a punishable act.

On September 15, 2021, MIA provided additional information to Parliament about activities that it has implemented. According to the letter, in June-August, MIA in cooperation with Network of Centers for Civic Engagement (NCCE) produced two videos on sexual harassment in public spaces. In one video representatives of MIA and other agencies explain the meaning of sexual harassment in public spaces and what someone who has experienced and/or witnessed sexual harassment should do.¹⁹ Another video is about a story of two victims.²⁰ In partnership with NCCE, information posters

¹⁹ Video is available with Georgian, Armenian and Azerbaijani subtitles, see: <https://fb.watch/81l6ZLM9wo/>

²⁰ See online at: <https://fb.watch/81ldkaqnQ2/>

on sexual harassment were produced.²¹ Awareness raising material was distributed on social media with a hashtag #არგაჩუმდე (don't stay silent).

□ Identified trends

- It is commendable that MIA records detailed statistical information.
- MIA recommendation on analyzing sexual harassment cases is in line with international standards. It is detailed and provides broad definitions that focus on protection of victim's interests. For example, the recommendations define when online space is considered a public space. It is also commendable that in line with the existing regulations, MIA recommendation specifies that a conduct of a sexual nature perpetrated knowingly against a minor under the age of 16 may fall outside the scope of an administrative offence and be qualified under CCG Article 141 (lewd act).
- According to the letter of MIA, reporting rate for sexual harassment cases is low and therefore, the rate of identification of sexual harassment in public spaces is also low.
- Analysis of decisions provided by MIA has revealed certain legal flaws in practice. For example, (1) showing a middle finger was evaluated by MIA as sexual harassment while legal reasoning for this is ambiguous. This position was not upheld by court and instead, it issued a verbal warning.²² (2) Blowing a kiss in presence of a minor on the street was considered sexual harassment by MIA, while court did not uphold this position either.²³
- In two cases a procedural flaw was identified: (1) MIA found that an act amounted to a criminal offence but later investigation was terminated for absence of elements of crime. As the time limit for finding an administrative offence had expired, it was impossible to impose a sanction.²⁴ (2) In a repeat offence case, a sanction was imposed only for the second offence because when the administrative case was handled, the time limit for imposing an administrative sanction had already been expired for the first offence.

5. Information provided by stakeholders and general trends

Information requested from the Coalition for Equality:

1. *What are the obstacles faced by the Coalition when applying the legal norms in practice and how can these obstacles be eliminated?*
2. *Which area has most challenges in eliminating sexual harassment?*
3. *Please provide information about court judgments or equality mechanism decisions that did not find sexual harassment, due to a legal gap or wrong interpretation.*
4. *Please, provide reports concerning issues of sexual harassment in the workplace or in public spaces.*

²¹ See online at: <https://www.facebook.com/ncce.ge/photos/a.498306390376940/1587413061466262/>; <https://www.facebook.com/ncce.ge/photos/a.498306390376940/1589510021256566/>

²² Batumi City Court decision N4/1099-2019

²³ Kutaisi City Court decision N4/705-20

²⁴ Tbilisi City Court decision N4/14455-19

The Coalition for Equality is an alliance of NGOs established in 2014, in the process of adoption of the Law of Georgia on Elimination of All Forms of Discrimination.²⁵ The following organizations are members of the Coalition:

- Open Society Georgia Foundation (OSGF);
- Social Justice Centre;
- Rights Georgia;
- Union Sapari;
- Georgian Young Lawyers' Association (GYLA);
- Women's Initiatives Supporting Group (WISG),
- Partnership for Human Rights (PHR),
- Georgian Democracy Initiative (GDI),
- Tolerance and Diversity Institute (TDI),
- Human Rights Center (HRC)
- Equality Movement.

The Coalition is chaired by Union Sapari. In the letter Sapari director Baia Pataria noted that there are no major flaws in legal norms regulating sexual harassment. The issue of minors however is not adequately regulated. In particular, sexual harassment may take place against a minor between the ages of 16 and 18, while any sexual act with a minor under the age of 16 falls within the field of criminal regulation and amounts to a lewd act. According to the letter, this position is not shared by law enforcement authorities. Therefore, it is recommended to create guidelines and/or amend the legal formulation. In addition, law enforcement authorities in regions mostly issue warnings, including in serious cases of harassment. The letter also notes that equality policy is not implemented in private and public sectors.

During a coordination meeting in Parliament on May 28, 2021, Baia Pataraia noted that many cases of sexual harassment have been identified in the field of healthcare and education. In addition, legal norms prohibiting sexual harassment are not included in the medical ethics curriculum and there are no recommendations at the Ministry level.

During the meeting, deputy chairperson of the Georgian Trade Unions Confederation (GTUC), Raisa Liparteliani raised another problem – respondents file against victims of sexual harassment and their lawyers, alleging defamation. Existing practice creates additional obstacles in combating discrimination and additional meetings are needed with the judicial corps.

Sexual harassment in civil service

Workplace Sexual Harassment in the Civil Service in Georgia is a report prepared by CRRC-Georgia in cooperation with Civil Service Bureau of Georgia within the framework of the UN Women implemented project "Good Governance for Gender Equality in Georgia" supported by the Norwegian Ministry of Foreign Affairs. According to the report, **majority of civil servant surveyed** were able to identify sexually suggestive comments (86%), a joke about sexually explicit topic (90%) and unnecessary physical familiarity (98%) as examples of sexual harassment. In addition, many civil servants perceive sexual harassment **as part of typical working culture. Gender differences in perceptions are considerable**, as majority of women (93%) believe that sexual harassment is a

²⁵ For additional information, please see: <http://equalitycoalition.ge/article/1>

serious social problem, while only 44% of men think the same.²⁶ **One third** of the survey respondents reported having experienced sexual harassment in the civil service. More than one fifth of female respondents experienced more than one form of sexual harassment during the preceding 12 months, compared to 6% of men.²⁷

The report also deals with attitudes toward reporting workplace sexual harassment. 94% of respondents **agree** that civil servants have the right to report workplace sexual harassment. However, in practice **the majority of sexual harassment cases** in the civil service go unreported, which is due to **fear of victimization**. 34% of respondents agreed that those who report sexual harassment risk being looked upon badly by their colleagues, while 24% stated that reporting sexual harassment leads to animosity in the workplace.²⁸ The qualitative interview respondents named the lack of information regarding what can qualify as sexual harassment, the lack of reporting mechanisms, concerns about confidentiality and the lack of trust towards institutions as key obstacles to reporting. An immediate supervisor, the Public Defender's Office and a dedicated reporting mechanism for reporting sexual harassment are perceived to be the **most comfortable ways** to report sexual harassment in the civil service.²⁹ 32% of interviewees said they are not aware of internal anti-sexual harassment mechanisms existing within their organization.³⁰ One third of the interviewed civil servants said that they had attended training on workplace sexual harassment. Training attendance is associated positively with the awareness of reporting mechanisms and less sexist attitudes toward sexual harassment.³¹

²⁶ *Workplace sexual harassment in civil service in Georgia*, UN Women, 2021, p. 19

²⁷ *Ibid*, p. 25

²⁸ *Ibid*, p. 36

²⁹ *Ibid*

³⁰ *Ibid*, p. 43

³¹ *Ibid*

V. Analysis of Legal Framework

PLS analyzed all legal provisions that prohibit sexual harassment and evaluated compliance of these formulations with international standards.

1. Labor Code of Georgia

Article 4.5. Harassment in the workplace (including sexual harassment) is a form of discrimination, in particular, unwanted behavior towards a person on any of the grounds referred to in paragraph 1 of this article, with the purpose or effect of violating the dignity of the person concerned, and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her.

Para. 5 provides definition of harassment but it refers to sexual harassment in brackets, while para. 6 provides definition of sexual harassment. These two notions are different forms of discrimination with different prerequisites. Referring to sexual harassment in para.5 is therefore confusing. **In addition, formulation of para.5 is misleading, as it refers to sexual harassment in brackets and prerequisites specified in this paragraph do not match the prerequisites of sexual harassment.** In particular, the legal norm identifies sexual harassment with harassment and associates it with elements of discrimination. It therefore considers that there is sexual harassment when conduct is related to a protected characteristic specified in the law or other characteristic. According to this definition, burden of proof falls on the possible victim and s/he has to prove that sexual harassment was related to any of the protected characteristics. Such definition and prerequisites are not in line with international standards that do associate sexual harassment to any of the protected characteristics.

Article 40 of the Istanbul Convention provides a definition³² of sexual harassment and requires Parties to adopt appropriate legal sanctions. According to this definition, conduct motivated by a protected characteristic is not a prerequisite for finding of sexual harassment.

EU Directive **2002/73/EC** provides definition of sexual harassment and deems it as discrimination on the grounds of sex, however according to the Directive such grounds are not a prerequisite.³³ Similar definition of sexual harassment is contained by **Directives 2004/113/ EC and 2006/54/EC Recast**. In particular, these directives note that sexual harassment is a type of sex-based discrimination, however such basis is not a legal prerequisite or an element of definition:

³² *Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.* See online at: <https://rm.coe.int/168046031c>

³³ *sexual harassment: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.* See online at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32002L0073>

*„Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment“.*³⁴

Sexual harassment can be intersectional, meaning that if a person has any of the protected characteristics, s/he is facing a higher risk of sexual harassment.³⁵ However, a person without any of the protected characteristics may also become a victim of sexual harassment or sexual harassment may not be motivated by a protected characteristic. Therefore, stipulation that sexual harassment should be based on any of the grounds is not in line with international standards.

Article 4.6. Sexual harassment shall be conduct of a sexual nature towards a person, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her.
Note: For the purposes of this Law, conduct of a sexual nature includes uttering and/or addressing a person with phrases of a sexual nature, displaying genitals, and/or any other non-verbal physical conduct of a sexual nature.

According to the Explanatory Report to the Istanbul Convention, sexual harassment can manifest in different forms and the list of examples/cases is not exhaustive.³⁶ The purpose of the note provided in the national legislation is ambiguous. It only provides a single example, which is confusing. On the other hand, according to this note, there are three forms of sexual harassment. Therefore, this sentence should be modified and incorporated in the definition of sexual harassment.

2. Administrative Offences Code

Article 166¹.1. 1. Sexual harassment – unwanted conduct of a sexual nature in public spaces toward another person, with the purpose or effect of violating their dignity and creating intimidating, hostile, humiliating, degrading or abusive environment, -
Note: For the purposes of this Code, a conduct of a sexual nature includes uttering and/or addressing a person with phrases of a sexual nature, displaying genitals, and/or any other non-verbal physical conduct of a sexual nature.

³⁴ Akhvlediani M., *Practical Guidelines on Sexual Harassment*, Public Defender of Georgia, 2020, p. 8, see online at:

<https://ombudsman.ge/res/docs/2021031110082436854.pdf>

³⁵ Ibid, p. 34

³⁶ CoE, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, §208: *Verbal conduct refers to words or sounds expressed or communicated by the perpetrator, such as jokes, questions, remarks, and may be expressed orally or in writing. Non-verbal conduct, on the other hand, covers any expressions or communication on the part of the perpetrator that do not involve words or sounds, for example facial expressions, hand movements or symbols. Physical conduct refers to any sexual behavior of the perpetrator and may include situations involving contact with the body of the victim.*

The Administrative Offences Code mirrors the structure and the formulation of Article 4.6 of the Labor Code. Similar amendments should therefore be introduced in AOC Article 166¹ also.

□ **Definition of public space**

AOC Article 166¹ prohibits sexual harassment in public spaces. However, national legislation does not provide any definition of a public space, which creates certain ambiguity in practice. This was confirmed by a representative of MIA during a meeting on May 28, 2021, noting that legislation should provide definition of a public space.

□ **Size of fines for sexual harassment in public spaces**

During a meeting on May 28, 2021, representative of common courts discussed legal gaps, including small administrative sanctions and the fact that a range is not defined to allow judges to impose a penalty by taking into account aggravating factors.

Analysis of court judgments clearly shows that some cases of sexual harassment are serious, due to the form of sexual harassment committed. Against this background, 300 GEL prescribed by law is a disproportionate sanction. Judges are limited in evaluation of aggravating factors and they may not increase the amount of fine as the law provides an exhaustive list of such factors. This fails to respond to actual challenges. For example, a fine of 300 GEL was imposed for the following incidents:

- Ambushing in an underground passage at night, two times in a row, and touching the victim's backside;³⁷
- Offering sexual relations in the subway, physical touching and following;³⁸
- A cab driver offering sex, sending a text message to the victim's phone the following day, calling and contacting the victim on social media;³⁹
- Offering a sexual intercourse, touching the victim's backside and chest.⁴⁰

In view of different factors, the foregoing cases are severe and the behavior is traumatizing for the victim. Legislator provides for a uniform approach for all actions, as opposed to an individualized one (if aggravating factors exist) and it prescribes a fine of 300 GEL.⁴¹

3. Sexual harassment against a minor

Under the existing regulations, sexual harassment against a minor in a public space amounts to an administrative offence punishable with a higher fine (500-800 GEL).

³⁷ Tbilisi City Court decision N4/2530-20

³⁸ Tbilisi City Court decision N4/579-20

³⁹ Tbilisi City Court decision N4/338-21

⁴⁰ Tbilisi City Court decision N4/152-21

⁴¹ Tbilisi City Court decision N4/987-21

According to the internal document of MIA, conduct of a sexual nature committed knowingly against a person under the age of 16 may fall outside the scope of administrative offence and be qualified under CCG Article 141 (lewd act).

Based on the foregoing regulations it is clear that:

- (i) Sexual harassment against a minor aged 16-18 amounts to an administrative offence, punishable with a fine of 500-800 GEL. It is not an act prohibited by the Criminal Code.
- (ii) Sexual harassment against a minor under the age of 16 **may be** qualified under CCG Article 141. However, according to the formulation in MIA internal document, not all actions amount to a conduct prohibited by CCG. The code in turn does not provide *definition of a lewd act*. This creates additional ambiguity with regards to qualification of sexual harassment against minors.

Decisions analyzed within PLS and severity of facts described here in make it clear that administrative sanction is not a proportionate form of punishment for sexual harassment against a minor.

Similar conclusion can be drawn based on the comparative legal analysis by LEPL Parliamentary Research Center.⁴² In particular, in some countries criminal code prohibits sexual harassment against a minor, e.g., indecent exposure to a minor is a criminally punishable offence in Slovenia.

⁴² LEPL Parliamentary Research Center submitted an inquiry to ECPRD (The European Centre for Parliamentary Research and Documentation) in order to obtain comprehensive information. The document outlines practice in the following countries: Austria, Estonia, England, Israel, Canada, Latvia, Lithuania, Luxemburg, Norway, Poland, Portugal, France, Slovakia, Slovenia, Hungary, Finland, Switzerland, Czech Republic, Northern Macedonia and Croatia.

VI. Recommendations

PLS analyzed positions and decisions provided by executive authorities. This document fully reflects the trends identified based on the information provided by each entity. PLS identified certain factors that obstruct effective implementation of the legal norms in question.

Pursuant to Article 38(1) of the Rules of Procedure of the Parliament of Georgia, in such cases a parliamentary committee may take the following measures to ensure implementation of legal norms:

- para.3(a) of Article 38 – findings of Parliament about implementation of the normative act in question;
- para.3(b) of Article 38 – tasking relevant parliamentary committee with preparing appropriate amendments;
- para.4 of Article 42 – preparing committee recommendations that may be submitted to Parliament or sent to another entity with relevant jurisdiction for further actions.

The section below briefly outlines recommendations that are based on main findings provided in previous chapters. The recommendations are provided in two parts: (1) first part puts forward proposals for improving implementation of legal norms; (2) the second part proposes changes in the legal norms.

1. Committee recommendations on effectiveness of implementation of legal norms

1.1. Recommendations for the Parliament of Georgia

1. Lack of anti-discrimination and sexual harassment prevention mechanisms in organizations was identified as a major challenge by PLS. The role of GEC is important. It should monitor fulfillment of the legal requirement about implementation of internal mechanisms for gender equality by private and public institutions.
2. GEC should hold periodic coordination meetings with executive authorities and stakeholders, with the aim of identifying the existing challenges and creating a shared strategy for combating these challenges.
3. GEC is authorized to monitor campaigns conducted by executive authorities for raising awareness about sexual harassment.

1.2. Recommendations for common courts

1. According to the letter of the Supreme Court, data on judgments about possible sexual harassment are not recorded at any court level. To respond to requests for public information, the judiciary relies on statistical information, while data on judgments about this topic are unavailable. The judiciary is therefore unable to fulfill the requirements imposed by law for providing access to public information, which in turn obstructs Parliament in implementing PLS. Courts should therefore maintain data on judgments about sexual harassment complaints and provide access to all judgments upon request.

2. PLS analyzed decisions that are flawed and run against the common practice (see Chapter IV of the present report). This should be analyzed through working meetings and become a subject of internal discussions within the judicial corps.
3. Courts should describe in their judgments which conduct in particular amounted to sexual harassment and provide its legal evaluation. Regulations prohibiting sexual harassment are relatively new and court's reasoning and interpretation is therefore especially important for development of law.
4. In absence of sufficient legal regulations, careful handling of sexual harassment cases against minors is important. For example, courts should address if minor's age was perceivable. In addition, minimum fines should not be imposed for unwanted physical touching.
5. The judiciary should discuss internally which standards should be used to handle defamation complaints filed against expression by a possible victim of sexual harassment.
6. Delivery of trainings for judges and judicial assistants on peculiarities of handling discrimination disputes is commendable. However, it should be ensured that all judges and assistants attend such training gradually.

1.3. Recommendations for the Public Defender

1. As there are several entities responsible for implementation of the legal norms, the role of the Public Defender reinforced by the Constitution becomes especially important. PDO function to oversee protection of human rights also entails active supervision of fulfillment of duties by other executive authorities.
2. Reporting rate is low for possible sexual harassment cases, due to a low level of awareness. Therefore, more measures need to be taken for proactive identification of such cases. It is recommended to analyze the area with the highest number of sexual harassment cases. Findings of such analysis should inform a comprehensive approach for elimination of sexual harassment cases.
3. Problematic areas identified by PDO should be constantly monitored. To eliminate problems, training should be delivered for representatives of the areas identified and PDO should help relevant supervising bodies in preparing corresponding guidelines.

1.4. Recommendations for MIA

1. Analysis of decisions provided by MIA has clearly revealed shortcomings in legal proceedings (see Chapter IV of the present report). Facts addressed by PLS should be analyzed by MIA in order to avoid such cases in the future.
2. MIA should submit adequate evidence to courts and provide legal arguments as to why a disputed conduct amounts to sexual harassment. Not only a statement of MIA representative but also, recordings of body cam will be important for court, as it will reveal psycho-emotional state of the victim and the environment where s/he experienced sexual harassment.
3. It is recommended to conduct trainings for MIA officers, including about controversial issues identified by PLS. Delivering trainings will require significant human resources. As an alternative, online training module can be designed and completing the module should be mandatory for all employees.

4. MIA should continue campaigns for raising awareness, especially focusing on individuals that often witness such facts (e.g. metro or bus employees).

1.5. Recommendations for Labor Inspection Office

1. Rate of reporting sexual harassment cases to Labor Inspection Office is low, which means that such cases should be proactively identified. One of the most effective ways to do it is active meetings and trainings with private and public sector. During these meetings, organization representatives should be provided with information about new functions of the Labor Inspection Office and its stronger mandate for elimination of discrimination.
2. Labor Inspection Office should continue to actively control and examine implementation of internal equality mechanisms in private and public institutions.

In conclusion, it should be noted that all executive authorities have highlighted low level of awareness and low reporting rate. Identification of sexual harassment by victims and their low awareness about available remedies is problematic. Therefore, public awareness campaigns are needed on a bigger scale. Executive authorities should plan individual and joint campaigns and these campaigns should be equally active in Tbilisi and in regions.

2. Recommended changes to legislation

1. Article 4 of the Labor Code of Georgia should be amended:
 - The words „including sexual harassment“ should be removed from para.5;
 - Note in Article 4 should be removed. Its contents should be incorporated in Article 4.6 and it should be formulated the following way: *„Sexual harassment shall be any unwanted verbal, non-verbal or physical conduct of a sexual nature towards a person, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her“*
2. MIA is maintaining a database and recording information about perpetrators of sexual harassment, as sanctions are more severe for repeat offenders. Conviction data is therefore already processed. Employers should be provided with a legal leverage in pre-contractual labor relations to demand that candidates provide a certificate of conviction under Article 166¹, depending on specific job characteristics.
3. Administrative Offences Code of Georgia should be amended to remove the note. Its contents should instead be incorporated in Article 166¹ and it should be formulated the following way: *„Sexual harassment - any unwanted verbal, non-verbal or physical conduct of a sexual nature towards a person in public spaces, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her“.*
4. Law should provide a definition of a public space. PRC document that provides an exhaustive list of countries with definitions of public space can be used as a source for such changes. Additionally, an interesting definition has been developed by Kutaisi Appellate Court: *any space*

*where a person has the right to be or the possibility to obtain such right shall be considered a public space.*⁴³

5. Administrative fines should be increased and a range of fines should be available, in order for judges to be able to determine the fine according to gravity of conduct.
6. Sexual harassment against a minor (under the age of 18) should be punishable under CCG, especially if it involves a severe sexual misconduct, e.g., physical touching, masturbation, indecent exposure, etc.
7. Policy for combating sexual harassment should be revised and the need to impose criminal penalties on severe cases should be considered. Information provided in this report makes it clear that severe cases of sexual harassment are identified in practice, e.g., public nudity; public masturbation; unwanted touching of another person's intimate areas; drugging the victim and masturbating in the victim's presence. It should also be noted that according to the PRC comparative research, in a number of countries in Europe such cases are criminally punishable.

⁴³ Decision N4/a-39-2021