

Initial assessment of a draft law on the rights of persons with disabilities by organizations and activists working on the rights of persons with disabilities

On February 3, 2020, a Draft Law of Georgia “on the Rights of Persons with Disabilities” along with the package of legislative changes was registered at the Parliament of Georgia. The Ministry of Justice has been working on the document for the last few years. The Draft Law should have been designed to implement the UN Convention on the Rights of Persons with Disabilities (CRPD) and create relevant legislative and institutional mechanisms. Nevertheless, aside from a few positive changes, the Draft Law does not change the human rights situation of persons with disabilities, and in some cases, contradicts the Convention and worsens the standards for the protection of the rights of persons with disabilities.

The CRPD provides for active and effective involvement and participation of persons with disabilities in any relevant decision-making process carried out by the State. However, the law-drafting process by the Ministry of Justice was challenging. The Ministry failed to ensure active and effective involvement of persons with disabilities and organizations working on their rights in the drafting process. Interested persons with disabilities had no information about the commencement of working on the Draft Law. Certain organizations and activists had the opportunity to participate only once in the discussion on the Draft Law and submit their written and verbal comments. Nevertheless, the involvement was illusory, as only a small part of the recommendations was reflected in the final version of the Draft Law, and the Draft was not substantially changed. Furthermore, prior to the submission of the Draft Law to the Parliament, persons with disabilities were not given the opportunity to get acquainted with the final version of the Draft Law and submit their feedback to the relevant governmental agencies. We believe that when the central government was working on a package of legislation that would address all aspects of the lives of people with disabilities, it was not enough to ensure solely the involvement of service provider organizations. The process should have been inclusive and should have been part of a wide-range public discussion throughout Georgia, taking into account the views and recommendations of people with disabilities living in the regions.

The Draft Law includes some positive changes, such as the requirement to protect a physical and mental integrity of persons with disabilities, the provision of support to persons with disabilities in the framework of legal proceedings, the concepts of reasonable accommodation and universal design, as well as the definition of a special plaintiff. However, these changes do not significantly improve the human rights situation of persons with disabilities and their quality of independent living due to their deficiencies and/or introducing lower standards than the CRPD. In addition, the transitional provisions of the Draft Law include the obligation to set important standards, however, the timing of their adoption and enforcement is prolonged, which postpones the state’s obligations under the CRPD and makes it impossible to improve the rights of persons with disabilities. Furthermore, the issue on the ratification of the Additional Protocol to the CRPD is absent in the Draft.

An important challenge is the declarative and abstract nature of the Draft Law, which does not set human rights standards and, if enacted, does not guarantee the real protection of the rights of persons with disabilities. In particular, the Draft Law, recognizes the protection of the rights of persons with disabilities as a good will (and not the obligation) of the state. Concerning all articles, the document stipulates that the state should promote the realization of the rights, while according to the UNCRPD and the national legislation the state should *ensure* protection of the rights of persons with disabilities in all areas of life.

The structure of the Draft Law is inconsistent. It excludes several rights and rights-setting and enforcing standards. The Draft Law omits important areas that are a major challenge for people with disabilities living in Georgia. While hundreds of persons with disabilities continue to live in large-size boarding houses and psychiatric institutions, the Draft Law excludes the state’s obligations concerning mental health and deinstitutionalization. One of the major problems is a reflection of the legal capacity standards into the Draft Law. Although the state has carried out the legal capacity reform, which was resulted in the introduction of a supported decision-making model, the implementation of this reform is challenging and does not substantially improve the situation of the supported persons. Against this background, the Draft Law fails to mention these most important challenges and ways to overcome them.

The document does not include particular rights such as freedom of movement, freedom of thought and expression. The document does not single out the protection issues of women with disabilities as a separate article, despite the specific difficulties they face. Unlike the original version, the definition of an organization of persons with disabilities, which was an important innovation, is no longer found in the current version.

Along with the rights-setting standards, the Draft Law fails to create preconditions for the provision of relevant services for persons with disabilities. It solely introduces a program of a personal assistant as a separate service, while it cannot be qualified as only important service for people with disabilities.

It is noteworthy, that the founding concepts of the CRPD - the social model, reasonable accommodation and universal design - are found in the document, however, lower standards are set than the CRPD. In particular, the Draft Law narrowly defines reasonable accommodation, as only the obligation of particular state institutions, and only with regard to adaptation of the physical environment, and thus imposes a limitation on its provision in other areas. In addition, it should be noted that the CRPD views undue and unjustifiable hardship as grounds for denial of reasonable accommodation, while the Draft Law, on the other hand, stipulates that precondition for a denial of reasonable accommodation is a disproportionate or excessive burden or obligation. It is important that denial of reasonable accommodation as a form of discrimination is reflected in the Law “on the Elimination of All Forms of Discrimination”.

As noted above, the concept of universal design is flawed and, like the principle of reasonable accommodation, it sets a lower standard than the one included in the CRPD. In particular, the CRPD considers the maximum usage of the product, environment, programs and services as the main purpose of the principle of universal design, while the Draft Law is solely limited to the accessibility issues. A provision in the Draft Law concerning "the adaptation of the environment in accordance with Universal Design" is unclear, which makes the introduction of the definition of universal design nonsensical. The limited definition of universal design is also confirmed by the fact that its implementation is related only to the obligations of the Ministry of Economy and Sustainable Development and the Ministry of Regional Development and Infrastructure and is not connected with other important topics such as education, employment, health care, etc.

The provision regarding the introduction of a social model for the assessment of persons with disabilities is completely flawed. Instead of a social model, the legislation only discusses the assessment approach (biopsychosocial assessment), which is again linked to the medical approach.

In relation to certain rights and concepts, the Draft Law contradicts the CRPD and worsens the human rights situation of persons with disabilities and/or ignores the challenges faced by them. In particular, despite the fact that the Draft Law abolishes the Law of Georgia “on Social Protection of Persons with Disabilities”, new mechanisms that are in line with the CRPD are not introduced; therefore, persons with disabilities are left without significant social protection guarantees. The article on labor and employment rights, which does not establish the standard defined by the CRPD - "open, inclusive and accessible labor market and work environment”, is also problematic. The Draft Law does not explicitly determine the specific positive measures that can be used to ensure the labor rights of persons with disabilities. The general role of the state in promoting (and not ensuring) employment and employment assistance to persons with disabilities is becoming even more obscure in the light of regulations concerning the self-employment and entrepreneurial activities of persons with disabilities.

As noted above, the Draft Law is accompanied by a package of legislative changes, some of which substantially contradict the CRPD, national legislation, and the state's already carried out legal capacity reform. It is also important to note that the proposed version of the Draft Law in some cases sets an even lower standard than the current national legislative framework.

The document does not provide specific and effective means for the implementation of the CRPD. One of the main challenges for the protection of the rights of persons with disabilities in the country is the lack of evidence-based state policies and services, preconditions for which is the production and analysis of statistical information by all governmental agencies. The Draft Law determines that the production of statistics is the responsibility of only one Agency – National Statistics Office of Georgia, which is not in

line with the international obligations of the country. Instead of this regulation, the Draft Law should instruct all governmental agencies to produce detailed statistics that will facilitate the creation and delivery of evidence-based services to persons with disabilities. Along with the production of statistics, unhindered work of the Convention implementation, coordination and monitoring bodies is important means for effective implementation of the state policy and thus, and relevant legislative guarantees should be introduced in the Draft Law in this regard.