

## Brief Summary

On 2 May 2014, the Georgian Parliament passed the Law on the Elimination of All Forms of Discrimination. The law bans all forms of discrimination, including that based on language, religion and sexual orientation. While Georgia's constitution already included the protection of universally recognised human rights and freedoms as eternal and supreme human values, there was an urgent need to introduce a comprehensive antidiscrimination framework and enforce fundamental equality before the law. The Georgian Government's commitments under the Visa Liberalisation Action Plan with the EU provided another impetus for the adoption of legislation that protected the rights of minorities.

This report presents a summary of the work of the Coalition for Equality during the period of May 2014 through 1 April 2015. The first chapter describes the cases litigated by the Coalition during this period. The second chapter discusses the Public Defender's successes and shortcomings in implementing the antidiscrimination law. The third chapter focuses on procedural complexities, discovered as Coalition members brought antidiscrimination claims before the courts. The fourth chapter presents a set of comprehensive recommendations intending to advance the implementation of the antidiscrimination law. The final chapter of the report describes the Coalition for Equality.

The informal Coalition for Equality brings together five Georgian human rights non-governmental organisations: Georgian Young Lawyers' Association (GYLA), Article 42, Identoba, Sapari, Human Rights Education and Monitoring Center (EMC). Open Society Georgia Foundation (OSGF) funds and acts as the Coalition's secretariat. The Coalition was formed in advance of the Georgian Parliament's Human Rights Committee's consideration of the antidiscrimination bill. The five human rights organisations united to present a common stance on the bill's contents. The aim of the collaboration was to promote the development of an effective antidiscrimination mechanism and counter the strong resistance of the Georgian Orthodox Church to the prohibition of discrimination based on sexual orientation and gender identity.

Parliament did not submit to the strong insistence of the Georgian Orthodox Church and the two grounds of discrimination remained in the bill. However, Parliament refrained from including any monetary repercussions against those who violate the antidiscrimination law.

The Coalition did not dissolve with the adoption of antidiscrimination law. Rather, members of the Coalition began promoting the effective implementation of the newly enacted law. Now the organisations each focus on the specific type of discrimination relevant to their accumulated expertise and experience. GYLA works on cases of alleged discrimination based on race, ethnicity and citizenship, Article 42 on political persecution, Sapari on gender-based discrimination, Identoba on the LGBT community, and EMC on religious minorities and persons with disabilities.

On 16 May 2015, the Coalition for Equality signed a memorandum of understanding with the Public Defender, the constitutional institution in charge of implementing the antidiscrimination legislation. The parties committed to sharing information on allegations of discrimination and meet regularly to promote collaboration. In advance of submitting a proposal of legislative amendments to Parliament on 11 February 2015, the Public Defender consulted members of the Coalition about the proposal's contents.

Coalition members met with the EU evaluation mission when it came to Georgia in order to assess progress toward the implementation of the Visa Liberalisation Action Plan and provided their independent assessments of the government's implementation of the law to the mission.

Along with litigating allegations of discrimination, the Coalition for Equality is conducting a public awareness campaign on the antidiscrimination law. The Coalition created a 23-second public service announcement (PSA) in order to inform the public about the rights enshrined in the antidiscrimination law and the Coalition's activities. The PSA has been airing on Georgian Public Broadcasting (GPB) since 25 February 2015. The PSA announces the number of the hotline where individuals alleging discrimination can receive a legal consultation and the support of the relevant member organisation. The Coalition also published flyers with similar information and provided them to people who visited the offices of Coalition member.

The law vests in the Public Defender, the independent human rights institution accountable to Parliament, the authority to implement the antidiscrimination law. Based on a complaint submitted by a victim or even without it, the Public Defender is empowered to investigate alleged cases of discrimination. The Public Defender has jurisdiction over both public and private entities. While investigating an instance of discrimination, the Public Defender has the right to obtain any and all information or evidence regarding the fact of alleged discrimination from a public entity within ten days. Upon the request of the Public Defender, the public entity is obliged to make the information available. If the public entity does not comply with the request, the Public Defender can appeal to the court to fine the entity. This is not the same for a private entity. A private entity is not legally obliged to comply with the Public Defender's request for information. This significantly curtails the effectiveness of the antidiscrimination law. In addition, the law does not provide any timeline for the Public Defender to render a decision on the investigation of the allegation.

If the Public Defender sustains an allegation of discrimination, he issues a recommendation to the perpetrator for how to remedy the discriminatory action. If there is condition that constitutes a threat to equality but which has not yet resulted in a specific instance of discrimination, the Public Defender issues a general proposition to the person in charge of eliminating that condition. However, neither a recommendation nor a general proposition is binding. Prior to the law's adoption, the Coalition had proposed that Parliament give the Public Defender the authority to recommend penalties. Should the perpetrator remain non-compliant with a recommendation or general proposition, the Public Defender would then have appealed to the court to institute a fine against the perpetrator. Parliament, however, was reluctant to upset private business, and rejected this proposal thereby limiting the effectiveness of the national equality mechanism.

The Public Defender is also entitled to adduce annual reports, present legislative proposals to Parliament and submit *amicus curiae* briefs to both common and constitutional courts. However, there are some legislative inconsistencies when it comes to the Public Defender and *amicus* briefs. The Organic Law on the Public Defender does not limit the Public Defender's ability to submit *amicus* briefs to criminal cases only. But while the Criminal Procedure Code allows any person to submit *amicus* briefs in criminal cases, neither the Civil Procedure Code (CPC) nor the Administrative Procedure Code refer explicitly to anyone's right to submit such briefs. The Coalition for Equality strongly recommends that Parliament amend the Civil Procedure Code in order to allow not only the Public Defender but also NGOs to adduce *amicus curiae* opinion in both civil and administrative cases.

The antidiscrimination legislation grants the authority to the common court to adjudicate cases on alleged discrimination. An alleged victim can seek the following judicial remedies: to bring to an end the act of discrimination or to receive compensation for material and moral damages. However, what constitutes moral damage and how to provide evidence for this is vague.

Pursuant to Georgian legislation, the plaintiff bears the burden of proof in establishing a reasonable doubt that the plaintiff has suffered discriminated at the hands of the defendant. The defendant must then prove that he/she has not discriminated against the plaintiff. To win the case in court, the victim needs to have access to evidence that comports with the standards of reasonable doubt. Once a civil case is in litigation, the court is unable to help the victim in obtaining the evidence in civil cases. The only way the victim can gain access to evidence is through the Public Defender's office. The problem is that the victim is incapable of seeking redress from the Public Defender and court simultaneously. The law requires the Public Defender to suspend the application once the author of it appeals to the court. Additionally, the law mandates a three-month time limit for the victim to appeal to the court. The victim is thus impelled to appeal to the court quickly and not lose time seeking redress through the Public Defender, so as to avoid missing the three-month window. The Coalition for Equality recommends that Parliament extend the time limit from three months to one year and make it possible for the victim to engage with both the Public Defender and the court simultaneously.

On 12 March 2015, the Public Defender informed the Coalition that the office has addressed 48 cases (some close and others pending) of alleged discrimination. The 48 cases contain allegations of discrimination in the following locales: workplace (20 cases); law-enforcement authorities (6 cases); public and semi-public spaces (5 cases); restaurants (3 cases); social protection entities (3 cases); educational facilities (3 cases); healthcare systems (2 cases); the public transportation system (2 cases); construction company (1 case); statistics service (1 case); and the civil registry (1 case).

Members of the Coalition for Equality are litigating 32 cases before the court, Public Defender and other public agencies. Seventeen cases have been brought before the Public Defender and 12 claims have been submitted to the court. Other administrative agencies, such as the commission on the resettlement of households, have resolved the applications of the EMC. The Ministry of Justice is addressing the complaint of Identoba and the social service agency has upheld the request of GYLA.

Sapari has challenged as sexist the commercial of the Bank of Georgia, which was posted on Facebook, before the Public Defender. The commercial depicts a man as a cash dispenser with his wife asking him to borrow money. The commercial promotes the gender stereotype that the man is the only breadwinner in the family. The commercial inculcates the belief of the inferior role of woman in the family, as though she herself could not earn her living. The Public Defender found that the commercial jeopardises a woman's right to equality and sent a general proposition requesting that the Bank of Georgia refrain from releasing such a commercial in future and train its staff on gender sensitivity. Although the Bank of Georgia neither responded to the proposition nor removed the commercial, it is the Coalition's only instance of the Public Defender successfully addressing one of its cases at this point.