

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The Address of the NGOs and the Religious Organizations to the Government on the Draft Law on Elimination of All Forms of Discrimination

We, the undersigned organizations, recognize the importance of the enactment of the Anti-Discrimination Legislation for the introduction of high standards of the human rights and the democracy. We welcome the efforts of the Government of Georgia in

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this regard and at the same time, we would like to note, that the enactment of the Anti-Discrimination Legislation package is prescribed under the Visa Liberalization Action Plan and is one of the EU requests to revoke the short-term visas for the citizens of Georgia. However, we consider that it is important to introduce a number of corrections to the draft law to make it more effective and to ensure that each individual is able to exercise their rights, provided under the legislation of Georgia, effectively and in equality, despite their race, skin color, language, sex, age, citizenship, origin, birth, residence, property or title, religion or beliefs, national, ethnic or social affiliation, profession, family status, health condition, disability, sexual orientation, gender identity and expression, political or other views or any other feature.

It is especially important for the law to include the mechanisms of the court imposing a fine on the public institutions and private entities for discriminating. Without such mechanisms the process of combating the discrimination will not be effective and the unequal environment for the discriminated groups will not change significantly. The Ombudsman of Georgia and the parliamentary Committee of the Human Rights' Protection and Civil Integration also indicate the necessity of introducing those amendments to the law.

Enactment of the effective mechanisms for combating the discrimination is the joint request of the major institutions and individuals working on the human rights; among them, of the religious unions and the community organizations. Therefore, neglecting this request by the Government and the Parliament weakens the trust towards their readiness to combat the discrimination.

We consider that the main arguments, relating to the impropriety of the fining mechanisms, brought forward by the Government representatives, are ungrounded, because:

-Despite the differences in the European models of the scope of authority of the institutions, created for the protection of the equality, the international standards for the human rights protection require introduction of the effective legislative tools of the protection within a state. This will provide the victims of the discrimination with the tangible possibility to restore their violated rights. The legal means should simultaneously include both repressive and preventive, as well as the restitutive

(civil) mechanisms. The basic repressive mechanism provided under incumbent legislation is the Criminal Code. However, since the intensity of the discrimination-based violence or the violation of the right very often are not expressed with the level of intensity, enough to fall under the Criminal Code provisions, not all of the potential forms of discrimination are considered to be violation under the incumbent legislation. As a result, the majority of the facts of the discrimination remain without any legal response. Inexistence of the proper legal mechanisms makes it important to introduce small amounts of fines to the Code of the Administrative Violations against the cases of discrimination, to ensure proper response for the elimination of those cases;

-The means of damage restitution/compensation under the civil law legislation may not be considered as an alternative to imposing the fines, because the nature of those two mechanisms and their purposes are different. The compensation allows an individual to restore the violated right, while imposing the fine serves the preventive purposes against such violations. The incumbent legislative regulations and the court practice show that the possibility of receiving a compensation is especially unable to balance the inexistence of the mechanism of imposing the fine, because the reimbursement of the moral damage is clearly an shown to be ineffective mechanism for the legal protection;

-The court fining the violator (person discriminating against another person) based on the protocol of the administrative violation, drawn up by the Ombudsman, does not pose a threat to the legitimacy of the Ombudsman and does not contradict Ombudsman's constitutional nature, because: 1. The Ombudsman would apply the financial sanction as means of response in cases of the extreme necessity, when the resource of mediation and implementation of the recommendation within the prescribed time-limits is exhausted. During this process, violators will be given a possibility to properly re-think the legal request on the prohibition of the discrimination and based on those requests, to conduct general and individual activities for elimination of the discrimination; the Ombudsman has an assisting role in this process; 2. The incumbent Code of the Administrative Violations already provides the possibility for the Ombudsman to address the court if the Ombudsman's legal requests are not met; 3. Alleged violators will be given a possibility to protect their rights and interests at the court, in the environment of the fair court trial;

-The effectively planned awareness campaign, aimed at informing public servants and

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the natural persons/private entities of the enactment of the law, its requests and scopes, the prohibition of the discrimination and the existence of the standards, as well as the principle of application of the financial sanctions by the Ombudsman, as means of extreme necessity, will avoid any problems relating to the lack of awareness of the public servants or private persons.

Considering the above, we, the undersigned organizations once again call upon the Government and the Parliament of Georgia to consider the requests of the Ombudsman, the civil society and the religious organizations on the mechanisms for combating the discrimination and to show with their actions their readiness to create the environment of equality and solidarity in the country.

The separately elaborated conclusions of the undersigned organizations, relating to the other shortcomings in the draft law will be additionally sent to the Government and the Parliament of Georgia.