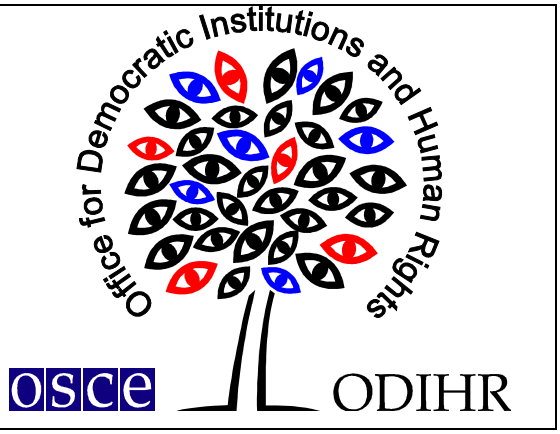
Warsaw, 18 October 2013 Opinion-Nr.: NDISCR-GEO/238/2013 [AlC] www.legislationline.org	

OPINION

ON THE DRAFT LAW ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION OF GEORGIA

based on an English translation of the draft law

provided by the Ministry of Justice of Georgia

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Annex 1: Draft Law of Georgia on the Elimination of All Forms of Discrimination

I. INTRODUCTION

1. *On 17 September 2013, the First Deputy Minister of Justice of Georgia sent an official letter to the OSCE/ODIHR asking for a legal opinion on the draft Law of Georgia on the Elimination of All Forms of Discrimination.*

2. *On 23 September 2013, the ODIHR Director responded to the First Deputy Minister of Justice of Georgia, confirming ODIHR's readiness to prepare a legal review of the draft law's compliance with OSCE commitments and international anti-discrimination standards.*

3. *This Opinion was prepared in response to the First Deputy Minister of Justice's letter of 17 September 2013.*

II. SCOPE OF REVIEW

4. The scope of this Opinion covers only the draft Law of Georgia on the Elimination of All Forms of Discrimination (hereinafter "the Draft Law"), submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional anti-discrimination framework in Georgia.

5. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international anti-discrimination standards, as found in the international agreements and commitments ratified and entered into by Georgia.

6. This Opinion is based on the English translation of the Draft Law provided by the Ministry of Justice of Georgia, which is attached to this document as Annex 1. Errors from translation may nevertheless result.

7. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to legislation and policy combating discrimination in Georgia, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

8. At the outset, OSCE/ODIHR welcomes Georgia's efforts to ensure an open and transparent law-making process by organizing several public consultations during the development of the proposed legislation. The Draft Law constitutes a genuine attempt to address all forms of discrimination in a very comprehensive manner, covering both private and public spheres. The authors of the Draft Law are to be commended for the detailed provisions aiming to guarantee the independence of the equality body, to be established by the Draft Law, as well as for devising a very well-articulated complaints-handling procedure.

9. At the same time, the Draft Law could benefit from certain revisions, to enhance its effectiveness, as well as some additions, e.g. by introducing derogatory preferential regimes such as temporary special measures/affirmative action measures. In order to

ensure the full compliance of the Draft Law with international standards, the OSCE/ODIHR thus recommends as follows:

1. Key Recommendations

A. to ensure coherence of the terminology used in the Draft Law and the Law on Gender Equality; [pars 30, 33-36, 39 and 48]

B. to consider introducing derogatory preferential regimes such as "affirmative action" or "temporary special measures" in the Draft Law; [par 42]

C. to re-define more clearly the cases and conditions where certain situations trigger automatic "pre-term termination" of the Inspector's office in Article 10 par 1 (c) and (e); [par 58]

D. to incorporate in the Draft Law a provision on the methods for selection and appointment of the Inspector's Deputies which should be open and consultative; [par 60]

E. to broaden the personal, material and temporal scope of functional immunity for the Inspector, his/her Deputies and his/her staff in Article 11 of the Draft Law; [pars 61-63]

F. if not already the case, to criminalize serious cases of discrimination (such as serious forms of sexual harassment, racist discourse, dissemination of ideas based on racial superiority and expressions of racial hatred, and incitement to racial discrimination) and include in Article 15 par 8 of the Draft Law cross-references to the respective provisions of the Criminal Code; [pars 37, 40 and 76]

2. Additional Recommendations

G. to clarify the relationships between the Draft Law and other laws containing anti-discrimination provisions and specify how the different bodies established in different pieces of legislation will inter-act; [pars 16-17, 30, 33-36 and 48]

H. to amend Article 2 of the Draft Law as follows:

1) clarify and simplify the definitions of "direct discrimination" and "indirect discrimination" in pars 2 and 3; [pars 24-28]
2) amend par 5 to specify that it is referring to "harassment", explicitly refer to the protected grounds listed in Article 1, and define the term "oppression"; [pars 31-32]
3) supplement par 6 by stating "unless such action serves a legitimate purpose and the means used to achieve this purpose are necessary and proportionate"; [par 39]
4) to include in the definition of discrimination under this provision the protection from discrimination based on assumed grounds and based on affiliation with a certain identifiable group; [par 41]

I. to consider amending the Law on Gender Equality as follows:

1) make a cross-reference to the definition of "harassment" as contained in the Law on the Elimination of All Forms of Discrimination as well as clarify that situations of "harassment on the basis of sex" are not limited to labour

relations but apply to all areas contemplated in Article 3 of the Draft Law; [pars 33-35]

2) specify that "sexual harassment" occurs not only in the context of labour relations but also in other areas; or if the drafters chose to include "sexual harassment" as constituting a form of discrimination in the Draft Law, make a cross-reference to the definition of "sexual harassment" as contained in the Law on the Elimination of All Forms of Discrimination; [par 36]

J. to amend Article 3 of the Draft Law as follows:

1) clarify that "labour relations" include access to employment (recruitment process), self-employment and occupation, vocational training, employment conditions including dismissals and pay, as well as membership/involvement in workers associations or professional bodies; [par 44]

2) supplement pars f) and g) related to the areas of elections and political activities by adding a mention such as "except as otherwise provided by the Election Code of Georgia" and/or other relevant legislation as appropriate; [pars 21-22 and 45]

K. to consider supplementing Article 5 of the Draft Law as follows:

1) expressly state that the Inspector co-operates with other bodies according to modalities that remain to be determined; [par 48]

2) include other key functions for the Inspector, such as more support to strengthening the international anti-discrimination legal framework, as well as education, training, public outreach and advocacy activities, and closer cooperation with civil society; [pars 49 and 51]

3) add in par 3 the possibility for the Inspector to be received without delay by officials of the public authorities or representatives from the legal persons; [par 50]

L. to supplement and clarify Article 7 of the Draft Law on the appointment of the Inspector as follows:

1) include a provision which requires informing the public about the initiation of the appointment process sufficiently ahead of time; [par 52]

2) clarify that par 3 refers to the majority of the total number of the members of the Parliament or consider introducing a qualified majority if feasible according to the Constitution of Georgia; [par 53]

3) expressly state in par 5 when the procedure for nominating a new Inspector should begin and that if there is any interim period, the Inspector's duties shall be carried out by the Deputy Inspector; [pars 54-55]

M. to consider amending Article 10 par 3 of the Draft Law by requiring a qualified majority of the members of the Parliament to take the decision of "pre-term termination" of the Inspector's office, if permitted by the Constitution of Georgia, and supplement Article 10 of the Draft Law to include a public procedure and provide that the Inspector is heard in public prior to the vote; [par 59]

N. to clarify that Article 11 par 2 of the Draft Law refers to the majority of the total number of the members of the Parliament; [par 64]

O. to amend Articles 13 and 18 of the Draft Law as follows:

1) supplement Article 13 par 1 of the Draft Law to include the possibility to receive complaints from any person on behalf of the alleged victim(s), where prior and written consent is given; [par 68]
2) clarify in Articles 13 par 1 and 18 of the Draft Law that "legal persons" can seek protection from the Inspector as well as submit applications to the court; [par 69]
3) make it clear that complaints can be brought against both individuals and legal persons, from both the public and private sectors in Article 13 of the Draft Law; [par 70]

P. to specify in Article 14 of the Draft Law that unless otherwise provided by the Draft Law, the procedural rules laid down in the Code of Administrative Offences of Georgia shall apply before the Inspector; [par 72]

Q. to clarify Article 15 of the Draft Law as follows:

1) expressly state that sanctions and other measures imposed by the Inspector also apply to private legal entities and individual civil servants; [par 74]
2) further break down the sanctions and specify which types of violations would lead to which level of fine; [par 75]

R. to clarify the meaning of victimization in Article 21 of the Draft Law by referring to "adverse treatment or adverse consequences" and extend the personal scope of the protection against victimization; [pars 80 and 81]

S. to specify that the limitation relating to "public order" in Article 22 of the Draft Law should be prescribed by law and necessary and proportionate to protect the public order; [par 82]

T. to clarify in Article 23 of the Draft Law the scope of the duty to "accommodate", particularly that it does not apply where such measures impose a disproportionate or undue burden on the employer or other stakeholders, and that it applies in the private sphere by referring to "any person, organization or private enterprise"; [pars 83-85]

U. to consider supplementing the Draft Law as follows:

1) incorporate an alternative dispute resolution mechanism as one additional available procedure; [par 71]
2) introduce other procedural provisions which are tailored to discrimination claims, such as allowing complainants to adduce statistical evidence before both the Inspector and the courts to prove that discrimination has occurred; [par 73]
3) add provisions in the Draft Law specifying how the powers of the Inspector to act *proprio motu*, will be implemented in practice; [par 77]
4) introduce the possibility for the Inspector to initiate court proceedings; [par 77]
5) to elaborate further the types of measures that can be taken by the court; [pars 78 and 79] and

V. to provide sufficient funding to ensure that the Inspector for Equality Protection will have the human, financial, material and technical capacity to properly exercise his/her functions as an anti-discrimination and equality body. [pars 18 and 47]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Anti-Discrimination Standards

10. This Opinion analyses the Draft Law from the viewpoint of its compatibility with relevant international anti-discrimination standards and OSCE commitments. Key general international human rights instruments applicable in Georgia contain anti-discrimination clauses, namely Article 26 of the UN International Covenant on Civil and Political Rights[1] (hereinafter "ICCPR"), Article 2 of the UN International Covenant on Economic Social and Cultural Rights[2] (hereinafter "the ICESCR") and the European Convention on Human Rights[3] (hereinafter "ECHR") in its Article 14 and Protocol No. 12.[4]

11. At the same time, Georgia has ratified numerous specific international anti-discrimination instruments, among others the UN Convention on the Elimination of All Forms of Racial Discrimination[5] (hereinafter "CERD") and the UN Convention on All Forms of Discrimination against Women[6] (hereinafter "CEDAW"). While Georgia has already signed the UN Convention on the Rights of Persons with Disabilities[7] (hereinafter "CRPD") and its Protocol, it has not yet ratified it.

12. At the Council of Europe level, Georgia also ratified the Framework Convention for the Protection of National Minorities.[8]

13. Of the various OSCE commitments focusing on equal treatment, the Vienna Document is among the most specific. It stresses that all OSCE participating States shall commit to ensuring human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind, including by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[9]

14. Given that the Draft Law aims to establish an equality body mandated to deal with all forms of discrimination and to ensure its independence, the ensuing recommendations

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1 United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. Georgia acceded to this Covenant on 3 May 1994.

2 United Nations International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. Georgia acceded to this Covenant on 3 May 1994.

3 Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. Georgia ratified this Convention on 20 May 1999.

4 Georgia ratified the Protocol No. 12 to the ECHR on 15 June 2001, which entered into force on 1 April 2005.

5 United Nations Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) on 21 December 1965. Georgia acceded to this Convention on 2 June 1999.

6 United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to this Convention on 26 October 1994.

7 United Nations Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution 61/106 on 13 December 2006. Georgia signed this Convention and its Protocol on 10 July 2009.

8 Council of Europe's Framework Convention for the Protection of National Minorities ratified by Georgia on 22 December 2005 and entered into force in Georgia on 1 April 2006.

9 OSCE Concluding Document of Vienna – Third Follow-up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.7. See also the Ministerial Council Decision no. 4/03 on Tolerance and Non-Discrimination of 2 December 2003 which reaffirmed the Ministerial Council's concern about discrimination in all participating States and the Permanent Council Decision no. 621 of 29 July 2004 on Tolerance and the Fights against Racism, Xenophobia and Discrimination including commitments from participating States to consider enacting, or strengthening, as appropriate, legislation prohibiting discrimination.

will also make reference, as appropriate, to the United Nations Principles relating to the status of national institutions for the promotion and protection of human rights (hereinafter "the Paris Principles")[10] which set minimum standards for ensuring their independence and efficiency.[11]

2. Purpose, Definitions and Scope of the Draft Law (Articles 1 to 4 of the Draft Law)

2.1 General Comments

15. The Constitution of Georgia and a number of laws, such as the Law of Georgia on Gender Equality and the Labour Code, contain various anti-discrimination provisions.[12] It is therefore welcome that the Draft Law constitutes an attempt to address all forms of discrimination in a comprehensive manner. However, there is always potential for conflict and overlap where provisions relating to discrimination can be found in different acts, especially if there are differences in terminology.

16. To ensure the coherence of the anti-discrimination legal and institutional framework, it is advisable to clarify the relationship between other laws and the Draft Law. In particular, it is necessary to specify which law applies in which situations or which law will prevail in case of ambiguity or conflict[13] and how the different bodies established in different pieces of legislation will inter-act (see also pars 30, 33-36 and 48 *infra*).

17. In order to be fully effective, the adoption of the Draft Law should be accompanied by a systematic review, amendment and/or removal of provisions contained in other areas of law that may contradict the legislation adopted, so as to ensure a consistent legal framework for the elimination of all forms of discrimination.

18. Also, in view of the likely costs for both public and private entities as a result of the implementation of the provisions of the Draft Law, it is recommended for the Government to undertake a thorough cost analysis of implementation, including the

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[10] Defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

[11] The recommendations are also based on the General Observations issued by the Sub-Committee on Accreditation and adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (hereinafter "the ICC General Observations"), as last amended in May 2013, which serve as interpretive tools of the Paris Principles, available at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf.

[12] For example, Article 14 of the Constitution expressly states that "[e]veryone 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"; Article 2 of the Law on Gender Equality provides that "[t]he aim of the Law is to ensure prohibition of all kinds of discrimination based on sex in all spheres of social life, create appropriate conditions for implementation of equal rights, freedoms and opportunities of women and men, support prevention and elimination of all kinds of discrimination based on sex"; Article 2 par 3 of the Labour Code of Georgia states that "[d]iscrimination of any kind is forbidden during the labour relations, such as: discrimination by race, colour of a skin, language, ethnic and social belonging, origin, property, class, working place, age, sex, sexual orientation, limited abilities, religion or membership of other unifications, family status, political and other beliefs".

[13] See e.g. as a comparison Article 1 of the Law on Prohibition of Discrimination of Montenegro which states that "[t]he prohibition of and protection from discrimination shall be, also, exercised pursuant to provisions of other laws regulating prohibition of and protection from discrimination on particular grounds or related to exercise of particular rights, if they are not contrary to this law".

costs relating to the functioning of the equality body to be established, those associated with the likely increase of caseload before the courts, costs to publicize the new law and provide adequate trainings, and those associated with adapting existing infrastructure and environment (as per Article 23 of the Draft Law) (see also par 47 *infra*).

2.2 Purpose of the Draft Law

19. Chapter 1 of the Draft Law contains provisions clearly spelling out the purpose and the scope of the Law, and defining key terms and principles.

20. Article 1 of the Draft Law provides a list of the protected grounds, which are largely in line with standard international practice.[14] In particular, they include "sexual orientation or gender identity" or having an "internal displacement" status which is very welcome since this reflects the experience of social groups that are vulnerable in Georgia and have suffered and may continue to suffer marginalization.[15]

21. It is noted that one of the protected grounds listed under Article 1 is "nationality". As per Article 2 (a) of the Council of Europe's Convention on Nationality, adopted on 6 November 1997, "'nationality' means the legal bond between a person and a State and does not indicate the person's ethnic origin". Also, the inclusion of this protected ground seems to reflect the broad approach adopted by the Council of Europe Commission against Racism and Intolerance (hereinafter "ECRI") which defines "racial discrimination" by including the ground of nationality.[16]

22. At the same time, it is noted that the areas of activities listed under Article 3 setting out the scope of the Draft Law, also include the areas of elections and political activities. In that respect, the Constitution of Georgia and the Election Code (2012) make a clear distinction between the rights of citizens and the rights of others in the area of political participation and voting rights, and this may lead to certain inconsistencies between the Constitution/election legislation and the Draft Law (see related recommendation under par 45 *infra*). In this respect, the Draft Law could perhaps differentiate more, to ensure consistency with the Constitution, and other relevant legislation.

2.3 Definitions

23. Article 2 of the Draft Law contains a list of basic terms and their definitions which overall comply with international standards. It is particularly welcome that the Draft Law envisages the case of "multiple discrimination", which is considered as an aggravating factor according to Article 15 par 3(a) of the Draft Law. However, certain definitions contained in Article 2 of the Draft Law would benefit from further improvement, in order to ensure that they are in full compliance with international standards.

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[14] See e.g. the examples of differential treatment on a variety of grounds listed in General Comment No. 20 of the UN Committee on Economic, Social and Cultural Rights.

[15] See e.g. the Reports of the Representative of the Secretary-General on the human rights of internally displaced persons for Georgia available at http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx and the Concluding observations of the Committee on the Elimination of Racial Discrimination on Georgia dated 20 September 2011, par 20.

[16] ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, ECRI(2003)8, adopted on 13 December 2002, pars 1(b) and (c).

24. The definitions of "direct discrimination" and "indirect discrimination" in Article 2 pars 2 and 3 of the Draft Law appear to be somewhat complicated when compared to the definitions provided under international law. While Article 26 of the ICCPR or Article 2 of the ICESCR do not contain a definition of discrimination, Human Rights Council General Comment No. 18 defines discrimination as "any distinction, exclusion, restriction or preference" based on a list of protected grounds "which has the purpose or effect of nullifying, or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[17] In its case-law concerning violations of Article 14 of the ECHR and Protocol 12, the European Court of Human Rights (hereinafter "the ECtHR") has established that discrimination means "treating differently, without an objective and reasonable justification, persons in relevantly similar situations"[18] while recognizing that "a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group".[19] Such formulation reflects both forms of discrimination, namely direct discrimination (i.e. an action or omission that has the "purpose" of discriminating) and indirect discrimination (i.e. an action or omission that has the "effect" of discriminating, even if it appears to be neutral). To make the definitions of direct and indirect discrimination more understandable, Article 2 pars 2 and 3 of the Draft Law could be simplified and clarified accordingly.

25. Article 2 par 2 of the Draft Law defines "direct discrimination" as "such treatment of person or creation of conditions in the process of enjoyment of protected rights on the basis of any characteristics set forth in Article 1, which would put this person in different - favourable or unfavourable situations in comparison to other persons in similar circumstances, or similar treatment of persons being in apparently unequal circumstances".

26. Overall, this definition appears to correspond to the definition given by the ECtHR. However, the definition could be further improved. For example, by referring to a "treatment" or "creation of conditions", it seems to cover merely positive action, while direct discrimination may also result from a failure to act or by omission.[20] Article 2 par 2 of the Draft Law could be supplemented accordingly.

27. The definition provided by the Draft Law also implies that the said treatment or creation of conditions is linked to the enjoyment of a person's rights. However, this may be too limiting since not all cases of discrimination will necessarily infringe upon the enjoyment of a person's rights.[21] The Explanatory Report on the Protocol No. 12 to the ECHR recognizes that the Protocol also relates to the relations between private persons that the State is normally expected to regulate, "for example arbitrary denial of access to work, access to restaurants, or to services which private persons may make available to the public such as medical care or utilities such as water and electricity".[22]

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[17] See par 7 of UN Human Rights Council General Comment No. 18 on Non-Discrimination, issued on 11 October 1989.

[18] ECtHR judgment in the case of *Willis v. United Kingdom*, application no. 36042/97, of 11 June 2002, par 48.

[19] ECtHR judgment in the case of *D.H. and Others v. the Czech Republic*, application no. 57325/00, of 13 November 2007, par 184.

[20] See par 10 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights on Non-Discrimination. See also par 22 of the Explanatory Report on the Protocol No. 12 to the CEDH.

[21] For example, a person may be barred from entering a restaurant due to his/her ethnicity or colour, but this will not affect the enjoyment of his/her rights, since entering a restaurant does not constitute a human right as such.

[22] See par 28 of the Explanatory Report on the Protocol No. 12 to the CEDH.

To reflect this broad approach adopted at the European level, it is therefore recommended that the reference to "the enjoyment of a person's rights" from the definition of "direct discrimination" under Article 2 par 2 of the Draft Law is deleted. The same applies for the definition of "indirect discrimination" under Article 2 par 3 of the Draft Law.

28. Article 2 par 3 of the Draft Law provides the definition of "indirect discrimination" which refers to "a *clearly* neutral provision, criterion or practice". The General Comment No. 20 of the Committee on Economic, Social and Cultural Rights states that "indirect discrimination refers to laws, policies or practices which *appear neutral at face value*, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination". Moreover, the ECtHR refers to "general policy or measure which is *apparently neutral* but has disproportionately prejudicial effects on persons or groups of persons".[23] Unless this is merely a result of faulty translation, Article 2 par 3 of the Draft Law should cover "an *apparently* neutral provision, criterion or practice".

29. Both paragraphs 2 and 3 of Article 2 of the Draft Law include a caveat specifying that direct or indirect discrimination does not exist where the treatment or situation serves a legitimate purpose and the means used to achieve this purpose are necessary and proportionate. Such an exception generally reflects the standards set by the ECtHR in its case law, which states that differences in treatment may not constitute discrimination in cases where such difference was objectively and reasonably justifiable.[24]

30. Further, it is noted that the definitions of direct and indirect discrimination found in Article 2 do not correspond to definitions of the same terms in the Georgian Law on Gender Equality.[25] It is recommended to review the Draft Law and the Law on Gender Equality to ensure that all terminology is both consistent and in line with international standards (including European ones) (see also pars 33-36 *infra*).

31. Article 2 par 5 of the Draft Law states that "any oppression creating [an] hostile, intimidating or degrading environment for the person or group of persons, irrespective of its result, shall also constitute discrimination". It is noted that such a definition does not explicitly refer to the protected grounds listed in Article 1, and does not appear to specifically relate to situations of unequal treatment of individuals or groups. Instead, such a definition seems to relate in part to the notion of "harassment", as used in the EU Equality Directives.[26] While it positive that such particularly harmful form of

[23] See e.g. ECtHR judgment in the case of *Horváth and Kiss v. Hungary*, application no. 11146/11, of 29 January 2013, par 105.

[24] See e.g. ECtHR judgment in the case of *Willis v. United Kingdom*, application no. 36042/97, of 11 June 2002, par 48.

[25] For example, the definitions of "indirect discrimination" are worded differently in the two laws (Article 3 of the Law of Georgia on Gender Equality states that indirect discrimination is "a legal act, program or any other tool of public policy which is not directly indicating on discrimination, but is associated with discriminatory result through enforcement".

[26] Article 2 par 3 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (hereinafter the "EU Employment Equality Directive") defines "harassment" as "unwanted conduct related to any of the grounds referred to in Article 1 [which] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment"; similarly, see Article 2 par 3 of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin (hereinafter the "EU Racial Equality Directive"); Article 2(c) of the Council Directive 2004/113/EC of 13 December 2004 on equal treatment between men and women in the

discriminatory action is defined in the Draft Law and is prohibited "irrespective of the result", Article 2 par 5 of the Draft Law should expressly mention that it is referring to "harassment" and explicitly refer to the protected grounds listed in Article 1.

32. Also, the word "oppression" is not defined in the Draft Law and it is not clear whether such conduct involves physical and/or verbal and/or non-verbal abuse. The EU Equality Directives make reference to "unwanted conduct" when defining "harassment". Unless the term "oppression" is merely a result of faulty translation, Article 2 par 5 of the Draft Law could perhaps be more aligned with the definition of "harassment" provided in the EU Equality Directives, or it could alternatively be amended to expressly refer to "verbal, non-verbal or physical abuse".

33. It is noted that Article 6 par 1 (a) of the Law on Gender Equality[27] refers to some types of behavior which somehow correspond to a definition of "harassment on the basis of sex", but is worded somewhat differently from Article 2 par 5 of the Draft Law and is only contemplated in the context of labour relations. Furthermore, the Law on Gender Equality specifies that the Public Defender is the authority responsible for the protection of gender equality in accordance with the Organic Law of Georgia on the Public Defender, which indirectly makes reference to the complaints-handling procedure contained therein when dealing with harassment on the basis of sex in the context of labour relations.

34. It is worth mentioning that practice varies greatly in European countries when addressing "harassment on the basis of sex" and "sexual harassment".[28] It is generally acknowledged that sanctioning such types of conduct within the anti-discrimination framework is considered as overall positive, since this provides "greater access to justice for individuals including the rules on the reversed burden of proof, no upper limits concerning compensation and the existence of specialized bodies".[29]

35. To ensure consistency between both pieces of legislation, the drafters should consider amending the Law on Gender Equality by including a cross-reference to the definition of "harassment" as contained in the Draft Law, and by clarifying that situations of "harassment on the basis of sex" are not limited to labour relations but apply to all areas contemplated in Article 3 of the Draft Law.

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access to and supply of goods and services; and Article 2.1(c) of the Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (hereinafter both together referred as the "EU Gender Equality Directives").

[27] Article 6 par 1 (a) of the Law on Gender Equality states that "[a]ny kind of direct or indirect discrimination, persecution and/or forcing measure based on sex which is aimed at or induces conditions that are intimidating, hostile, humiliating, impairing dignity or abusive to a person" are inadmissible in labour relations.

[28] See the Report on Harassment related to Sex and Sexual Harassment Law in 33 European Countries prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012), page 11, available at http://ec.europa.eu/justice/gender-equality/files/your_rights/final_harassement_en.pdf. In many cases the prohibition of harassment on the ground of sex and sexual harassment is done through sex equality acts, covering working life and related areas and/or goods and services (like Belgium, Denmark, Cyprus, Estonia, Finland, Greece, Iceland, Liechtenstein, Malta, Norway and Spain). Another model is to include the bans on harassment related to sex and sexual harassment in an antidiscrimination act also covering grounds other than sex and also covering various areas of society including working life and goods and services (Bulgaria, Czech Republic, France, Germany, Poland, Slovakia, Slovenia, Sweden and the UK). Poland has double regulation in that bans on discriminatory harassment and sexual harassment are also included in the Labour Code, which has supremacy where working-life discrimination is concerned.

[29] ibid. page 31.

36. Additionally, Article 6 par 1 (b) of the Law of Gender Equality contains a definition[30] that seems to relate in part to the notion of "sexual harassment" as used in the EU Equality Directives.[31] This phenomenon is again only contemplated in the context of labour relations. The drafters may consider amending the Law on Gender Equality to broaden the scope of sexual harassment to other areas, and not only employment. This would be particularly positive since this phenomenon may exist equally in other fields and not only employment, e.g. vocational training, formal and informal educational settings, or sports, leisure or cultural settings. Alternatively, sexual harassment could also be introduced into the Draft Law, and a respective reference could be included in the Law on Gender Equality.

37. Moreover, while "sexual harassment" does indeed constitute a form of discrimination, such action could, depending on the gravity of the offence, also qualify as a serious criminal offence. If not already the case, the respective criminal liability of perpetrators should be clearly delineated and laid down in an article or chapter of the Criminal Code and the Law on Gender Equality (or the Draft Law) should make reference to these provisions.

38. Article 2 par 6 of the Draft Law states that "any action aimed at coercing, inciting or abetting any person and/or group of persons in carrying out discrimination is inadmissible". This reflects the wording of the General Policy Recommendation No. 7 of ECRI on National Legislation to Combat Racism and Racial Discrimination (2002) in relation to racism and racial discrimination.[32]

39. It should be noted that the blanket prohibition of incitement to discriminate may potentially affect every person's right to freedom of expression, including the freedom of the media. While this right may be limited as necessary in a democratic society for the protection of, *e.g.* national security, territorial integrity, disorder and crime, or the rights and freedoms of others, such restrictions need to be proportionate to the harm being addressed; it is not clear whether a blanket ban on incitement would fulfill these criteria. The ECtHR has, on several occasions, struck a balance between the freedom of expression and the prohibition of discrimination, reviewing for example whether a conviction for incitement to commit a discriminatory act had been proportionate to the legitimate aim (e.g. protecting the reputation and the rights of others).[33] In line with the ECtHR's judgments, it is recommended to supplement Article 2 par 6 of the Draft Law to state that the above-mentioned actions shall be deemed to be discrimination

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[30] Article 6 par 1 (b) of the Law on Gender Equality states that "[a]ny type of unwanted verbal, nonverbal or physical act of sexual nature that is aimed at or induces impairment of a person's dignity or creates humiliating, hostile or abusive conditions for him/her" are inadmissible in labour relations.

[31] Article 2 of EU Gender Equality Directives defines "sexual harassment" as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature [which] 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". In par 18 of General Recommendation No. 19 of CEDAW Committee (1992), sexual harassment is defined as "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions".

[32] See par 6 of ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, of 13 December 2002 which provides that "the following acts, *inter alia*, are considered as forms of discrimination: segregation; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting another to discriminate; aiding another to discriminate".

[33] For ECtHR judgments on non-discrimination v. freedom of expression, see e.g. the ECtHR judgment in the case of *Willem v. France*, application no. 10883/05, of 16 July 2009; ECtHR judgment in the case of *Jersild v. Denmark*, application no. 15890/89, of 23 September 1994; ECtHR judgment in the case of *Vejdeland and Others v. Sweden*, application no. 1813/07, of 9 February 2012.

unless such action serves a legitimate purpose and the means used to achieve this purpose are necessary and proportionate.

40. It is also important to highlight that certain forms of discourse may qualify as criminal acts; in that respect, the Committee on the Elimination of Racial Discrimination recommended to Georgia to include specific provisions in the Criminal Code to prohibit racist discourse, the dissemination of ideas based on racial superiority and expressions of racial hatred, and incitement to racial discrimination.[34] It is recommended that the Draft Law makes reference to these provisions contained in the Criminal Code, if they have already been adopted (see also par 76 *infra*).

41. Additionally, there are two important forms of discrimination which are not included in the Draft Law. The first is discrimination on the basis of an *assumed membership* of a protected group where an individual is discriminated against due to a mistaken belief that he or she belongs to a particular group, even though, in fact, he or she does not. The second is discrimination by *affiliation*; this occurs where a person is discriminated against because of a relationship with a person or persons from a protected group.[35] It is advisable to supplement the definition of "discrimination" in Article 2 of the Draft Law accordingly.

42. Moreover, the Draft Law does not expressly envision the introduction of "temporary special measures" or "affirmative action" to enhance equality in different parts of public and private life, even though such preferential treatment may be falling within the scope of the definition of "direct discrimination" as stated in Article 2 par 2. Given that derogatory preferential regimes may be allowed at times to ensure the realization of full and effective equality, as highlighted by various UN human rights bodies,[36] it is suggested to consider introducing the possibility for "affirmative action" or "temporary special measures" into the Draft Law. Article 2 could define what is meant by the above terms, and additional provisions could be introduced in a separate section of the Draft Law outlining such measures in greater detail, while specifying that such measures are taken for the purpose of ensuring equal treatment for a particular group. Such affirmative action/temporary special measures should moreover be "appropriate to the situation to be remedied, [...] legitimate, necessary in a democratic society, respecting the principles of fairness and proportionality, and [be] temporary", and this should also be reflected in the Draft Law.[37]

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[34] Concluding Observations of the Committee on the Elimination of Racial Discrimination on Georgia, dated 20 September 2011, par 11.

[35] See par 16 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights on Non-Discrimination.

[36] See e.g. par 10 of UN Human Rights Council General Comment No. 18 on non-discrimination which states that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the [ICCPR]"; see also General Comment No. 4 which further provides that articles of the ICCPR require "not only measures of protection but also affirmative action to ensure the positive enjoyment of those rights". See also par 18 of the General Recommendation No. 25 of the CEDAW Committee on temporary special measures, stating that "temporary special measures are part of a necessary strategy by States parties directed towards the achievement of *de facto* or substantive equality of women with men".

[37] See par 16 of General Recommendation No. 32 of the Committee on the Elimination of Racial Discrimination on the meaning and scope of special measures. See also par 20 of General Recommendation No. 25 of the CEDAW Committee on Article 4 par 1 of the CEDAW on temporary special measures.

2.4 Scope of the Draft Law

43. It is commendable that Article 3 of the Draft Law lists in a broad and detailed manner the areas of activities covered by the Draft Law, and encompasses both the public and the private spheres. However, such an article could benefit from further refinement and clarifications, as detailed below.

44. With regard to the areas covered by the legislation, Article 3 a) of the Draft Law refers to labour relations. This may imply that a formal labour relationship already exists, such as a labour contract between an employer and an employee. However, it is important to ensure that the protection is broader and reference to the scope of, e.g., the EU Equality Directives may be useful in that respect. It is therefore advisable to clarify the terminology by expressly stating that this includes access to employment (recruitment process), self-employment and occupation, vocational training, employment conditions including dismissals and pay, as well as membership/involvement in workers associations or professional bodies.

45. Article 3 f) and g) of the Draft Law respectively mention "elections" and "civil and political activities" as part of the areas covered by the Draft Law. As mentioned above (see pars 21-22 *supra*), given that "nationality" is amongst the protected grounds listed under Article 1, the Draft Law may contradict other pieces of legislation, such as the Electoral Code, and it is important to ensure consistency of the anti-discrimination legal framework. To avoid any confusion, it is advisable to expressly include under Article 3 f) and g) of the Draft Law a mention such as "except as otherwise provided by the Election Code of Georgia" and/or other relevant legislation as appropriate.

3. Inspector for Equality Protection (Articles 5 to 12 of the Draft Law)

46. It is particularly welcome that the Draft Law establishes a dedicated specialized entity, the "Inspector for Equality Protection" (hereinafter "the Inspector") and includes provisions which aim to guarantee the independence of such a body. The drafters are also to be commended for devising a very comprehensive mandate for the Inspector which ranges from complaints-handling, legislative and advisory functions, to data collection and analysis, public awareness and reporting.

47. First, it is important to reiterate that in order to guarantee the proper implementation of the Draft Law, it is essential that sufficient funding is ensured for the Inspector to have the adequate human, financial, material and technical capacity to fulfil his or her broad mandate (see also par 18 *supra*).

48. Additionally, it will also be essential to clarify the institutional relationships between the Inspector and the Public Defender, as well as other bodies dealing with situations of potential discrimination, and maybe to establish a coordination mechanism to ensure regular, constructive working relationships between the Inspector's office and other bodies. Article 5 par 2 of the Draft Law could be supplemented to expressly state that the Inspector cooperates with other bodies according to modalities to be determined, for example through a public memorandum of understanding[38] or protocols about handling intersectional complaints (*i.e.* complaints that involve two or more human rights grounds and might affect the mandates of several institutions),[39]

[38] As comparison, see the ICC General Observation 1.5. on cooperation with other human rights bodies.

[39] See OSCE/ODIHR Handbook for National Human Rights Institutions on Women's Rights and Gender Equality (August 2011), page 22, available at http://www.osce.org/odihr/97756?download=true.

specifying e.g. when to refer the complaints to other independent human rights institutions or competent governmental and judicial bodies.[40] This is particularly important for all tasks, not only complaints-handling that may be carried-out by the Public Defender in areas of preventing and combating discrimination[41].

49. If human and financial resources so allow, other key functions could be added to the competences of the Inspector, such as education, training, public outreach and advocacy, in order to create a society where the concept of equality is more broadly understood and respected.[42] Article 5 of the Draft Law could be further supplemented to also expressly include aspects relating to the international anti-discrimination legal framework, such as encouraging and supporting the ratification of relevant anti-discrimination international instruments (e.g. the CRPD) and ensuring the harmonization of national legislation, regulations and practices with international human rights in that area.[43]

50. Article 5 par 3 of the Draft Law introduces investigative powers for the Inspector by providing that "[a]ny person or national or local authority shall, in accordance with the rules established by law, co-operate and provide without delay all materials, documents and other information necessary for the Inspector to carry-out [his/her] duties". It is welcome that the Draft Law provides for such investigative powers. However, investigative powers could in addition include the possibility to be received without delay by officials of the public authorities or representatives of legal persons. Article 5 par 3 of the Draft Law could be supplemented accordingly.

51. Additionally, it is worth mentioning how important it is for the Inspector to develop relations with non-governmental organizations, particularly those devoted to protecting vulnerable groups, especially given the fundamental role they play as a bridge between the government and the people at the community level.

52. With regard to the appointment of the Inspector, Article 7 of the Draft Law provides for his/her election by the Parliament upon nominations made by higher education institutions and by non-profit organizations having a human-rights-related mandate which have been working on such issues for at least 2 years prior to the nomination. Such a pluralistic procedure which allows for the involvement of civil society is particularly welcome. To ensure that it is effective in practice, it is further recommended that the Draft Law requires informing the public about the initiation of the process sufficiently ahead of time, for example no later than one month before the election, in order to offer enough time for civil society actors to propose candidates. Article 7 of the Draft Law could be supplemented accordingly.

53. Article 7 par 3 of the Draft Law provides that "the candidate receiving the majority of votes shall be elected". Unless this is a result of imprecise translation, it is not clear whether this refers to the majority of the members of parliament who are present on the day of the election or to the majority of the total number of the members of the

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[40] See OSCE/ODIHR Handbook for National Human Rights Institutions on Women's Rights and Gender Equality (August 2011), page 32.

[41] See the 2012 Annual Report of the Public Defender, available at http://www.ombudsman.ge/files/downloads/en/vufepapvfljyqxcwbihu.pdf to see examples of activities carried-out in that area.

[42] See as a comparison the ICC General Observations as last amended in May 2013, available at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Report%20May%202013-Consolidated-English.pdf.

[43] See ICC General Observation 1.2.

Parliament. Article 7 par 3 of the Draft Law should be clarified accordingly – since the majority of the members of Parliament is required to terminate his/her term of office prematurely, the same should apply to his/her election. To ensure an even broader consensus for the choice of the Inspector and to provide his or her office with a politically and socially broad base, a qualified majority of 2/3 or 3/5 of the total number of members of Parliament could also be contemplated, if this is feasible according to the Constitution of Georgia.

54. Article 7 par 5 states that "[t]he new Inspector shall be elected not earlier than 60 days and no later than 30 days from the expiry of the acting Inspector's term in office". However, as already indicated above, the Draft Law contains no indication as to when the procedure for nominating candidates for Inspector shall begin. Such a provision is of key importance for ensuring continuity in the running of the office. It is recommended to fill this gap and expressly state when the procedure for nominating a new Inspector should begin, for example four months before the expiry of the incumbent Inspector's term of office.

55. Article 7 par 5 of the Draft Law also implies that there might be an interim period of 30 days without an Inspector. It is important to address this gap by specifying that in the meantime, his or her duties shall be carried out by the Deputy Inspector who enjoys the rights and legal guarantees granted to the Inspector, as stated under Article 10 par 4 of the Draft Law in case of termination of office before the end of his/her term.

56. Article 8 of the Draft Law provides that the Inspector cannot be elected for two consecutive terms, which is welcome since this constitutes a relative guarantee of independence.

57. Article 10 of the Draft Law lists the grounds for "pre-term termination" of the Inspector's term in office, meaning termination of his/her mandate before the expiry of his/her term. Some of these grounds (losing citizenship; being guilty according to a final judgment of the court; the recognition by court that the Inspector is lacking legal capacity, missing or deceased; his or her resignation or death) lead to automatic termination of office. Other grounds require a vote by the majority of the members of the Parliament.

58. Providing for automatic termination in the case of being "found guilty according to a final judgment of the court", without specifying before which court (civil or criminal) or providing specifics on the required gravity of the sentence, appears to be excessive. It is recommended that Article 10 par 1 (c) of the Draft Law be amended to specify that this concerns only final *criminal* judgments, for certain particularly grave crimes, the nature of which should be specified. Also, as regards the situation whereby the Inspector accepted or holds a position incompatible with his or her office (Article 10 par 1 (e)), immediate and automatic dismissal may be considered a too severe sanction. Instead, a prior warning could be introduced, which would allow the Inspector to give up such a position once made aware of its incompatibility with his/her office. Should he/she refuse to do so, then it would be justified to terminate his/her term. It is advisable to amend Article 10 par 1 of the Draft Law accordingly.

59. Regarding the cases where a vote by the Parliament is required to decide the "pre-term termination" (Article 10 par 1 sub-pars (b), (e) and (f)), and if permitted by the Constitution of Georgia, it would be preferable if a qualified majority would be required for this. In this way, the Draft Law would protect the Inspector from a

situation where such steps are taken merely because his or her acts are disapproved of by the governmental majority in Parliament. In order to guarantee transparency in the process of the dismissal of the Inspector, it is also recommended to provide for a public procedure and that the Inspector is heard in public prior to the vote.[44] Article 10 of the Draft Law could be amended and supplemented accordingly.

60. It is also noted that the Draft Law does not specify how the Deputy Inspector(s) is/are selected. As in the case of national human rights institutions, the manner of selecting and appointing the deputies should ensure pluralism as a guarantee of institutional independence.[45] Consequently, the methods for selection and appointment of the Inspector's deputies should also be open and consultative. This could be achieved by providing for procedures whereby the Inspector would consult diverse societal groups for suggestions or recommendations of candidates; or whereby he/she would organize their participation in the application, screening, selection and appointment process, among others.[46] The Draft Law could incorporate a provision to that effect.

61. Article 11 of the Draft Law provides for the functional immunity of the Inspector as a guarantee of his or her independence. While it is justified for the Inspector to enjoy special/broad immunity, his or her deputies and staff should also be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority (functional immunity).

62. Moreover, the material scope of the functional immunity could be further extended to also include luggage and means of communication. The temporal scope of the immunity should also be clarified by expressly providing that the immunity of the Inspector, his or her deputies and staff shall also apply after the end of the Inspector's or deputies' mandate or after the members of staff cease their employment with the Inspector's office, but only for acts performed during their time in office.[47]

63. Article 11 par 4 of the Draft Law provides that no correspondence addressed to or other information furnished to the Inspector may be seized. This may be somewhat limited since certain correspondence or documents may have been addressed to the Deputies or other staff from the Inspector's office. In order to enhance the independence of the Inspector, the office's possessions, documents, communications, funds and assets and premises, wherever located and whomsoever (Inspector, Deputies or staff) held, shall also be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action. The Draft Law could be supplemented accordingly.[48]

64. Article 11 par 2 of the Draft Law shall also clarify the type of majority required for the Parliament to lift the Inspector's immunity and consent to the prosecution, arrest or imprisonment of the Inspector; presumably this will be the majority of the total number of the members of the Parliament.

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[44] See page 14 of the Venice Commission Compilation on the Ombudsman Institution (CDL(2011)079).

[45] See section B.1 of Paris Principles.

[46] See ICC General Observations 1.7 on ensuring pluralism of the National Human Rights Institution (par (b)) and 1.8 on the selection and appointment of the decision-making body of National Human Rights Institutions (par (d)).

[47] See par 23 of the Joint Opinion by the Venice Commission and OSCE/ODIHR on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, issued on 19 October 2011, available at http://www.legislationline.org/documents/id/16665.

[48] See page 11 of the Venice Commission Compilation on the Ombudsman Institution (CDL(2011)079).

65. Article 12 pars 6 and 7 of the Draft Law provide several measures to guarantee the financial independence of the Inspector and his/her office and staff, which are much welcome, e.g. that the draft budget is presented by the Inspector and can only be reduced after prior consent of the Inspector, as well as the possibility to receive donations and grants.

4. Complaints-Handling Procedure (Articles 13 to 21 of the Draft Law)

66. It is particularly welcome that the Draft Law includes detailed provisions regulating the complaints-handling procedure before the Inspector. In particular, the Draft Law makes cross-references to the Code of Administrative Offences of Georgia, which implies that acts of discrimination shall entail administrative liability, and the Law on Enforcement Proceedings of Georgia to ensure implementation of the Inspector's decisions and payment of fines.

67. Also, the possibility for third-party intervention (Article 20 of the Draft Law), *i.e.* the right given to certain organizations, agencies or unions whose activity is related to the protection of persons from discrimination to bring a claim even if they have not been the victims of discriminatory behaviour, is a very positive feature. At the same time, other provisions may benefit from certain improvements, which are detailed below.

68. Article 13 par 1 of the Draft Law states that any interested person or group of persons are entitled to lodge a complaint. While it is presumed that this may also happen by proxy, it may be helpful to add this to the Draft Law. As suggested in the General Observations by the International Coordinating Committee of National Human Rights Institutions, a complaints-handling procedure should provide for the ability to receive complaints from any person on behalf of the alleged victim(s), where prior and written consent is given, including associations, organisations, or other legal entities. This issue is distinct from the above-mentioned right of third party intervention provided for in Article 20 of the Draft Law.

69. Also, this wording seems to exclude legal persons from seeking protection from the Inspector whereas legal persons, such as non-profit associations or business entities which can also be victims of discrimination, should also be allowed to seek the Inspector's intervention. It is therefore recommended to clarify Article 13 par 1 of the Draft Law in that respect. The same should be clarified under Article 18 regarding applications to the court.

70. While the scope of the Draft Law covers both public and private entities, it is recommended to make it clear that complaints can be brought against both individuals and legal persons, from both the public and private sectors.[49] Article 13 of the Draft Law should be amended accordingly.

71. The Draft Law does not expressly provide for the ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution mechanism. Such a conciliatory procedure is often effectively used for the prevention of discrimination, particularly where complainants may for many reasons feel reluctant to take quasi-judicial or legal action, e.g. in areas such as employment where an individual complainant wants to maintain a continued relationship with the

[49] See ICC New General Observation 2.10.

perpetrator of the discriminatory act.[50] Therefore the drafters may wish to consider incorporating an alternative dispute resolution mechanism as one additional available procedure under the Draft Law.

72. Article 14 of the Draft Law describes the steps followed by the Inspector to consider applications and complaints. As mentioned in par 66 *supra*, it can be inferred from other provisions of the Draft Law (e.g. Article 15) that a discriminatory act entails administrative liability. However, it is not clearly stated that the administrative procedural rules apply to the procedure before the Inspector. Since the Draft Law cannot comprehensively regulate all procedural aspects, it is recommended that Article 14 of the Draft Law expressly states that, unless otherwise provided by the Draft Law, the procedural rules laid down in the Code of Administrative Offences of Georgia shall apply. This will ensure the coherence of the provisions of the Draft Law with the Code of Administrative Offences and allow the inclusion by reference of more detailed provisions, such as evidentiary rules, as well as procedural guarantees incorporated therein.

73. Both Article 14 par 2 and Article 18 par 3 of the Draft Law provide for the shifting of the burden of proof once the complainant has presented evidence respectively to the Inspector or to the court from which it may be presumed that there has been discriminatory treatment. This is in line with well-established practice before the UN treaty bodies and the ECtHR case law.[51] Drafters may also wish to consider introducing other procedural provisions which are tailored to discrimination claims, such as allowing complainants to adduce statistical evidence before both the Inspector and the courts, if this is possible according to procedural rules, to prove that discrimination has occurred.[52]

74. Article 15 of the Draft Law describes the nature of the sanctions and penalties for breaching legislation on anti-discrimination. However, it only refers to administrative resolution, fines and/or other measures imposed on a "person, governmental agency or self-governmental institution" and therefore does not expressly cover private legal entities or individual civil servants. Article 15 of the Draft Law would be improved if it expressly refers to sanctions for such categories of persons as well.

75. Article 15 par 3 of the Draft Law provides for fines for infringements which range from 100 to 500 GEL (approximately 40 to 220 EUR) for individuals and from 500 to 2,500 GEL (approximately 220 to 1,100 EUR) for legal entities, for any type of discriminatory behaviour, with reference to certain aggravating factors such as multiple discrimination or repeated violation of the legislation. While the level of fines mentioned would most probably have a deterrent effect, it is nevertheless recommended to further break down the sanctions and specify which types of violations (harassment, multiple discrimination, etc.) would lead to which level of fine. Next to these types of discrimination, the ban on victimization (Article 21 of the Draft Law) will also only be effectually realized if it is combined with an appropriate dissuasive sanction, possibly including an injunction order to stop retaliatory acts

[50] Conciliation procedures are mentioned specifically as tasks of national human rights institutions and anti-discrimination bodies under the Paris Principles and the EU Equality Directives respectively. See also ICC New General Observation 2.10.

[51] See e.g. Human Rights Committee Case *Bhinder Singh v. Canada* (no. 208/1986, ICCPR). See also e.g. ECtHR judgment in the case of *D.H. and Others v. Czech Republic*, application no. 57325/00, of 13 November 2007, pars 82-84.

[52] See the ECtHR Grand Chamber judgment in the case of *D.H. and Others v. the Czech Republic*, application no. 57325/00, of 13 November 2007, par. 188.

and/or compensate victims.

76. Article 15 par 8 of the Draft Law states that "[i]f the characteristics of a crime are revealed as a result of the case examination, [the] Inspector addresses respective investigative bodies". However, the respective acts are not outlined in detail. As already mentioned in pars 37 and 40 *supra*, certain forms of discrimination of a particular gravity may qualify as criminal offences (e.g. racist discourse, the dissemination of ideas based on racial superiority and expressions of racial hatred, and incitement to racial discrimination, sexual harassment, as well as domestic violence). If not already the case, the respective criminal liability of perpetrators should be clearly delineated and laid down in an article or chapter of the Criminal Code; the Draft Law should make reference to these provisions.

77. It is also welcome that Article 5 par 2 b) of the Draft Law provides for the possibility for the Inspector to act *proprio motu*, i.e. on his or her own initiative. However, other provisions of the law do not specify how such powers would be implemented in practice, as the Draft Law only details the procedure for handling complaints by the victims or applications by other persons or institution. For example, it is not clear whether the Inspector should also seek the consent of the person who considers himself/herself a victim of discrimination (if applicable) as is the case for third-party interventions under Article 20 of the Draft Law. While obtaining such consent may represent a severe limitation to the functioning of these two good initiatives, it should be possible for the Inspector to proceed without agreement when it is impossible or very difficult to obtain it and the Inspector thinks advisable to do so without it.[53] Additionally, the drafters may also consider introducing the possibility for the Inspector to initiate court proceedings, as appropriate.[54]

78. It is also welcome that, according to Article 18 par 4 c) of the Draft Law, the court may decide the payment of both moral and/or pecuniary damages to the victims of discrimination, which is an important tool for enforcing equality provisions and is in line with international standards.[55] Such a provision could be further supplemented to expressly refer to the types of financial and/or moral compensation by providing a non-exhaustive list including but not limited to lost wages, interest on financial losses, injury to feelings, and litigation costs.

79. Article 18 par 4 of the Draft Law lists the types of measures that can be adopted by the court. Among them, the court may demand from the person or authority to carry out activities which will eliminate the consequences of the discrimination. While this constitutes a positive feature, such provision could be further elaborated to clarify the types of measures that are envisioned, such as individual re-engagement, instruction to undertake broader structural measures or granting preferential treatment to previously disadvantaged groups.[56]

80. Article 21 of the Draft Law states that "[a]ny form of influence of any person on the ground that he/she has applied to the relevant authorities/agencies for the protection

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[53] See Opinion of the Venice Commission CDL-AD(2003)007 on the Draft Law on the Public Attorney of "The former Yugoslav Republic of Macedonia" adopted at its 54th Plenary Session (Venice, 14- March 2003), B I. Article 2.3 and B III. Article 17 and Article 22.

[54] See ECRI General Policy Recommendation No. 7, Recommendation 24, as well as pars 51 and 52 of the Explanatory Memorandum.

[55] See General comment no. 26 of the Committee on the Elimination of Racial Discrimination which elaborates on Article of 6 of the ICERD.

[56] See e.g. Human Rights Council Case *Stalla Costa v. Uruguay* (No. 198/1985, ICCPR).

from discrimination shall be inadmissible". Such definition corresponds in part to the definition of "victimization" as used in the EU Equality Directives[57] and it is particularly welcome that the Draft Law provides for specific protection against such behaviour. However, Article 21 of the Draft Law uses somewhat vague wording ("[a]ny form of influence") which does not reflect the negative consequences or negative behaviour towards the victim. Unless a result of unclear translation, it is advisable to better align with the definition of the EU Equality Directives by referring to "adverse treatment or adverse consequences" in Article 21 of the Draft Law.

81. Also, according to the title of Article 21, such a protection mechanism seems to be only available to direct victims of discrimination where they have applied to the relevant authorities/agencies for the protection from discrimination. This is unduly restrictive: the concept of victimization is designed to protect all persons who complain of discrimination, give evidence or provide support or assistance to a person who claims discrimination, from suffering repercussions. It is therefore recommended to extend the scope of Article 21 of the Draft Law to cover persons reporting discrimination, giving deposition before a competent authority, or offering evidence in proceedings investigating discrimination as well as anybody or any group of persons that is treated or affected adversely by anti-discrimination complaints and proceedings.

5. Special, Transitional and Final Provisions

82. Article 22 of the Draft Law states that the provisions of the law "shall not be construed to affect the right of religious unions to carry out activities and perform rituals in accordance with its own norms, provided that they do not violate public order". Such a limitation relating to "public order" should obey the international standards applicable to the "limitation clause", *i.e.* that the limitation is prescribed by law and is necessary and proportionate to protect the public order.[58]

83. Article 23 of the Draft Law provides the obligation for public authorities and public service providers to adapt infrastructure to enable persons to equally enjoy rights, especially persons with disabilities, and provide for a transition period to adapt existing infrastructure. This is welcome as it introduces the concept of reasonable accommodation stated in Article 5(3) of the CRPD - even if the convention has not yet been ratified by Georgia - which places a general obligation on the States to take all appropriate measures to ensure that reasonable accommodation is provided in order to promote equality and eliminate discrimination of persons with disabilities.

84. At the same time, Article 23 of the Draft Law does not include the notion of "reasonable" accommodation or the exception granted in cases where such measures would impose an undue burden on relevant natural or legal persons, or public institutions as stated in Article 2 of the CRPD. While a State may decide to go further in terms of the protection provided in international instruments, it is recommended to align Article 23 with Article 2 of the CRPD, also to ensure that this part of the Draft Law is implemented (which may not be the case if such measures impose excessive

[57] See e.g. Article 9 of the EU Racial Equality Directive which states that "Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment".

[58] See Article 9 par 2 of the ECHR and Article 18 par 3 of the ICCPR.

financial and other burdens on the government or private parties[59]). It should also be pointed out that Article 23 of the Draft Law refers to infrastructure and environment, while provisions of Article 9 of the CRPD include not only physical infrastructure but also transportation, information and communication technologies and systems.[60] Article 23 should be supplemented accordingly, and should also specify that denial of reasonable accommodation constitutes discrimination and is thus prohibited.[61]

85. It is further noted that Article 23 of the Draft Law only refers to public authorities and public service providers whereas the positive component of the non-discrimination obligation requires States parties to take all measures to eliminate discrimination also in the private sphere, by referring to "any person, organization or private enterprise" (CRPD, article 4 par 1 (e)).[62] The scope of Article 23 of the Draft Law should be broadened accordingly.

86. Providing for a transition period whereby the complaints-handling procedure shall only be available from 1 March 2014 onwards is also positive, as it helps to ensure that adequate procedures and human resources will be in place to handle the complaints.

[END OF TEXT]

[59] For reference, see the Handbook for Parliamentarians on the CRPD which provides some examples of the types of factors that can be considered in determining whether the accommodation constitutes an undue burden, such as the nature and the costs of the modifications required, the size and resources of the private or public entity involved and, amongst others, the impact of the accommodation on the work of the entity in question and the possibility of obtaining official financing or other assistance. Some countries such as Spain and the United Kingdom expressly provide in their legislation a list of the factors upon which to assess the reasonableness of the accommodation request - see Chapter 5 of the Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities on National legislation and the Convention, available at http://www.un.org/disabilities/default.asp?id=236.

[60] In the case of employment, this might involve physical changes to premises, acquiring or modifying equipment, providing a reader or interpreter or appropriate training or supervision, adapting testing or assessment procedures, altering standard working hours, or allocating some of the duties of a position to another person. In some countries, laws may also require disability-aware procurement strategies, under which public agencies may be required to give preference to equipment that is fully accessible or based on the principle of inclusive design, or to service providers who employ specified percentages of persons with disabilities in their labour force.

[61] See par 28 of General Comment No. 20 of the Committee on Economic, Social and Cultural Rights.

[62] ibid., which expressly refers to reasonable accommodation in private places. See also the Committee on the Rights of Persons with Disabilities Communication No. 1/2010 (dated 21 June 2013) which concluded that there was a failure by the authorities to eliminate discrimination on the ground of disability by a private credit institution and to ensure that persons with visual impairments have an unimpeded access to the services provided by ATMs on an equal basis with other clients.

Annex 1

Draft translation

Law of Georgia
On Elimination of All Forms of Discrimination (Draft)

Chapter I. General Provisions

Article 1. Purpose of the law

The purpose of this law is to eliminate all forms of discrimination and ensure for every person equal enjoyment of rights prescribed by law, irrespective of race, color, language, national, ethnic or social belonging, sex, sexual orientation or gender identity, pregnancy or maternity, marital or health status, disability, age, nationality, origin, place of birth, place of residence, internal displacement, material or social status, religion or belief, political or any other ground.

Article 2. Prohibition of discrimination

1. Any form of the discrimination being it direct or indirect, including any hidden form of discrimination when application of distinguishing criterion entails discrimination, is prohibited in Georgia.

2. Direct discrimination shall be considered such treatment of person or creation of conditions in the process of enjoyment of protected rights on the basis of any characteristics set forth in article 1, which would put this person in different - favorable or unfavorable situation in comparison to other persons in similar circumstances, or similar treatment of persons being in apparently unequal circumstances, except when such treatment serves legitimate purpose and the means used to achieve this purpose are necessary and proportionate.

3. Indirect discrimination shall be considered such situation where a clearly neutral provision, criterion or practice does not prevent directly to equally enjoy the protected rights, but its implementation entails unfavorable situation for a person in comparison to persons in similar circumstances, except when such situation serves legitimate purpose and the means used to achieve this purpose are necessary and proportionate.

4. Multiple discrimination, i.e. treatment of person as described in the first paragraph of this article on the basis of two or more grounds listed in article 1 of this law, is also prohibited in Georgia.

5. Any oppression creating hostile, intimidating, humiliating or degrading environment for the person or group of persons, irrespective of its result, shall also constitute discrimination.

6. Any action aimed at coercing, inciting or abetting any person and/or group of persons in carrying out discrimination is inadmissible.

7. Any act falling under the definition of discrimination contained in this article shall be qualified as discriminatory irrespective of victim's objective bearing of the ground on which s(he) was discriminated.

Article 3. Scope of the Law

This law applies to all areas of activities of public institutions, natural and legal persons, including:

a) Labor relations;

b) Social security and health care;

c) Pre-school education, Education, access to education and learning process;

d) Science

e) Culture and creative art;

f) Elections;

g) Civil and political activities;

h) Public Information and Media;

i) Justice;

j) Penitentiary;

k) Law enforcement;

l) Military;

m) State services;

n) Use of goods and services;

o) Housing;

p) Entrepreneurship and banking;

q) Usage of natural resources;

r) Transport and Infrastructure;

s) Tourism;

t) Sports.

Article 4. Measures to eliminate discrimination

In order to eliminate discrimination any legal person or public institution shall:

a) take appropriate preventive measures in order to avoid discrimination;

b) inform its subordinates about the forms of discrimination and means of protection;

c) amend its acts, regulations and norms with a view to bringing them in compliance with this law or any other anti-discrimination law;

d) take prompt and efficient action on any act being presumably discriminatory;

e) ensure elimination of the consequences of discrimination and impose adequate sanctions on the subordinates who conducted violation;

f) undertake affirmative actions in order to enable people with special needs, including persons with disabilities, to exercise their rights and use opportunities in the same way as other individuals;

g) implement the decisions of the Inspector for Equality Protection.

Chapter II. Ensuring elimination of discrimination and equality

Article 5. Monitoring institution on elimination of discrimination and ensuring of equality

1. For the purposes of this law, the Inspector for Equality Protection (hereinafter – Inspector) monitors and controls elimination of discrimination and ensuring of equality.

2. In order to carry out its functions the Inspector:

a) examines applications and complaints of the person, group of persons or institutions who consider themselves to be victims of discrimination;

b) monitors the observance of human rights and freedoms, examines facts of the discrimination, either based on the applications and complaints or *proprio motu*

c) prepares and submits to the appropriate agency or person general opinions with regard to prevention and combating discrimination;

d) makes legally binding decisions in accordance with the article 15 of this Law;

e) prepares opinions on legislative amendments which are under consideration;

f) prepares and submit to the Parliament legislative proposals aiming at refining antidiscriminatory legislation ;

g) gathers and analyzes statistical data on discrimination cases;

h) carries out appropriate activities to raise public awareness on discrimination;

i) cooperates with various international and non-governmental organizations, national and local authorities or other interested persons with regard to equality issues;

j) with regard to equality issues, in particular cases, exercises *Amicus Curiae* function in

Common courts and the Constitutional Court of Georgia;

k) performs other duties necessary to carry out its function.

3. Any person or national or local authority shall, in accordance with the rules established by law, cooperate and provide without delay all materials, documents and other information necessary for the inspector to carry out its duties.

Article 6. Annual Report

1. The inspector shall prepare and submit to the Parliament annual report on combating and preventing discrimination, and the situation on equality. The report shall be public and the inspector shall ensure its publishing.

2. Inspector's report shall include general evaluation, conclusions and recommendations on the fight against discrimination in the country, its prevention and general situation of equality, as well as information on the identified significant violations during the year and respective activities undertaken in order to address this violations.

Article 7. Election of the inspector

1. The position of the inspector may be occupied by the citizen of Georgia who shares the objectives and spirit of this law, and has:

a) Higher Education;

b) 5 years working experience in the field of human rights;

c) Distinctive professional and moral reputation.

2. Inspector shall be elected by the Parliament for a term of 4 years, with secret voting.

Candidates can be nominated by the Higher Education Institutions and the non-profit (noncommercial) legal entities, whose statutes, regulations, or founding documents foresee the protection of human rights as one of the fields of their activities and who were carrying out activities in the field of human rights protection for at least 2 years prior to the nomination.

Each institution/entity has the right to nominate only one candidate.

3. During the voting only one candidate can be voted. The candidate receiving the majority of votes shall be elected. If the inspector is not elected, a second round is held on the same day, in which the two candidates with the highest results shall be voted. The candidate, who receives the required number of votes prescribed in this paragraph, shall be elected.

4. If no candidate receives the requisite number of votes, the new voting shall take place no earlier than 7 days and not later than 14 days after the initial voting.

5. The new Inspector shall be elected not earlier than 60 days and no later than 30 days from the expiry of the acting Inspector’s term in office.

Article 8. Inspector’s term in office

1. The term in office of the newly-elected Inspector shall commence on the day following the date of expiry of the term in office of the incumbent if s(he) is elected before such date, or on the day following the election if the incumbent’s term had terminated pre-term.

2. The term in office of the inspector shall end upon the expiry of 4 years from the election or upon a pre-term termination thereof.

3. The same person can not be elected as Inspector in two consecutive terms.

Article 9. Incompatibility of the position of the Inspector

1. The position of the Inspector shall be incompatible with membership of any state or local self-government representative body, holding another public office or engaging in any other

remunerated activity other than scientific, educational or artistic work. The Inspector cannot be a member of a political party and shall be restricted from any sort of political activity.

2. Within a month of election, the Inspector shall cease any activity incompatible with his/her status. Failure to comply with this requirement within the stipulated period shall result in the removal of the Inspector from office and the Parliament shall elect a new Inspector.

Article 10. Pre-term termination of Inspector's term in office

1. The position of the Inspector shall be the subject to pre-term termination in case s(he):

a. loses citizenship;

b. fails to carry out his/her duties for two consecutive months;

c. is found guilty in the final judgment of the court;

d. is recognised by the court as lacking legal capacity, missing or deceased;

e. has accepted or holds a position or carries out activities incompatible with the office of the Inspector;

f. did not meet or no longer meets the requirements set forth in the first paragraph of Article 7;

g. resigns;

h. dies.

2. In cases referred to in paragraph 1 above, the term in office of the Inspector shall be considered terminated from the moment any of the stipulated grounds are established.

3. In cases stipulated in sub-paragraphs (b), (e) and (f) of paragraph 1 above, the term in office of the Inspector shall be terminated by the decision of the Parliament adopted by a majority of all members of the Parliament.

4. In case of pre-term termination of the term in office of the Inspector the Parliament shall elect the new Inspector within 30 days after such termination. In case of pre-term termination of the office of the inspector his/her duties, before the selection of the new Inspector, is carried out by the Deputy Inspector who enjoys the rights and legal guarantees granted to the Inspector.

Article 11. Independence of the Inspector

1. Inspector shall be independent in exercising his/her functions and bound only by the Constitution of Georgia, international treaties, the present Law and other legislative acts. Any pressure on Inspector or interference with his/her activities is prohibited and punishable by law.

2. The Inspector shall be protected with immunity. Prosecution, arrest or imprisonment of inspector, search of his/her apartment, car, workplace or his/her person in relation to his/her activities in the capacity of inspector, shall be permissible only by the consent of the

Parliament, except in the cases when he/she is caught in the act of committing an offence which must be immediately notified to the Parliament. If the Parliament refuses to grant

consent, the arrested or detained Inspector must be immediately released. The Parliament shall make the decision within 14 days after receiving the relevant communication from the Chief Prosecutor of Georgia.

3. If the Parliament gives consent to the initiation of criminal proceedings against, arrest or detention of the Inspector, he/she shall be suspended from office until a final decision is made by the court. If the Inspector is acquitted or the proceedings are discontinued on grounds of exoneration, the Inspector shall be restored to the office.

4. The Inspector may not be required to testify or to release information provided in confidence in the course of his/her performance of duty. This privilege shall continue to apply after the expiry of the Inspector's term in office. No correspondence addressed to or other information furnished to the Inspector may be seized.

5. The Inspector may not be held liable for the views and opinions expressed when discharging the duties of the office.

Article 12. Financial and organizational safeguards of the Inspector

1. In case of absence or inability to discharge the authority of the Inspector, the Deputy

Inspector, which is appointed by Inspector, shall exercise the responsibilities of the Inspector.

The deputy inspector shall meet the requirements established for the inspector. The deputy inspector exercises with the same rights and enjoys legal guarantees as inspector while being the acting inspector.

2. Inspector shall also have the administration of the Inspector (hereinafter - administration), ensuing the assistance to the inspector.

3. The structure, staff listing, activities and distribution/sharing of power of the staff members are regulated by the inspector through the statute of the administration.

4. The administration is headed by the inspector or the deputy inspector in accordance with the assignment of the inspector.

5. Salaries and expenses of Inspector and staff are paid from state budget. The draft of the accounting is presented by the inspector in accordance with the law. Allotments for the inspector and the administration are determined with the special state budget code. Reduction in the amount envisaged for the Inspector and his/her administration in the respective Article on remuneration within the State budget in comparison with the amount allocated for the previous year shall be permitted only with a prior consent of the Inspector.

6. Inspector can also receive donations and grants in accordance with Georgian legislation.

Article 13. Applying to Inspector with applications and complaints

1. Any interested person or group of persons, who considers to be victim of discrimination shall be entitled to lodge the complaint to the Inspector.

2. Any person or institution which has information on discrimination fact may file application to Inspector.

3. The administration is obliged to immediately register the application or complaint upon their reception and issue the respective reference.

4. Inspector would not receive application or complaint if:

a) It is anonymous;

b) It has no relationship with discrimination.

c) It is impossible to investigate according to information set in application.

d) More than 3 years passed since the author of application or complaint found, or should have known about the fact, which s(he) considers to be discriminative, except when the expiry is objectively justified.

5. In case of paragraph 3 (c) of this article complaint is rejected only in the case when author fails to provide additional information upon the request of the Inspector.

6. In case application or complaint is inadmissible, Inspector has to substantiate decision in written.

7. Filing application or lodging complaint or their consideration by Inspector shall not be the subject to paying any charges.

Article 14. Considering applications and complaints by the Inspector

1. In case if application is filed to the Inspector, the latter is entitled to examine the case and collect relevant information and evidence.

2. Person, who lodges complaint to the Inspector, shall list the facts and submit evidences, from which it may be presumed that prohibition of discrimination is violated. The burden of proof to refute the violation of the prohibition of discrimination lies on respondent.

3. Both, applicant and respondent, have to submit written position regarding the fact to Inspector within 15 calendar days. If necessary, Inspector can request information from any third party.

4. If necessary, Inspector shall have the right to appoint oral hearing, invite both parties and all interested parties.

5. Any person, state authority or self-governmental institutions are obliged to provide Inspector with requested documentation, materials, or any other information connected to the case within 10 calendar days from the request in accordance with national legislation.

6. Inspector shall make decision no later than 2 months. Inspector has right to prolong this term by one month based on the reasonable decision. Both parties shall be informed in this regard in advance.

Article 15. Decision of the Inspector

1. If the discrimination fact is not established by the inspector, the case is terminated.

2. If the discrimination fact is established, in accordance with the peculiarities of the case

Inspector undertakes the following measure(s):

a) Inspector adopts administrative resolution and imposes fine to the perpetrator, whether

person, governmental agency or self-governmental institution, in accordance with the Code of Administrative Offences of Georgia;

b) Inspector determines measures for the perpetrator (person, governmental agency or selfgovernmental institution) in order to restore violated equality, *inter alia*, Inspector demands to abolish discriminatory legal act or provision.

3. Natural person who has committed discrimination shall be fined in the amount of 100-500

GEL, while legal entities, governmental agencies and self-governmental institutions – 500-2500 GEL. In order to determine precise amount of the fine, Inspector shall take into account gravity of the discrimination, such as:

a) multiple discrimination;

b) discrimination committed twice or more times before the imposition of the fine or the repeated commission of the discrimination by the person already fined for this offense;

c) discrimination committed against two or more persons;

d) discrimination committed by group of persons;

4. If Inspector finds out that discrimination was constituted by the legal act, Inspector:

a) applies to Public Defender and asks for lodging a constitutional complaint with the

Constitutional Court, which shall demand unconstitutionality of the given act in the light of the human rights and freedoms envisaged in the chapter II of the Constitution of Georgia;

b) recommends to the victim of the discrimination to apply to the administrative body and demand abolishing the discriminatory legal act or provision, in case this body fails to implement the Inspector's demand for the revocation of legal act/provision by the administrative organ.

5. Any person, state authority and self-governmental institution is obliged to implement the decision established under Article 15 (2) (b) of the present Law within a month and report to the Inspector.

6. Non-implementation of Inspector's decision under Article 15 (2) (b) of the present Law results a fine of triple amount established under Article 15 (3). Inspector adopts the resolution in accordance with Code of Administrative Offences of Georgia in this regard.

7. The fine determined under paragraph 3 and 6 of this Article of the present Law shall be paid in accordance with Code of Administrative Offences of Georgia. If the fine is not paid, the enforcement proceedings are carried out in accordance with the "Law on Enforcement Proceedings of Georgia".

8. If the characteristics of a crime are revealed as a result of the case examination Inspector addresses respective investigative bodies.

Article 16. Appealing resolution with regard to fine

Inspector's resolution on administrative offence that is delivered according to the article 15, paragraph 2, subparagraph (a) of this law, can be appealed in the court within 10 days from its delivery according to the established rule of the Code of Administrative Offences of Georgia.

Article 17. Appealing the decision of the Inspector

1. Decision that was delivered by the Inspector according to the article 15, paragraph 2, subparagraph (b) of this law, can be appealed by the party in court within a month after the delivery of the decision.

2. After hearing the case, the Court makes one of the following decisions:

a) Upholds the decision of the inspector;

b) Partially or entirely revokes the decision of the inspector.

3. If the court approves the claim of the person, who considers that measures taken by the inspectors was not sufficient for restoration of his/her violated right, it obliges the perpetrator to take necessary measures for elimination of the consequences of discrimination, which was not determined by appealed decision of inspector.

Article 18. Applying to the court

1. Any person, who considers himself/herself to be victim of discrimination, can apply to the court notwithstanding the case has been considered by the Inspector or not. The claim can be lodged to the court within three years. The period of limitation to lodge the claim begins to run from the moment at which the person detected or ought to have detected the fact, which he/she considers discriminative.

2. The court hearing will be suspended:

a) If the complaint of this person is being examined by the inspector;

b) until the court's decision enters into force, in case the decision of the Inspector is appealed in the court.

3. While lodging the claim the person shall submit the facts and respective evidence presuming discrimination, after which the burden of proof to refute the fact of discrimination is imposed on the respondent party.

4. In case of establishment of discrimination fact, the court shall take all necessary measures for elimination the consequences of discrimination, including:

a) Abolish or discriminative act, regulation or norm;

b) Demand to the person or authority, which committed discrimination to carry out activities which will eliminate the consequences of the discrimination;

c) Impose the obligation on the perpetrator to pay moral and/or pecuniary damages to the victims of discrimination.

Article 19. Liability for failure to comply with the requirements of the law

1. Commission of the prohibited actions under this law or failure to comply with the responsibilities imposed by this law, including failure to follow the demands of the Inspector shall be fined with the amount envisaged by the article 15 (3) of this law.

2. In cases referred to in paragraph 1 above Inspector is entitled to impose fine on any person failing to comply with the requirements of this law.

3. In case the discrimination is committed by the person acting on behalf of institution or legal person/organization the latter bears responsibility before the victim.

Article 20. Involvement of the third party in proceedings

1. Any organization, agency or union whose activity is related to the protection of persons from discrimination shall be entitled to apply to the Inspector with the request of involvement as the third party in proceedings stipulated by this law.

2. Inspector shall be entitled to satisfy the request of the third party regarding involvement in the proceeding upon the consent of the person who considers himself/herself victim of discrimination.

Article 21. Protection of victims of discrimination from the victimization and during the procedures envisaged by this Law

1. Any form of influence on any person on the ground that he/she has applied to the relevant authorities/agencies for the protection from discrimination shall be inadmissible.

2. Relevant authorities/agencies during and after execution of procedures of this law shall ensure confidentiality of any personal information regarding the victim of discrimination in accordance with *Law of Georgia on Protection of Personal Data of Georgia*. It shall be prohibited to transfer such information to the third party without consent of the victim of discrimination with the exception of the cases directly stipulated by law.

3. In case of violation of the provisions of this article victim of discrimination shall be entitled to file application to the Inspector, who shall employ measures stipulated by the article 15 of this law.

Chapter III. Special, transitional and final provisions

Article 22. Carrying out religious activities and performing religious rituals

The provisions of this law shall not be construed to affect the right of religious union to carry out activities and perform rituals in accordance with its own norms, provided that they do not violate public order.

Article. 23. Adapting existing Infrastructure and environment in accordance with the requirements of this law

1. State and local self-government authorities, as well as public service providers shall adapt infrastructure in accordance with the requirements set in this Law in order to enable persons on the territory of Georgia, especially people with disabilities, to equally enjoy rights and opportunities envisaged by the legislation.

2. Inspector shall not impose fine until 1st of January 2018, on the ground that the infrastructure and environment existed before the entry into force of this law have not been adapted in accordance with the requirements of this law.

Article 24. Elaboration of state strategy and action plan on elaboration of all forms of discrimination

The Government of Georgia shall elaborate strategy and action plan no later than 1st of September 2014, that shall determine activities to be carried out by the certain authorities for elimination of all forms of discrimination, terms of their execution and assessment indicators.

Article 25. Date of the election of the Inspector.

Inspector shall be elected no later than 1st of March 2014 in accordance with this Law.

Article 26. Entry into force

1. This Law except Articles 13-17 shall come into force upon publishing.
2. Articles 13-17 shall come into force on the 1st of March 2014.