**Contribution for the Office of the High Commissioner for Human Rights (OHCHR) for the study on the Article 5 of the CRPD on Equality and nondiscrimination**

**Human Rights Conditions of the Persons with Disabilities in terms of equality and nondiscrimination in Georgia**

1.Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.

The Georgian Constitution sets down the fundamental principles of non-discrimination and equality before the law. Article 14 of the Constitution does not directly establish disability as a prohibited ground of discrimination, however, in its March 31, 2008 №2 / 1-392 decision,[[1]](#footnote-1) the Constitutional Court explained that despite the grammatically exhaustive records, the Constitution prohibits discrimination on any grounds, including disability. In addition, as explained by the Constitutional Court, the limited mental capacity is a social criteria/characteristic, [[2]](#footnote-2) which, according to the above-mentioned article of the Constitution, is prohibited grounds of discriminations and, therefore, is considered to be directly implied in the named norm. The Constitution prohibits both direct and indirect discrimination on any grounds.

In December 2013, the Parliament of Georgia ratified the Convention on the Rights of Persons with Disabilities. Furthermore, in May 2014, the Parliament adopted the law "on the Elimination of All Forms of Discrimination“[[3]](#footnote-3)(hereinafter referred to as "anti-discrimination law"), where it is important that disability is one of the characteristics, irrespective of which, every form discrimination is prohibited (Article 1). Similarly to the Constitution, according to the above-mentioned law, both direct and indirect discrimination is prohibited. In addition the law states that discrimination is not only unequal treatment of individuals in comparable/similar position, but also equal treatment of persons who are in inherently unequal conditions. Beside the above-mentioned law, according to the Labour Code of Georgia, labour and pre-contractual relations prohibit discrimination on the grounds of disability,[[4]](#footnote-4) which implies that both direct and indirect discrimination is impermissible.

Anti-discrimination law, in addition to providing material rights, defined institutional mechanisms for appropriate supervision and preventing discriminatory attitudes and practices. In particular, as stated in the first paragraph of Article 6 of the law, the Ombudsman is supervising the elimination of discrimination and ensuring the equality. In order to practically implement its mandate, certain changes were made also in the legislation regulating the Public Defender’s activities[[5]](#footnote-5). At the same time, Article 10 of the anti-discrimination law provides the possibility of appealing to the court in cases of disputes related to the discrimination issues. The legislation also covered the special regulations for the court proceedings.[[6]](#footnote-6)

According to the Anti-discrimination law, the Ombudsman, due to individual's application / complaint, or its own initiative, has the right to examine the factual circumstances of the case and determine the existence of discrimination. In this way, Ombudsman performs the task, assigned to it according to the aforementioned law, regarding the supervision of the elimination of discrimination and ensuring equality. If the case of discrimination is established the Ombudsman can give a recommendation to the person who had committed the discriminatory act to eliminate this kind of action.

Despite these positive innovations in the Georgian legislation, this mechanism has serious drawbacks, which eventually makes it ineffective mechanism against fighting discrimination. In his report to the parliament, Ombudsmen indicates that its mandate is limited and problematic[[7]](#footnote-7).

In particular, in cases where existance of discrimination is established, the Ombudsman issues recommendations which are not binding and have only advisory nature. Upon Ombudsman’s proposal/recommendation, administrative agencies, state and local authorities have the responsibility to review the case and report the results back to the Ombusman, in a 20 day period. Such consideration is not provided to private individuals and legal persons. Besides the above-mentioned, the Ombudsman does not have any mechanisms to monitor the implementation of the recommendations and ensure their enforceability to private individuals and legal persons, as opposed to administrative authorities, where the Public Defender, according to the anti-discrimination law, has the right to apeal to the court to issue administrative act, if the administrative body fails respond to Ombudsman’s recommendations or refuses to share them.

In addition, there is a difference on the investigation stage between the public authorities and private entities releasing the information to the Public Defender. When the Public Defender requests the information, the state authorities are obliged, according to the law, to ensure the delivery within 10 days, however, the same requirement does not apply to the private entities and obtaining the necessary information (which is important for determining the proceedings of the case) depends on the good will of the private entities. In these conditions, it is impossible for the Public Defender to fully and impartially investigate the circumstances.

According to the anti-discrimination law, another important mechanism for elimination of discrimination is opportunity to address the court. In terms of discrimination, an individual may request elimination of discriminatory practices and / or alleviation of its consequences, as well as compensation for moral and / or material damages. The court is authorized to establish the fact of discrimination, and fully or partially satisfy the claim, or to refuse to satisfy the claim. Moreover, establishing the distribution of burden of proof, which is different from the general regulations, should be considered a positive step forward. The plaintiff shall submit to the court the evidence that is sufficient to create the presumption of the existence of discrimination, and further proof rests on the defendant to prove that discrimination did not occur.

There are also some procedural flaws in the judicial proceedings. One of the major problems is in relation to the limitation period, namely the claim is allowed if it is filed within 3 months from the fact of discrimination, or from the moment when the individual ought to have known about it. It is noteworthy that 3 months is a very short time period for this process, considering that such actions aimed at eliminating discrimination is a new opportunity, about which there is no adequate public awareness. Adequate time is needed for the victim to fully realize and understand the discriminatory treatment, to seek help for representation in court proceedings, and prepare the case. In some cases, the limitation period is problematic in relation to victims who need to be convinved to get involved with the court proceedings. As explained above, in many cases the 3-month deadline for submitting a claim to the court is too short, which makes its practical implementation not possible, and thus hinders the realization of the rights. Such procedural precondition is set as a blanket rule and does not provide any exceptions.

Even though, the mandate of the public defender differs from the mandate of the court, in terms of eliminating discrimination, according to the today’s procedural framework, these two mechanisms can not be effectively used simultaneously. In particular, unlike the courts, the Ombudsman cannot discuss the compensation for damages, and the enforceability of the court's decision is also different in this regard.

Factual circumstances identified by the Public defender, as well as the recommendation and the evidence gathered by him may constitute an important factor in the further consideration of the case during the court proceedings. Furthermore, under the framework of the case where the Public Defender's Office is represented, the Ombudsman's findings and recommendations will significantly help the party in the the process of preparing and justifying the position. However, the existing legislation virtually eliminates such possibility, due to the 3-month time limitaion period. In particular, as Ombudsman is considering the case (which usually takes more than 3 months), aforementioned period of three months might pass and the party will be left without the right to address the court. If the Ombudsman is considering the case and, at the same time, the party files the lawsuit in the court, or there are proceedings in the administrative body or criminal prosecution process starts, the Ombudsman will drop the case. In addition, the existence of a court decision, regardless of its content and outcome, leads to the Public Defender to drop the proceedings. Under these conditions, it is impossible to appeal to the Ombudsman and the court institution simultaniously, these two mechanisms are alternatives to each other and those who are victims of discrimination, are forced to make a choice between the two.

As only the court has a mandate to review and satisfy individual’s claim requesting the compensation for discriminatory conduct, and such mandate is not given to the Ombudsman, the applicant has to have a limited opportunity to appeal to both of these mechanisms. As a result, some alleged discrimination cases are left beyond the Ombudsman’s review, especially when it is in the party's interest to demand compensation for the material or moral damage.

Court and the Ombudsman are institutions of essentially different functions. Their own mandates, rested upon the relevant legislation, should not be considered as alternative mechanisms, which are incompatible with each other, but on the contrary, these two institutions should complement each other, and joint their efforts in fighting against discrimination.

In addition to the aforementioned shortcomings, which make the institutions responsible for the elimination of discrimination and ensuring equality ineffective and weak mechanisms, one of the main problems is the lack of relevant knowledge and experience, particularly in the judiciary. Review of the discrimination cases calls for the discussion of different standards and peculiarities. In today’s reality such resources are considerably limited, thus there is an urgent necessity to increase sensitivity, qualification and knowledge of the important actors who are involved in the discrimination-related issues.

2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements

Georgian legislation does not take into consideration the concept of "reasonable accommodation" (as defined by the Convention of the Rights of Persons with Disabilities ") and does not recognize its non-existence as a form of discrimination. This is one of the major problems and drawbacks in fighting against the discriminatory environment which disregards their special needs and this is also reflected in Ombudsman’s report[[8]](#footnote-8).

Absence of the "reasonable accommodation" standard also implies the absence of the evaluation criteria, and the absence of the test, in relation to which it would be possible to monitor the implementation of the "reasonable accommodation" and adequatly qualify the discrimination that might occur. The absence of the concept of “reasonable accommodation” and lack of its testing, directly impacts the identification of the discrimination cases that are the result of the absence of the reasonable accommodation, since the Department of Equality (under the Public Defender’s Office) can not conclude the existence of discrimination in such cases. Due to the problematic nature of such legislation, the Department of Equality set up a working group for the purpose of identifying the standards and concepts of "reasonable accommodation".

3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced.

State policy does not enforce affirmative action as a means of combating structural discrimination and promoting realization of rights for persons with disabilities. Consequently, legislation and policy, which is aimed at promoting the realisation of rights for persons with disabilities, mostly is not based system of affirmative action, including in such important areas as employment.

However, there are several exceptions to this general policy, which based on the legislation or on the national or local policy provides affirmative actions for combating structural discrimination against persons with disabilities One of these measures, is education grant in the higher education system. For example, in the case of moderately disabled/ pronounced disabled student, based on his/her exam results, gains the status of the student, state will automatically issue educational grant, under the framework of the social program.[[9]](#footnote-9)Furthermore, as incentive measure, the law also establishes the possibility of exemption from income tax. More specifically, the income of the person with disabilities since childhood, as well as that of people with significant disabilities is not taxed, as long as the taxable income in one calendar year is less than 6000 GEL. [[10]](#footnote-10) Also, the Tbilisi Municipality provides one time assistance program for the legally blind persons and operates preferencial system in the municipal transport

4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks;

In terms of combating discrimination against women and children with disabilities, our organization does not have specific knowledge and experience. In this regard, important source is Public Defender’s parliamentary and special reports, which address the rights of women and children with disabilities. [[11]](#footnote-11)

5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?

In terms of combating discrimination, the Ombudsman as well as court system has lack of experience,which also is reflected on the poort statistics of determining discrimination of the grounds of disability. Despite the limited experience, the Ombudsman collects and provides statistical information regarding the overall number of the discrimination cases (on dissability grounds). However, this statistics does not provide disaggregated data on discrimination based on gender, age and the degree of impairment.[[12]](#footnote-12) Furthermore, common court system, on cases where discrmination based on disability was esbalished or proceeded, also does not proactively collect and publish disaggregated data on discrmination against persons based on gender, age and degree of impairment.

1. Judgement of the Constitutional Court of Georgia №2/1-392, March 31, 2008; II-2. <http://www.constcourt.ge/en/legal-acts/judgments/citizen-of-georgia-shota-beridze-and-others-v-the-parliament-of-georgia-573.page> [↑](#footnote-ref-1)
2. Judgement of the Constitutional Court of Georgia №2/4/532,533, October 8, 2014; II-114. [↑](#footnote-ref-2)
3. <https://matsne.gov.ge/ka/document/view/2339687?impose=translateEn> [↑](#footnote-ref-3)
4. Labour Code of Georgia, Article 2; para. 3-4. [↑](#footnote-ref-4)
5. <https://matsne.gov.ge/ka/document/view/33034?impose=translateEn> [↑](#footnote-ref-5)
6. Civil Procedure Code of Georgia, Chapter XLIV9 [↑](#footnote-ref-6)
7. <http://ombudsman.ge/uploads/other/3/3652.pdf> Pg. 110 [↑](#footnote-ref-7)
8. <http://www.ombudsman.ge/uploads/other/1/1934.pdf> Pg. 286 [↑](#footnote-ref-8)
9. Human Rights Education and Monitoring Center (EMC); Guidelines on the Implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), (Concept-Based Recommendation on the Amendment of the Legislation and Major Policy Directions); 2015; pg. 79; available in Georgian: <https://emc.org.ge/2014/08/18/uncrpd-is-imlementaciis-gaidlaini/>; [↑](#footnote-ref-9)
10. Human Rights Education and Monitoring Center (EMC); Guidelines on the Implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), (Concept-Based Recommendation on the Amendment of the Legislation and Major Policy Directions); 2015; pg. 79; available in Georgian: <https://emc.org.ge/2014/08/18/uncrpd-is-imlementaciis-gaidlaini/>; [↑](#footnote-ref-10)
11. Annual Report of the Public Defender of Georgia; The Situation of protection of human rights and freedoms in Georgia. 2015. Available: <http://www.ombudsman.ge/uploads/other/3/3652.pdf>; Annual Report of the Public Defender of Georgia; The Situation of Human Rights and Freedoms in Georgia. 2014; available: <http://www.ombudsman.ge/uploads/other/3/3510.pdf>; Special Report of the Public Defender of Georgia. Rights of Persons with Disabilities in Georgia; 2015; available: <http://www.ombudsman.ge/uploads/other/3/3728.pdf>; [↑](#footnote-ref-11)
12. Public Defender (Ombudsman) of Georgia; Special Report On combating discrimination, its prevention and the situation of equality in the country; September 2015; pg.12; available: <http://ombudsman.ge/uploads/other/3/3334.pdf>; [↑](#footnote-ref-12)