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**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)*

Short Overview

The “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” was prepared by Human Rights Education and Monitoring Center (EMC) with the financial support of “Open Society – Georgia Foundation” (OSGF).

The content of this Concept-based Recommendation is the sole responsibility of Human Rights Education and Monitoring Center (EMC) and can under no circumstances be regarded as reflecting the position of “Open Society - Georgia Foundation” (OSGF).

1. Introduction

The UN Convention on the Rights of the Persons with Disabilities (further – UNCRPD or the Convention) is the main international document in protecting the rights of the persons with disabilities. The ratification of this document implies that a state undertakes an obligation to implement this legally binding document. Therefore, Georgia is facing a significant challenge: to fundamentally revise national standards of protection of the rights of persons with disabilities and to change these based on a policy of systematic approach.

Therefore, by ratifying the UNCRPD Georgia has expressed its will to base its policy on a new paradigm of the perception of disability and further, to ensure the protection of the rights of persons with disabilities in line with the best standards that are established by the Convention.

The goal of the presented document – the “Guidelines on the Implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)” - is to evaluate the human rights situation in relation to persons with disabilities through analyzing its compliance with the Convention. Further, these guidelines aim at providing the legislative and executive government with a concept recommendation on the implementation of the UNCRPD.

The “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” was prepared within the project “Supporting the Implementation of the UNCRPD in Georgia”, which was implemented with the financial support of “Open Society – Georgia Foundation” (OSGF).

2. Methodology

The document analyzes the human rights situations of persons with disabilities regarding the main rights stipulated by the Convention of; the document further analyzes the legislative framework and the major shortcomings in state policy, while elaborating possible directions of amendments that are targeted at compliance with the Convention.

Each chapter consists of the following components: 1) state obligations under the Convention; 2) coherence of the incumbent legislative framework and state policy with the standards established under the Convention and finally, 3) recommendations regarding the implementation of the relevant provisions of the Convention.

While preparing this document, the Human Rights Education and Monitoring Center (EMC) applied the following instruments:

- Evaluation of the legislation, policy papers and state programs;
- Secondary examination of the existing reports relating to the human rights situation of persons with disabilities – such as annual and special reports prepared by international organizations, local organizations, the Ombudsman of Georgia and the UN Committee on the Protection of the Rights of the Persons with Disabilities;
- Overview of the interpretations/explanations made in regard to the rights of persons with disabilities;
- Examination of the best practices of European countries in terms of the implementation of the Convention; and
- Processing the information, obtained through working groups which were composed of persons with disabilities, relevant organizations working on their rights and representatives of both the legislative and executive branches of the government.

3. General Definitions of the Convention

Despite some changes, the main notions outlined in the national legislation still do not comply with the Convention. They do not take its newest attitudes into consideration and on certain occasions, even contradict the main values of the document.

The major amendments, introduced after the ratification, should have implied the review of the definitions; however, changes were only made to the definition of a person with a disability. Despite the amendments to this definition, the legislative acts still use terminology which does not comply with the Convention such as: to become an invalid¹, imbecile, insane² etc. This trend derives from the medical model and results in the usage of terminology that does no longer comply with modern concepts.

This relates to the medical model of perceiving a disability which, among others, is reflected in the legislative terminology and which is incoherent with the contemporary understanding of a disability.

3.1. Disability

Changes in the legislation were made simultaneously with the ratification of the Convention³. A new definition of the term “disability” was introduced: “disability is a serious physical, mental,

¹ Georgian Law on General Education, article 48⁵, Georgian Law on Health Protection, article 3, subclause „ ϕ “¹, Law on protecting patients rights. article 12, clause 25

² Georgian Civil Code, article 12

³ On changes to the Law on Medical-Social Examination, article 1, March 7, 2014

intellectual or sensory impairment which results in limited abilities either temporarily or permanently”.⁴

Although the mentioned definition (introduced after the ratification in order to reflect the major vision of the Convention in the legislation) was changed, it still contradicts the vision of the notion under the Convention. The new definition was supposed to rely on the social model and eliminate impairment as the only cause for disability; however, the amendment has maintained the old perception which ignores social and environment factors. Thus, the new definition of disability that was implemented after the ratification still contradicts the Convention significantly.

3.2. Persons with Disabilities

The concept of a person with a disability, which was based on the medical model, was also changed after the ratification and approaches the Convention’s notion. According to the new definition a "disabled person is a person with serious physical, mental, intellectual or sensory impairments which in interaction with various obstacles might prevent full and effective participation in public life on equal terms with others."⁵

Therefore, the current version is in compliance with the Convention requirements, since the current definition relies on the social model of a perception of a person with disability. Although, the changed definition does not immediately imply effective legislation. Especially since no changes were made in the supporting regulations, including to the rules of granting the status of being disabled. As a result, the existing medical model still remains in both the national legislation and in the practical implementation.

3.3. Reasonable Adjustment and Universal Design

The Georgian legislation does not recognize the notions of *reasonable adjustment* and *universal design*. Therefore, in order to implement the Convention, it is necessary to introduce these notions into domestic legislation. Universal design is mentioned in the ordinance issued by the Government of Georgia: “Technical regulations for creating space and architectural and planning elements for people with disabilities”, but this document does not further define the term.

It is important to introduce the term at a legislative level, which will then become the pre-condition for applying the term in practice.

⁴ Georgian Law on Medical-Social Examination, article 10, clause 1

⁵ On changes to Georgian Law “Social Protection for Persons with Disabilities”, article 1, March 7, 2014

3.4. Discrimination Based on Disability

The Constitution of Georgia recognizes freedom and equality, and Article 14 prohibits discrimination based on different grounds. Disability is not listed separately, which does not imply it is not included in this sphere, but is protected by the Constitution. In its decision,⁶ the Constitutional Court of Georgia has clarified that the list of grounds indicated in Article 14 is not exhaustive and that it may imply any other ground, including disability.

Some other legislative acts such as the Georgian Labour Code and the Law on Social Protection of Persons with Disabilities prohibited discrimination and mentioned persons with disabilities even before the ratification of the Convention. The newest law in terms of eliminating discrimination is the “Law on Eliminating all forms of Discrimination” which was enacted on May 2, 2014. The law defines the notions of direct and indirect discrimination and its prohibition. The law applies to all public institutions and organizations, physical or legal entities and prohibits any kind of discrimination. It specifically mentions discrimination on the basis of disability.⁷

Defining discriminatory actions and its material significance in legislation was an important step; however, the law does not include the creation of effective institutional mechanisms that would have resulted in the effective combating of the discrimination in all spheres.

3.5. Sign/Gesture Language

National legislation recognizes sign language as a means of communication, but does not consider the possibility of granting it a special status. At the same time, it takes on certain responsibilities to use and develop it.⁸ Sign language and similar means of communication are part of the curriculum in specialized schools.⁹ Therefore, it is important to award a special status to sign language and to create sufficient conditions to use and spread its practice.

⁶ The decision of the Constitutional Court of Georgia (March 31, 2008) on the case Shota Beridze and others against the parliament of Georgia;

⁷ Georgian Law on “Eliminating all forms of discrimination”, article 1

⁸ Georgian Law “On Social Protection for Persons with Disabilities”, article 5

⁹ Georgian Law on General Education, article 4, part 5

4. The Rules of Granting the Status of a Person with a Disability

The change from the medical model to the social model when defining the status of a person with a disability was part of the governmental plan of 2010-2012, but was not fulfilled.¹⁰ Moreover, the ratification of the Convention did not influence the process of defining this status either.

The changes should in the first place apply to the rules and methodology of defining the status of persons with disabilities. At this point, the status is granted based on a medical-social examination issued by a licensed medical institution.¹¹

According to the current regulations, defining the status depends on a medical diagnosis and ignores any other social factors that may result in limited abilities.

There is a prescribed list that enumerates a number of "diseases"¹², which after proper diagnosis become a prerequisite to define the status of a disabled person. The existing regulations do not provide for any environmental factors/obstacles and contradicts the social model as defined in the Convention.¹³

5. Equal Recognition Before the Law

The institute of equal recognition before the law for persons with legal incapacity as defined in national legislation does not comply with the goal of the Convention and contradicts the standards established in it. The current model completely eliminates the person's right to participate in decision-making processes and, instead of providing a support system, provides for the full replacement of the entity's legal will with a guardian's will. Legal incapacity, which is equivalent to a lack of decision-making capacity, restricts the realization of a person's civil and political rights, including marriage, parental rights, forming a civil agreement or applying to court¹⁴.

Contrary to the requirements of the Convention, Georgia currently does not have alternative services for custody, such as assistance or support mechanisms which would provide support as

¹⁰ Dea Report

¹¹ Decree N1/N by the Minister of Labor, Health and Social Protection

¹² "On defining disability status" instruction, chapter 5

¹³ Contribution to the Universal Periodic Review Mechanism; pr.19, available: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/JS4_JointSubmission4-eng.pdf;

¹⁴ Contribution to the Universal Periodic Review Mechanism; pr.57, available: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/JS4_JointSubmission4-eng.pdf;

required. The only model currently used by the state is guardianship for persons who require support in decision-making processes.¹⁵ At the moment, the Constitutional Court of Georgia is reviewing the constitutionality of the existing model.¹⁶

The procedure of defining legal incapacity and appointing a guardian gives basis to the exclusion of the person from the process; the process may take place without his or her participation. Disability is recognized by the court based on the request of family members, a legal representative, and a guardian or institution of care or by an application from a psychiatric hospital.¹⁷ The basis for such an application is the diagnosis of a mental disorder, requested by the court, upon which it establishes its final decision on recognizing the person to have a disability.

The person whose legal incapacity is under discussion/question, has no status/role in the process. The law does not require the person (under consideration) to participate in the process and the decision-making; whether to invite him or her to the trial depends on the individual's health condition which is subject to the court's judgment in each case. Even when the person is present in court, the law does not provide for any defence right which would make his or her participation in the process possible. The whole procedure implies that the person is presumed incapable even before the court makes its final decision.

A person who is considered to be legally incapable has no right to appeal the decision concerning the appointment of a guardian. In addition, the law denies the right to appeal to the court even if the person in question has recovered, which is supposed to be the basis for the annulment of the status of legal incapacity. A person with the status of legal incapacity has no right to appeal to the court and as a result he or she is completely dependent on the will of other people.¹⁸

Therefore, the process outlined by law does not provide for equal participation and equal protection of the interests of a person. This kind of legislation, which gives the person the status of legal incapacity which entails no right to address the court, results in an increased number of cases of abusive treatment and the limitation of person's rights which is confirmed in practice.¹⁹

¹⁵ Implementing article N19 of UN Convention on the Rights of Persons with Disabilities in Georgia , p. 16

¹⁶ See Constitutional suit Maia Asakashvili against Parliament of Georgia

¹⁷ Georgian Civil Code chapter XXXVIII

¹⁸ *ibid.* article 327

¹⁹ Implementing article N19 of UN Convention on the Rights of Persons with Disabilities in Georgia , p. 16

Upon ratification of the Convention on the Rights of Persons with Disabilities, Georgia made a declaration on Article 12²⁰. Article 12 of the Declaration holds the following:

"Georgia shall interpret Article 12 of the Convention in accordance with other international instruments on protection of human rights and respective provisions of its national legislation and, thus, shall interpret its provisions in such a manner as to provide the highest level of legal protection for the purpose of ensuring the protection of dignity, physical, psychological and emotional integrity of the persons and inviolability of their property."

The declaration does not define the superiority/order of priority among the legal mechanisms in case of a conflict/contradiction among various legal sources. According to the Declaration, Georgia took on the responsibility to implement the norm with the highest level of legal protection with incorporated usage of international norms and local legislation, which means that the provisions of the Convention may not be circumvented.

6. Accessibility

Inaccessibility is a serious obstacle for persons with disabilities in Georgia. The current legislation, despite its shortcomings and non-effectiveness, includes certain articles for basic legislative guarantees. The Convention mentions different forms of accessibility, but the legislative acts that guarantee accessibility in Georgia, are rather limited and only regulate the accessibility of physical space.

6.1. Accessibility of Physical space

The "Law on Social Protection of Disabled Persons" provides the right of access to physical space for persons with disabilities. However, the physical environment, including indoor and outdoor facilities, streets, squares, underground passages, transport, and other public or private spaces reflect that the norm established by regulation is not properly enforced and cannot change the situation.²¹

²⁰ Resolution by the Parliament of Georgia on ratification of declaration attached to UN Convention on the Rights of Persons with Disabilities.

https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=2164946&lang=ge

²¹ Public Defender's Report on Human Rights and Freedom in Georgia, 2013. p. 525

The legislation foresees mechanisms which impose sanctions for the design and construction of facilities without considering the needs of persons with disabilities²². The relevant bodies within the Ministry of Labour, Health and Social Affairs are authorized to implement these measures, but the ministry has not yet identified those bodies.²³

Following the ratification of the UNCRPD, the Government of Georgia adopted the "Technical regulations for space design, architectural and planning elements for persons with disabilities"²⁴, which is an important document in terms of defining standards. The regulation establishes accessibility standards, which applies to both public and private institutions. The document stipulates that both new and already constructed buildings should come into compliance with standards within five years of the adoption of the regulation.

However, the document is not flexible in the sense that it does not prioritize issues according to their importance. At the same time, the regulation does not imply limited dates for the adaptation of certain public, including very important, buildings, nor does it account for an intermediary period to control the process of adaptation.

It has been proven that access to the surrounding environment is the biggest problem for persons with disabilities. Public space, public bodies, buildings, and public transport are not accessible to persons with disabilities.²⁵ This is especially true in the regions.²⁶

6.2. Access to Information and Services

The Constitution of Georgia²⁷ guarantees the right of access to information and it confirms that everyone has the right to receive and spread information. According to the Constitution, among others, this right is also guaranteed to persons with disabilities. However, these legislative regulations do not include a special provision for the state's responsibility to support persons with disabilities.

The Public Defender's report indicates that the cases of persons with disabilities requesting information are practically non-existent.²⁸ An absolute majority of the ministries do not have the means or experience of communicating and adequately supplying information to persons with disabilities.²⁹ Media and the internet represent essential sources of information, and it is necessary to introduce relevant regulations and standards to increase access to these sources.

²² Administrative Code, article 239, clause 45

²³ Public Defender's Report on Human Rights and Freedom in Georgia, 2013. p. 527

²⁴ Georgian Governmental Decree N41 from January 6, 2014

²⁵ Bureau of Democracy, Human Rights and Labor Country Reports on Human Rights Practices for 2013 Georgia; Persons with disabilities;

²⁶ Public Defender's Report on Human Rights and Freedom in Georgia, 2013. p. 524

²⁷ Constitution of Georgia, article 24, clause 41

²⁸ Public Defender's Interim Report "Freedom of Information and Access for the Persons with Disabilities" p.23-25

²⁹ Public Defenders Report on Protection of Human Rights and Freedom in Georgia, 2013, p. 530

In this respect, access to emergency services for people with hearing and speaking impairment (access to medical support, fire departments, the police, etc.) is an important issue. The state does not guarantee access to emergency services by providing alternative mechanisms for exchanging information. As a result, the access to these services is also limited.³⁰

7. Access to Justice

National legislation legitimates the effects of the legal incapacity of a person and limits his/her rights, including the right to appeal to court. Therefore, certain categories of persons are fully denied initiating litigation (as a plaintiff) or from participating in a trial as a witness.

Proper access to justice is problematic for people with recognized legal incapacity as well as for people who are under consideration on the issue of incapacity recognition.

According to the Civil Procedure Code, representing the rights of persons with the status of legal incapacity is the prerogative of the guardian, since an application from a person with a disability is a legally-prescribed ground for refusing to consider the application/lawsuit. Consequently, the law gives the guardian the right to decide on the legal protection of the person under question.

The legislation also limits a person with legal incapacity to take an indirect part in the proceedings. The Criminal Procedure Law as well as the Civil Code both prohibit a person with the status of legally incapable from being called into the proceedings as a witness, because due to a "physical" or "mental disorder" they cannot properly comprehend the facts and cannot testify properly.³¹

Unlike the right to apply to the court, in this case, the legislation expands the basis for the limitation of rights by adding new assessment categories such as "physical shortcomings" and "mental disorder". The meaning of these terms is not defined in the legislation.

The national legislation on access to justice conflicts with the standards of Article 13 of the Convention, as it imperatively excludes certain groups of persons with disabilities from access to the proceedings.

³⁰Public Defenders Report on Protection of Human Rights and Freedom in Georgia, 2012, p. 724

³¹Georgian Civil Code, article 141. Georgian Criminal Code, article 50, provision 2

8. Respect for Privacy and Family Life

The general ban on the enjoyment of rights by the person with a disability, based on the rigid model existing in Georgia, covers the spheres of private and family life as well. Specifically, according to civil legislation, if one of two people are recognized as disabled by the court they are banned from getting married, unconditionally.³²

This also concerns the right to be a parent. Civil legislation is rigid in this case as well and prescribes the grounds on which a child can be taken away for adoption: if parents are considered to be incapable by the court.³³ Based on the same grounds a child may be placed in foster care³⁴. Legal incapacity also implies that a person has no right to be an adoptive parent as the latter is related to capacity and is inconsistent with it.³⁵

Disabled person's parental rights are severely limited because of Civil Code regulations, which sets ground for the termination of parental rights if the child is considered to be abandoned due to the activity or inactivity of a parent. The purpose of this article is believed to be the case when a child is placed in a 24-hour state care facility.³⁶

Persons with disabilities living in boarding houses do not have the opportunity to have their children with them and are forced to place their children in 24-hour governmental care facilities, which results in the termination of their parental rights.³⁷

The automatic restriction of parental rights and the right to marriage, ignoring individual circumstances and conditions while making the decision, and eliminating an analysis based on a functional evaluation contradicts the goals of the Convention and results in the disproportionate restriction of family and personal life for persons with disabilities.

9. Freedom and Security of an Individual; Prohibition of Torture, Inhuman or Degrading Treatment and Punishment; Prohibition of Exploiting, Violence and Abuse; Protecting the Inviolability of a Person

9.1. Coherence of the Domestic Legislation with the Convention Standards

³² Georgian Civil Code, Article 1120

³³ Georgian Civil Code, Article 1254 of the Law on Adoption and Foster Care, Article 6

³⁴ Georgia Law on Adoption and Foster Care, Article 8

³⁵ Georgian Civil Code, Article 1245; The Law of Adoption and Foster Care, Article 7

³⁶ Civil Code, Section 12051, paragraph 5

³⁷ Public Defenders Report on Protection of Human Rights and Freedom in Georgia, 2013 p. 541-542

The “Law on Psychiatric Assistance” relates to the combination of the following activities: medical examination of a person, providing medical treatment, prevention of diseases, prevention of worsening the condition and supporting integration into the society.³⁸

According to the law, residential medical treatment might be voluntary or mandatory. In cases directly prescribed under the legislation and in cases of the relevant court decisions, the legislation of Georgia prescribes the possibility of placing a person in a psychiatric institution for mandatory treatment. In addition, the legislation does not differentiate the mandatory placing into a residential facility and treatment. Therefore, individuals do not have the right to refuse mandatory treatment in the cases of mandatory residential placement. This is due to the fact that the law prescribes mandatory psychiatric assistance, which automatically implies treatment. In contrast to the abovementioned regulation, a person may refuse to be treated if he/she is legally capable and of legal age during a voluntary placement.³⁹

According to the “Law on Psychiatric Assistance”, it is not necessary to have the consent of a patient, his/her legal representative or a relative during the decision-making on mandatory psychiatric assistance.⁴⁰ Therefore, this issue is entirely governed by a state decision.

There is also a provision which prescribes that when a person refuses voluntary medical treatment, the decision might be made to change the voluntary status of a treatment into mandatory. Specifically, if the condition of a person corresponds to the requirements to be subject to mandatory treatment according to a doctor, the doctor may undertake various measures for the mandatory treatment of a person without the consent of the patient and his/her representatives.⁴¹

The “Law on Psychiatric Assistance” grants each patient the right to humane treatment, which excludes an inhuman or degrading approach.⁴² The law grants the same right to the patients in need of residential psychiatric assistance.⁴³ However, in the latter case, under the existing regulations, the doctor has the right (exceptionally) to limit a patient’s rights for security purposes. The doctor may restrict such rights as the right to be protected from treatment that degrades the dignity of a person.⁴⁴

Therefore, it is clear that the domestic legislation significantly contradicts a number of standards of the Convention and unreasonably limits the rights of the persons with disabilities – such as freedom, inviolability and dignity.

³⁸ The law of Georgia on the “Psychiatric Assistance”, article 3;

³⁹ The law of Georgia on the “Psychiatric Assistance”, article 5, clause 1, sub-clause “b”, sub-clause “e”; “the Psychiatric Institutions in Georgia. Problems, Needs Recommendation”, Human Rights Center, 2013, p. 19;

⁴⁰ The law of Georgia on the “Psychiatric Assistance”, article 18, clause 2;

⁴¹ The same provision, article 17, clause 4;

⁴² The law of Georgia on the “Psychiatric Assistance”, article 5, sub-clause “a”;

⁴³ The same provision, article 15, sub-clause “i”;

⁴⁴ The same provision, article 15, clause 3;

9.2. Persons with Disabilities in the Decision-Making Process

The incumbent legislation excludes the participation of persons with disabilities in the psychiatric treatment and in the decision-making on the termination of the treatment. Specifically, a will of a legal representative of a person with a disability is considered to be an expression of interests and the will of the person with a disability.⁴⁵ The legislation excludes the persons from the decision-making process regarding general medical treatment.⁴⁶

In addition, under the incumbent legislation, the persons with disabilities have a completely restricted right to receive information on their health condition (without any pre-condition or basis).⁴⁷ In addition, the persons with disabilities have a limited right to participate and to decide themselves on the issue of receiving medical treatment.⁴⁸ The incumbent legislative norms do not give a person with disability the right to directly participate in the decision-making on undergoing gene therapy (gene therapy is considered to be an extreme measure of medical manipulation under the legislation).⁴⁹

The law prescribes the necessary consent of the person with a disability as an exception – that is in case of conducting medical-biological research on him/her, and only if the person has an ability “to understand” this. Despite the contradiction among this provision and the logic of the legislation, it is an interesting exception since it allows the assumption that the person with a disability can have the ability to understand and agree to an action.⁵⁰ However, its existence, alongside with the discriminatory regulation, does not ensure compliance with the Convention and deserves a negative evaluation.

10. Independent Life

In October 2010 the Ministry of Labor, Health and Social Affairs of Georgia announced that the conditions in which people with mental health problems lived and were being treated, required immediate intervention to create an environment that would be adequate for their dignity, rights

⁴⁵ The same provision, article 17;

⁴⁶ The law of Georgia on the “Protection of the Healthcare”, article 60

⁴⁷ The law of Georgia on the “Protection of Healthcare”, article 7, clause 41; the law of Georgia on the medical profession, article 40;

⁴⁸ The law of Georgia on the “Protection of the Healthcare”, article 11;

⁴⁹ The same provision, article 52;

⁵⁰ The same provision, article 110;

and health and to provide them with relevant treatment facilities. The reform implementation started in 2011: large institutions were closed down and a few smaller bodies were created.⁵¹

Not all large institutions were included in the process of deinstitutionalization and reorganization. Some large boarding-house type institutions still function, even they do not comply with the Convention and are against the principle of integrating beneficiaries into society. After the deinstitutionalization process, apart from the mentioned remaining organizations, new smaller institutions began functioning and services offered by these small institutions offer persons with disabilities a better chance of resocialization.

Addressing the needs of children with disabilities in the process of deinstitutionalization is another pressing issue. The process of deinstitutionalization of children's institutions was conducted while excluding the children with disabilities. The reform that started in 2009 excluded children and young adults with disabilities from all stages of the process and they remain in state institutions.⁵² The state did not ensure equal rights for children with disabilities for integration and independent life as compared to other children. Besides, the monitoring process held in those institutions revealed a number of problems, for example violence towards the children, offensive treatment, etc.⁵³

The existence of large institutions that do not comply with the Convention standards is often a pre-condition for social isolation and exclusion from civil society. The special reports from the Public Defender's Office indicate systemic problems in these institutions that include inadequate treatment, the existence of physical limitations and a lack of sufficient medical care.⁵⁴

11. Rehabilitation, Habilitation and Individual Mobility

The Georgian "Law on Social Protection for Persons with Disabilities" envisions responsibilities in the areas of health, employment, and social rehabilitation, which are intended to enable persons with disabilities to maintain social and vocational ability, as well as full inclusion and participation in all aspects of life.⁵⁵

⁵¹ "Mental Health Reform in Georgia" Global Initiative of Psychiatry, Nino Makhashvili, p.4 (accessible here: http://www.mls.ge/hrh/pictures/dfltcontent/gallery/108_1.pdf)

⁵² *Left Behind: The Exclusion of Children and Adults from Reform and Rights Protection in the Republic of Georgia* (2013) Eric Mathews, Advocacy Associate, Disability Rights International (DRI), 2013 p. 9-12

⁵³ *Left Behind: The Exclusion of Children and Adults from Reform and Rights Protection in the Republic of Georgia* (2013) Eric Mathews, Advocacy Associate, Disability Rights International (DRI), 2013, p.13

⁵⁴ Public Defender of Georgia. Report on prevention mechanisms: Human Rights for persons with disabilities in Institutions. 2013 p.6.

⁵⁵ Law on social protection of persons with disabilities, article 13

Access to rehabilitation and habilitation may only be executed by the state continually and intensively. The full results of rehabilitation and habitation can only be achieved through assessing and identifying individual needs. Current state programs are mainly criticized for their lack of needs assessments, and as a result, the programs are questioned in terms of their adequacy, effectuality and sufficiency because the state is unable to see the full picture of necessities.

For the purpose of social rehabilitation of persons with disabilities, each year “State Programs of Social Rehabilitation and Child Care” are introduced by governmental decree.⁵⁶ Some of these programs directly address the needs of persons with disabilities (e.g. the program of early development of children, the day care subprogram, etc.).

One of the main problems is the financing of the day care center, which directly affects the quality of services and the achievement of the results of habilitation/rehabilitation.⁵⁷ The insufficient services provided under the subprograms are mainly caused by ineffective financing systems and represent a serious impediment to social rehabilitation. As a result, the very idea of social reintegration is being questioned.

There are other programs that provide means of support, mainly to children’s early development and to people with hearing impediment, but their effectivity is also under question because they are not based on a needs assesment of persons with disabilities.

In terms of rehabilitation, the environment of mental institutions requires separate research. Not only does the environment not contribute towards psycho-social rehabilitation, it also impedes the socilization of its beneficiaries.⁵⁸ The treatment of beneficiaries with mental disorders encompasses only medical services and does not include any (or only limited) measures aimed at rehabilitation and adaptation.⁵⁹

12. Right to Education

According to the Constitution of Georgia everyone has the right to receive an education and choose the form of that education. The only legislative document that mentions the right to education for persons with disabilities in the context of the inclusive education is Georgia’s “Law on General Education”. The concept of inclusive education for persons with disabilities, its introduction and its implementation were included in this law before the ratification of the

⁵⁶ Georgian Governmental Decree from April 2014, N291 on approving State Child Care Program for 2014

⁵⁷ Public Defenders report about the protection of human rights and freedom in Georgia, first half of the year 2008 p. 249

⁵⁸ “Psychiatric institutions in Georgia: problems, needs, recommendations” Human Rights Center, 2013. p. 37

⁵⁹ Public Defender Annual Report for 2012. p. 152

Convention. As a result, the relevant legislative regulations were envisaged and the basis for implementing relevant practices was created.

It should be mentioned, however, that other legislative acts regulating the right to education do not include similar provisions, and as a result, pre-school, professional (vocational) and higher education are excluded from this process and lack important mechanisms.

Apart from the fact that the legislative base is insufficient (especially in vocational and higher education spheres) there are other factors that impede the implementation process for inclusive education, which means that the Ministry of Education must work more systematically on these issues.

The qualification of teachers is a vital hindrance to inclusive education.⁶⁰ Namely, there is a great need for professional preparedness and training of teachers.⁶¹ It is necessary to implement governmental programs for the schooling and training of teachers and other related personnel. At the same time, it is necessary to adapt the physical environment as well as to implement specific equipment and other technical resources (which are necessary pre-conditions for an inclusive education).⁶²

12.1. School Education

Within the framework of inclusive education it is legally required to create individual teaching strategies for children with disabilities. It is also required to have specially trained teachers among the staff to meet the needs of pupils with special educational needs. This is an important precondition for the implementation of inclusive education.⁶³

Despite the applied inclusive education strategy in Georgia, the government maintains the specialized education system. This is implemented in parallel with mainstream education. Persons with disabilities can receive education in regular public schools (practicing mainstreaming) and in specialized public schools. As of today, there are eight public schools practicing special education programs in Georgia.⁶⁴

Despite the existing legislation, which is at an adequate level with the standards of the Convention, and despite the moderate level of inclusive education implementation, the Public Defender assumes that providing a quality education to persons with disabilities and their inclusion in the education system remains a challenge.⁶⁵

According to the Ministry of Education and Science, persons with multiple disabilities who miss the opportunity to be involved in the education process can apply to the services of day centers.⁶⁶

⁶⁰ Public Defender of Georgia. Report on The Situation of Human Rights and Freedom. 2009 p. 251.

⁶¹ Dea Report. 2012 p.7

⁶² Dea Report. 2012 p.7

⁶³ Law on General Secondary education, Article 21²;

⁶⁴ Letter of Georgian Ministry of Education and Science N30744

⁶⁵ Public Defenders report about the protection of human rights and freedom in Georgia, 2013, pg 523

Letter of Georgian Ministry of Education and Science N30744

Nevertheless, these day centers do not replace the education system and do not grant educational opportunities to those particular groups of individuals.⁶⁷ Therefore, the government does not have an implementation strategy for the right to education for persons with multiple disabilities.

13. Healthcare

The current legislative base contains several contradictory provisions concerning the healthcare services for persons with disabilities. In most cases, these provisions are against the practices based on the human rights protection approach, and they frequently serve as the basis for violations of rights. The current legislative acts directly violate the rights of persons with disabilities in the area of healthcare. Moreover, the approaches towards them are inconsistent.

More specifically, the legislation contains a differentiated approach towards informing and involving a person with a disability in decision-making (during the provision of healthcare services). For example, in some cases the “Law on Healthcare” does not require the persons with disabilities to express their informed consent.⁶⁸ However, in the cases of certain medical treatment the law does require the persons to express their informed consent. Even in the latter case, the law holds an exception which allows medical treatment with just the informed consent of a legal representative of the patient (and not the patient him/herself).⁶⁹

Similar inconsistencies can be found in the “Law on Psychiatric Care”, which excludes persons with disabilities from the decision making process on their medical treatment.⁷⁰ Nevertheless, in some cases the law requests the active involvement of the patient with disabilities in decision-making.⁷¹

However, it does not allow any limitations on the sole basis of mental disorder and without consideration of the mental state or social condition.⁷² Considering the above-mentioned contradictions there is no clear support from the legislation for the standardized protection of the rights of persons with disabilities

The provisions of the law concerning the participation of persons with disabilities in the decision-making process of their medical treatment procedure cannot be considered a legally justified functional evaluation model. It leaves room for further criticism and is a reason to reconsider its compliance to the Convention.

⁶⁷Government of Georgia decree N74, 2013 about “adoption of state programs for social rehabilitation and childcare” The program of Day Centers

⁶⁸ Law of Georgia on the “Protection of the Healthcare”, Article 26; Article 52, sub-clause “b”;

⁶⁹ Law of Georgia on Healthcare, Article 11 ;

⁷⁰Law of Georgia on Psychiatric Care, Article 10, 1;

⁷¹Law of Georgia on Psychiatric Care, Article 5, part 1, sub-paragraph E, Article 8.2.

⁷²Law of Georgia on Psychiatric Care, Article 6, paragraph 2

In order to ensure healthcare, it is important to inform the person with a disability about his/her health condition, otherwise the patient will be fully excluded from the decision-making process, regardless of whether or not such an opportunity is allowed by certain entries in the law. According to the current regulations about information delivery to patients, persons with disabilities are not considered as the addressees of this information.⁷³

Healthcare can be a challenge in closed institutions such as psychiatric institutions or prisons. The reports of the Public Defender reveal that persons with mental health problems are unable to exercise their right to healthcare. The treatment of the side effects of medications can also be named as a challenge.⁷⁴

The Public Defender's report revealed regular problems in prisons regarding inadequate healthcare. According to the monitoring results, medical interventions are not timely, which results in the deterioration of the patient's health. In addition, there is no practice of individual care for prisoners with a mental disorder.⁷⁵

14. Labor and Employment

Benefiting from the right to labor remains a major challenge. It is a complex case due to its different implications. Persons with disabilities on the job market encounter problems due to an ineffective legal base, practical obstacles, public approaches and stereotypes about persons with disabilities, limited access to rehabilitation and education systems and other problems.

The "Law on Social Protection of Persons with Disabilities" refers to the employment issue, but can hardly be called an efficient legal leverage that is in compliance with the Convention when considering its current regulatory framework.

The Law allows persons with disabilities to be legally employed in a variety of jobs,⁷⁶ but it does not include any legal guarantees or tools with which to execute or bring those norms to life. Therefore, current legal regulations and other provisions in the law that are supposed to ensure the effectiveness of the law exist solely for declarative purposes.

Instead of sharing international practices that encourage their employment through various activities, the current Georgian legislation implies that the employment of a person with disabilities in state institutions results in the cancelation of their social benefits.

⁷³Law of Georgia on Psychiatric Care, Article 5, part 1, paragraph „g“

⁷⁴ Public Defenders report about the protection of human rights and freedom in Georgia, 2012 pg. 150

⁷⁵Public Defender of Georgia, National plan for prevention, "Review of the situation of the Persons with Disabilities in prisons, in pre-detention isolator and non-voluntary psychiatric care.", 2014, pg.13-14

⁷⁶ Law of Georgia on social protection of Persons with Disabilities. Article 21

The mentioned provision does not only not support employment and social integration of persons with disabilities, but in several cases, even represents a significant drawback for employment.⁷⁷

It is obvious that despite the will to provide employment to persons with disabilities and the unacceptability of discrimination, the existing legal background cannot reach its goal due to the inexistence of effective enactment mechanisms, legal guarantees, and any practical support.

15. Adequate Standards of Living and Social Protection

The Georgian “Law on the Social Protection of Persons with Disabilities” is the cornerstone legal document that considers monetary and nonmonetary actions for the social protection of persons with disabilities.⁷⁸ According to the existing legislation, the government undertakes the responsibility to provide certain financial guarantees for the protection of the persons with disabilities.

Considering the above, this group of persons can benefit from such a social package.⁷⁹ A social package is a means of social support that implies the creation of a relevant protection system, aiming at effective and purposeful support of the population.⁸⁰ According to the regulation that determines the group of social package recipients, the group includes persons with obvious disabilities.⁸¹ Nevertheless, it provides different benefits to persons with moderately visible disabilities. In the latter case, the granting of the social protections package is linked to additional aspects of vulnerability.⁸² Therefore, the financial aid in the frame of social packages does not reach all the groups in need and does not fully protect the rights of the persons with moderately visible disabilities. In addition to this, the amount of the funds discharged is not determined based on the research into the social needs of the persons.

The “Law of Georgia on Social Protection” deems the provision of a living wage to be an action for the improvement of the social-economic state of the population.⁸³ The program considers monetary aid only in the case of extreme poverty and in such case is evenly distributed among all groups, which might include families that have family members with disabilities. Thereupon, the poverty reduction policy identifies disabilities only in the case of extreme poverty. It fails to provide for the protection of this group, which should be achieved not only by poverty

⁷⁷ The report of the public defender of Georgia on the condition of the human rights and freedoms, 2010, p. 502;

⁷⁸ Georgian law on Social Protection of Persons with Disabilities

⁷⁹ Georgian Law on Social Assistance, Article 12¹ ;

⁸⁰ Georgian Law on Social Assistance, Article 1

⁸¹ Decree of Georgian Government N279, About Determination of Social Benefit Packages, dated July 23, 2012

⁸² Decree of Georgian Government N279, About Determination of Social Benefit Packages, dated July 23, 2012, Article 5, paragraph 1.

⁸³ Georgian Law on Social Assistance, Article 7.

prevention programs, but also by a group of compound policy activities implemented in different fields.

16. Participation in Political and Public Life

Article 28 of the Constitution of Georgia guarantees the right of a citizen of Georgia to participate in the elections at both the central and local self-government level. However, exercising this right is restricted for persons with disabilities.⁸⁴ This provision of the Constitution also represents an integral part of the electoral legislation, the relevant provision of which entirely excludes the persons with disabilities from participation in the referendum, elections and plebiscite.⁸⁵

The electoral code includes specific regulations for the support of persons with disabilities to participate the elections. Specifically, the provisions of the code relate to the physical availability of the polling station and adaptation of the electoral process.

In order to adjust the electoral polling stations, several amendments were introduced to the Election Code of Georgia which prescribe the obligation of physical adjustment of the buildings for electoral administration. However, this provision will only come into force in 2016.⁸⁶ In practically implementing this regulation, the term “adaptation” should be properly interpreted and should imply the interests of not only those persons who have limited ability of physical movement, but also of all other persons with special needs.

Article 63 of the Election Code prescribes the obligation to use additional technologies in adapting the electoral process. This mechanism is intended for voters with limited eyesight to independently fill in the electoral ballot.⁸⁷ Naturally, the existence of this provision should be positively evaluated; however, while adjusting the electoral process the state should consider the needs of persons with other types of disabilities – both on normative and practical levels.

For the proper implementation of the political rights of persons with disabilities, the legislation prescribes an obligation to provide information in sign language and to ensure the availability of information during the pre-election period.⁸⁸

The normative base aimed at the implementation of the electoral right of persons with disabilities requires improvement in order to comply with the Convention standards. In addition, adapting the electoral environment and process must be conducted in such a way so that persons with disabilities are given the possibility to independently express their will and have an opportunity to make an informed choice and a possibility to be elected for various positions.

⁸⁴ The Constitution of Georgia, article 28;

⁸⁵ The organic law of Georgia, electoral code, article 3;

⁸⁶ The same provision, article 58, clause 1¹

⁸⁷ The same provision, article 63, clause 2

⁸⁸ The same provision, article 50, caluse 1, “g”

17. Institutional Framework of the Convention Implementation and Monitoring

17.1. Coordination Mechanisms

The state coordination council has been operating in Georgia since 2009. The council works on issues related to persons with disabilities and represents a permanent consulting body within the state.⁸⁹ The main functions of the council are to coordinate the implementation of a uniform state policy, to prepare strategic plans for the state and to coordinate the changes made to it, etc.

The council consists of the prime-minister of Georgia, representatives of various ministries, institutions and organizations working on the issues related to persons with disabilities. The Government of Georgia decides upon the composition of the council.⁹⁰

The existence of the coordination council may be considered a step forward in the protection of the rights of persons with disabilities; however, the functioning of the council is characterized by a number of shortcomings which precondition its ineffectiveness. Improper frequency of the council work is an object of public criticism. Other criticisms are the violation of the timeframes of the sessions, the issue of proper representation of persons with disabilities in the council which questions the inclusive nature and fairness of the council's composition, etc.⁹¹

In the context of the existing criticism towards the coordination council and the existing problems, the mechanisms must be revised and should be reformed. The reform should be based on the principles of transparency and inclusiveness and should ensure an increase of the council's effectiveness by introducing institutional and procedural guarantees.

17.2. Independent Mechanisms

The Convention obliges each state to create or assign an independent monitoring mechanism. Therefore, the states decide themselves on whether to authorize existing institutions to monitor the implementation of the Convention or whether to create new monitoring mechanisms.⁹²

In response to the Convention requirements, Georgia must create a domestic monitoring mechanism or must authorize an existing institution in the nearest future. The Public Defender of Georgia, due to its constitutional status, independence, and high level of legal guarantees,

⁸⁹ The resolution #231 of the Government of Georgia (December 15, 2009) on the "creation of the coordination council tasked to work on the issues relating to the persons with disabilities, and approving the statute", article 1;

⁹⁰ The same provision: article 4;

⁹¹ "evaluation of the state coordination council, tasked to work on the issues, relating to persons with disabilities", environment available to all, Mariani; Tbilisi 2012, p. 4-8;

⁹² "Study on the implementation of article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe"; by United Nations, Human Rights Office of the High Commissioner. pg. 6, Available: http://europe.ohchr.org/Documents/Publications/Art_33_CRPD_study.pdf; last seen: 20.07.2014

satisfies the Paris principle requirements, which brings up the question whether the ombudsman should undertake the Convention-prescribed function of monitoring (especially, due to the institutional experience of the human rights protection and due to having many years of practice in the sphere of protecting persons with disabilities).

17.3. Engagement of the Persons with Disabilities and the Organizations Working on their Rights

According to the UN Convention on the Rights of the Persons with Disabilities, the member states are obliged to actively engage persons with disabilities in the process of implementing the Convention. Article 33 prescribes that persons with disabilities and organizations working on their rights must be represented in the framework monitoring mechanism and coordinatory body.⁹³

In the process of forming/reforming the domestic monitoring mechanism and coordination body, Georgia must consider the fundamental principle of the Convention –*inclusion*. Georgia must further ensure the maximal and effective engagement of persons with disabilities and the organizations working on protection of their rights, through their direct representation and through various forms of cooperation.

⁹³Guidelines on Article 33 of the UN Convention on the Rights of Persons with Disabilities; “Building the Architecture for Change”; Chapter 5.2 “How to enshure meaningful participation”; pg. 21. Available: http://mdac.info/sites/mdac.info/files/Article_33_EN.pdf; last seen: 20.07.2014