

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## **GYLA Considers the Draft Anti-Discrimination Law Initiated in the Parliament to be Ineffective**

Under Article 14 of the Constitution of Georgia, Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.” In order to ensure enforcement of the most important principle of equality guaranteed by the Constitution, effective legislation for combating discrimination must be created.

On April 2, 2014, draft [law on Elimination of All Forms of Discrimination](#) was initiated in the parliament by the Government of Georgia, drafted by the Chancellery of the Government of Georgia. The document is considerably different from the draft elaborated by the Ministry of Justice of Georgia several months ago, with an active involvement of NGOs, representatives of ethnic, religious and other groups. The draft proposed to the parliament no longer envisages setting up of a special institute for elimination of discrimination – inspector for the protection of equality. Instead, provision of equality will be supervised by the Public Defender of Georgia, who in its turn has not been delegated with effective means for combating discrimination by the draft.

GYLA is particularly concerned by the fact that the draft law no longer includes the norm that provided for an opportunity to impose a fine on natural and legal entity, state and local self-government agency practicing discrimination. The mechanism had been approved by almost all representatives of civil society participating in the process.

The explanatory note justifies the draft law by ineffectiveness of anti-discriminatory legislation. According to the draft law tabled by the government, Public Defender addresses relevant agency or private person with a recommendation for restoring rights of victim of discriminatory practice. Notably, under the existing law Public Defender has similar authorities for protecting a victim of discrimination and therefore, the proposed draft duplicates at a large extent the mechanisms that are already in place, and which have already been deemed ineffective in the explanatory note.

It raises a question of what will happen if an agency or a private person concerned ignores recommendation of the Public Defender. Under the draft proposed by the Government, the Public Defender is authorized to apply to an administrative agency practicing a discrimination (and not a private person) under the Administrative Procedure Code. The legislative package does not include the draft law on Amendments and Supplements to the Administrative Procedure Code that would have reflected the particular nature of reviewing the Public Defender's claim in court. Therefore, it is highly likely that the authority that the Public Defender has been delegated with for eliminating discrimination by filing in court will remain to be an ineffective mechanism.

The legislative package submitted to the parliament also includes draft law on the Amendment to the Civil Procedure Code, delegating victim of discrimination with the right to file in court seeking termination of the discriminatory practice and/or its elimination, also to file a claim for compensating moral and/or material damage.

Discriminatory practice often does not result in some material damage. As to moral damage, it is difficult to prove in practice. Therefore, a person practicing discrimination will be able to evade pecuniary sanctions in most of the cases. Clearly, imposing a fine for practicing discrimination is not the end in itself; rather, fine is not only an effective way of forcing an person concerned to stop the practice but also to prevent any future practice of discrimination. Without putting in place an effective mechanism for imposition of pecuniary fine and/or liability, it will be virtually impossible to improve effectiveness of anti-discrimination legislation.

We urge the parliament of Georgia to insert back into the draft law the norm that made it possible to impose a fine for discriminatory practice. Further, for implementing the anti-discriminatory measure a special body must be set up, while if the Public Defender is the institute supervising practice of the principle of equality, its office will need additional financial and human resources. In this light, the statement in the explanatory note that allocation of additional resources will not be needed is peculiar. If the draft law broadens powers of the Public Defender, it should be at least coupled by increasing the number of staff in the office of Public Defender that will specialize in anti-discrimination issues. Hiring additional public servants will require making of additional expenditures from the budget.

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There are other significant gaps in the proposed law. GYLA plans to submit its detailed legal opinion on the draft to the parliament in upcoming days.