

# NOVELTIES OF THE LAW ON THE PROTECTION OF PEOPLE WITH DISABILITIES

A new Draft Law on the Protection of People with Disabilities has been initiated in the Parliament of Georgia. It is currently pending for a committee sitting. The legislative initiative envisages significant novelties in terms of protecting the rights of people with disabilities.

## 1. LAW, INITIATOR

**Law:** [Law on the Protection of People with Disabilities](#)

**Initiator:** Government of Georgia

**Author:** Ministry of Justice

## 2. ESSENCE OF THE DRAFT LAW

The law [envisages](#) resolving the shortcomings in regards to the protection of the rights of persons with disabilities in line with the [Convention](#) on the Rights of Persons with Disabilities.<sup>1</sup>

The draft law abolishes the [Law on the Social Protection of People with Disabilities](#) that was adopted in 1995.

According to the Draft Law:

- Municipalities will offer personal assistance services to people with disabilities. A personal assistant will help a person with a disability to get an education, a job, to use public services and to solve everyday problems.

- A special institution of plaintiffs will be established - organizations that work for the rights of persons with disabilities will be registered with the status of a special plaintiff and will be given the opportunity to apply to the court in cases of discrimination against persons with disabilities.

- A person with a disability will have the opportunity to receive legal assistance at the expense of the state

- State agencies will be obliged to adapt buildings according to the needs of persons with disabilities;<sup>2</sup>

## 3. 1. PRINCIPLE OF REASONABLE ACCOMMODATION

### EXISTING PROVISION

Not defined

### PROPOSED CHANGES

Reasonable accommodation implies the protection of the principle of equality for the rights of persons with disabilities.<sup>3</sup>

## 4. 2. UNIVERSAL DESIGN

### EXISTING PROVISION

The law does not define the concept of universal design nor its obligation.<sup>4</sup>

### PROPOSED CHANGES

- “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.<sup>5</sup>

- Within 15 years of the adoption of the law, all relevant bodies / institutions are to gradually adapt the principle of universal design to existing buildings, infrastructure, and services. If adaptation is not possible for technical reasons, alternative means should be identified to ensure full access for persons with disabilities.

## 5. 3. INCREASING THE POWERS OF THE LEGAL AID SERVICE

### EXISTING PROVISION

Persons with disabilities, like all other citizens, can use the Legal Aid Service if they don't have the means to pay.

### PROPOSED CHANGES

The Legal Aid Service will provide legal consultations and representation in the court for all categories of cases.

## 6. 4. SPECIAL PLAINTIFF INSTITUTE

### EXISTING PROVISION

Not envisaged under current law.

### PROPOSED CHANGES

- A non-profit (non-commercial) legal entity will be registered as a special plaintiff in order to protect the rights of persons with disabilities. To be eligible for registration, the organization needs to have at least 3 years of experience in the field of civil and / or administrative proceedings.

- Organizations with the status of a special plaintiff will have the right to conduct administrative and civil disputes in cases related to the discrimination of persons with disabilities.

## 7. 5. PERSONAL ASSISTANT

### EXISTING PROVISION

Not envisaged under current law.

### PROPOSED CHANGES

- Municipalities will offer personal assistance services to people with disabilities.

- A personal assistant is an adult, able-bodied person who assists a person with a disability in improving their quality of life in receiving an education, a job, using public services, or performing daily activities.

## 8. 6. ESTABLISHING THE STATUS OF A PERSON WITH DISABILITY THROUGH BIOPSYCHOSOCIAL MODEL

### EXISTING PROVISION

The status of a person with disability is defined through a medical diagnosis.

### PROPOSED CHANGES

- The establishment of a disability status will be based on a biopsychosocial model developed by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia

- According to the biopsychosocial model, the status of disability, along with the provided medical evidence, will be based on an assessment of real needs. In particular, the relationship between psychological, biological and social factors, behavioral style, cognitive processes and environmental factors will be taken into account.

## 9. 7. INTERAGENCY COORDINATION COMMITTEE

### EXISTING PROVISION

Not envisaged under the current law.

### PROPOSED CHANGES

- The government is setting up an interagency coordination committee that will be responsible for the implementation of the Convention on the Rights of Persons with Disabilities.

- The interagency coordination committee should develop a unified strategy and action plan for the implementation of the Convention on the Rights of Persons with Disabilities and the Law on the Rights of Persons with Disabilities. The committee will also oversee their implementation.

## 10. ★ ASSESSMENT/ANALYSIS

The draft law makes an improvement on the standard of protection of the rights of persons with disabilities, which is a positive development.

The UN [Convention](#) on the Rights of Persons with Disabilities was ratified in Georgia on December 26, 2013 (entered into force on April 12, 2014)<sup>6</sup>. As such, Georgia has committed itself to ensuring and promoting the full realization of human rights and fundamental freedoms by persons with disabilities without any discrimination.

Later, in October 2014, a [ruling](#) <sup>7</sup> by the Constitutional Court completely changed the regulatory norms for people with disabilities, fundamentally reformed the system of legal capacity and elaborated that people with psychosocial needs were fully viable.

Despite the legislative amendments, the rights of the persons with disabilities are still not properly protected and ensured, according to the initiator of the draft law. More specifically, the [explanatory note](#) states that “the reality in Georgia makes it difficult for persons with disabilities to live independently, based on both statistical and substantive studies.”<sup>8</sup>

The following important amendments in the draft law should be positively assessed:

- Supporting persons with disabilities in the process of legal proceedings: a person with disabilities will have the opportunity to receive legal assistance from a state and there will also be a special plaintiff institution;

- The law defines the principles of reasonable accommodation and universal design.

It is important for the norms that guarantee the protection of the rights of persons with disabilities not to be obscure and contain enforcement mechanisms. A number of issues in this regard need to be refined and improved on, namely:

- Numerous norms of the draft law are declarative in nature and therefore the mechanisms of enforcement are not defined. For example, the state “supports” and / or “ensures” the rights of persons with disabilities, although the specific mechanisms that contribute to the implementation of rights, such as education, health, employment, are not explained.

- The draft contains vague / obscure provisions, for example, when defining reasonable accommodation, it is not clear what is meant by necessary and appropriate changes;

- The proposed amendments should be implemented as soon as possible. The deadline for the entry into force of the draft law is defined during the years 2021-2035.

1 Explanatory note on the draft law of Georgia on the Rights of Persons with Disabilities, see: <https://info.parliament.ge/file/1/BillReviewContent/243316?>

2 Accessibility is a broad category and includes several areas, including access to services, buildings, and information.

3 According to the draft law, the “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

4 The norms governing the environment, teaching or product availability are scattered across various legal acts.

5 “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

6 Convention on the Rights of Persons with Disabilities, Entry into Force on 12/04/2014, see <https://bit.ly/2yFdwEm>

7 Judgment of the Constitutional Court of Georgia of October 10, 2014 # 2/4 / 532,533 on the case “Citizens of Georgia - Irakli Kemoklidze and Davit Kharadze v. Parliament of Georgia”, see: <https://bit.ly/2VbTdFY>