

## **Appeal of Non-governmental Organizations and Religious Groups to the Government of Georgia about the Draft Law on the Elimination of all Forms of Discrimination**

We, the undersigned organizations, acknowledge the great importance of adopting the anti-discrimination law to establish a high standard of human rights and democracy in Georgia. We would like to commend the Government for its efforts in this direction, and at the same time, stress that the adoption of the anti-discrimination law is a European Union requirement under the Visa Liberalization Action Plan, in order to cancel the requirement of short-term visas for Georgian citizens. However, we believe that a number of amendments should be made to the Draft in order to make it more efficient and to give citizens the opportunity to enjoy their rights on an equal basis regardless of their race, skin color, language, sex, age, national origin, place of birth, place of residence, property, social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinion or other status.

The mechanisms that permit fining individuals and public agencies that commit a discriminatory act should be included in the law. Otherwise, the process of combating discrimination in Georgia will be inefficient and the existing inequality faced by vulnerable groups will not change substantially. The Public Defender of Georgia<sup>1</sup> and the Parliamentary Committee for Human Rights and Civil Integration also highlight the need to amend the law.

The major actors and institutions working on human right issues all assert the need for implementation of effective mechanisms against discrimination, including religious associations and community organizations. In case of its ignorance, the confidence in the Government's ability and readiness to combat the discrimination in the country will be undermined.

We consider that government officials' major arguments regarding the inexpediency of using the fining mechanisms are unsubstantiated, for the following reasons:

- Despite the fact that there are different European models of institutions established for the protection of equality, international human rights standards require the existence of effective internal legal remedies for discrimination. This will provide real opportunities for the victims of discrimination to ensure accountability for rights violations. Legal remedies should include both punitive and preventive measures, as well as restitution (civil) mechanisms. In the current draft of the legislation, the major punitive mechanism for acts of discrimination is the Criminal Code. However, all possible forms of discrimination do not constitute a criminal act, and discriminatory actions do not often reach the sufficient level of severity to constitute violence or deprivation of rights under the Criminal Code. As a result, the majority of discrimination cases will remain without any legal response. Due to the lack of appropriate legal

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<sup>1</sup> See the statement of Public Defender, available at: <http://ombudsman.ge/ge/page/Sexvedra-antidiskriminaciul-kanonproeqTan-dakavSirebiT>

mechanisms, consideration of the possibility of an adequate response on discrimination cases through low sanctions is required for their elimination;

- Compensation mechanisms for damages under civil law cannot be considered an appropriate alternative to the fining mechanism, as these two mechanisms are different in their nature and purpose. Compensation enables the individual to restore the right that has been violated, while the fining mechanism has a preventive purpose, to deter the offender and other persons. Based on existing legal regulations and court practice, the possibility of receiving compensation is not an alternative to the fining mechanism, as the compensation for moral damages under civil law is clearly ineffective legal protection;

Imposing fines on the individuals that have committed a discriminatory act through the court and on the basis of the protocol prescribed by the Public Defender, will not pose a threat to the legitimacy of the Public Defender and will not contravene its constitutional nature. 1. The Public Defender will use the fining mechanism only as an extreme measure for responding to a violation, and only after a reasonable time period of mediation and recommendation is exhausted. In this process, individuals committing discriminatory acts will have an opportunity to properly consider the implications of the non-discrimination law and implement individual and general measures in order to remedy them. The Public Defender has a supporting role in this process; 2. The Georgian Code of Administrative Offences envisages practice of sending appeals to courts for consideration in case Public Defender's legitimate recommendations are disregarded.

- 3. Individuals that are accused of committing a discriminatory act will have the opportunity to protect their rights and interests in court, under the conditions of a fair trial;
- Enactment of the law and effective planning of information policy regarding its requirements and scale, including the fining mechanism used by the Public Defender as an extreme measure, will solve the problem of the lack of knowledge of public officials and individuals about the non-discrimination requirements and standards.

Based on the above mentioned, we, the undersigned organizations call upon the Government and the Parliament of Georgia to consider the requirements of the Public Defender, civil society and religious organizations regarding the mechanisms against discrimination and to show their readiness for creating an equal environment in Georgia through actions rather than just words.

Conclusions on other shortcomings of the draft law that have been prepared individually by the signatory organizations will be submitted to the Government and the Parliament of Georgia.

