

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Civil Society Organizations Urge the Parliament against Adopting the Law that Imposes Administrative Liability for Hurting Religious Sentiments

The below signatory civil society organizations disapprove of the legal draft submitted to the parliament that imposes administrative liability for hurting religious sentiments.

The Parliament of Georgia is currently reviewing a bill qualifying public expression of

hatred towards sacred objects, religious organizations, clergymen or worshippers by an individual, aimed at hurting religious sentiments, as administrative offence and envisaging subsequent administrative liability. We believe that the bill falls short of Constitutional and international human rights standards, and is essentially harmful to freedom of expression, and the development of pluralistic, liberal and democratic society in the country.

Regrettably, the bill was also reviewed in violation of procedural regulations considering that the proposed norm was not part of the initially proposed draft and was inserted in the document only during second hearing of the draft, which is in conflict with parliamentary regulations and decreases the possibility of public involvement and transparency in lawmaking process.

The bill envisages administrative liability in cases when an individual publicly expressed hatred towards sacred objects, religious organization, clergymen or worshippers by means of a statement or with his/her actions, aimed at hurting religious sentiments of worshippers; or if public expression by an individual displayed signs of religious strife or hatred or contained public call for any such actions. The bill under consideration does not offer any formulation whatsoever that would establish a standard of imminent and essential threat of violence with the intensity that matches an administrative offence during such public expressions. We believe that such legal provision, if enacted, will place arbitrary and unjustified restrictions on freedom of expression in terms of its content and will jeopardize free public debates in the society. Placement of such restrictions is especially unacceptable in view of challenges of secularism that require rationalization of public debates and processes related to authority and religion.

The bill is in direct conflict with the standards established by the ECHR and the Georgian Constitutional Court by placing restrictions on freedom of expression, considering that

1. In its case law the ECHR has found that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. It is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Pluralism,

tolerance and broadmindedness are hallmarks of a “democratic society” Restriction of freedom of expression should be permissible in certain exceptions only and be applied narrowly. (Surek v . Turkey, judgment dated 8 July, 1999, application #26682/95, paras. 58 (i)

Per Constitutional Court of Georgia, when placing restrictions on freedom of expression in terms of its contents, the state enjoys sharply limited discretionary powers. (April 18, 2011 judgment of the Constitutional Court of Georgia #2/482,483,487,502, in the political union Movement for Unified Georgia, Conservative Party of Georgia, citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v the Parliament of Georgia II.p.28)

In one of the cases the Court ruled the following: *“the state in general is prohibited from restricting freedom of information on grounds that certain information or ideas may be emotionally hurtful or promote unacceptable behavior. Individuals have the right to receive and impart ideas, and make their own judgments about what is acceptable and what is unacceptable”*. (November 10, 2009 judgment of the Constitutional Court of Georgia, 1/3/421,422 in citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v the Parliament of Georgia, II.p.7)

2. When assessing possible conflict between freedom of expression and freedom of religion, the ECHR explained: *“Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.”* (i.A. v. Turkey, judgment 13 September 2005, application #42571/98, paras.23)

3. Further, the Constitutional Court explains when legal liability may be imposed for committing violence and/or making calls for violent action. According to the Court it is important for both law and practice to differentiate between expressions that may contain hate speech but are harmless and part of political, social or scientific discourse, and calls when their author has realized their possible consequences and is aiming at these consequences. [...] clearly the fact that call has been made is not sufficient for holding individual liable but rather, an act of violence and/or criminal

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action or imminent threat of such action must be evident. [...] Making of calls shall result in imposition of legal liability only when an action (calls made by) an individual [...] create clear, direct and essential threat of illegal consequences. (April 18, 2011 judgment of the Constitutional Court of Georgia #2/482,483,487,502, in the political union Movement for Unified Georgia, Conservative Party of Georgia, citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v the Parliament of Georgia II.p.104)

In this light, the below signatories urge the parliament against adopting the bill and in general, to ensure public access and inclusive nature of discussions about issues of particular public importance and sensitiveness in the legislative body.

Institute of Tolerance and Diversity
Article 42 of the Constitution
Georgian Democratic Initiative
Georgian Young Lawyers' Association
Human Rights Education and Monitoring Center
Transparency International – Georgia
International Society for Fair Elections and Democracy
Tabula
Civic Education Fund
Media Development Fund
Sapari Union
Liberty Institute
Network of Information Centers
Liberal Magazine