

The standards set by United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)



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Georgian Young Lawyers' Association

**The standards set by United Nations
Convention on the Rights of Persons with
Disabilities (UNCRPD)**

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The research supervisor: **Merab Kartvelishvili**
Mzia Gochelashvili

Author: **Marina Kobakhidze**

Research participated by: **Maka Abuladze,**
Mariam Ozashvili

Editor: **Khatuna Kviralashvili**

Translation from Georgian: **Natia Gelashvili**

Cover designed by: **Nino Gagua**

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Introduction

After the amendment made to the Constitution of Georgia, pursuant to the paragraph 4 of the Article 11 of the Constitution, the State shall create special conditions to realize the rights and interests of people with disabilities.

The people with disabilities still are unable to properly exercise their rights. Unlike others, they cannot enjoy all the opportunities and rights, which are inherent to each person at birth, regardless of their different conditions. The Persons with Disabilities (hereinafter PWDs) are the most outcasted group as they still face the systematic barriers in every area of public life. They are unable to exercise constitutionally protected rights. Furthermore, as it is clear from practice, the most critical problem for the PWDs is the accessible environment. There are no accessible public spaces, buildings, public facilities or public transport, educational institutions, health care facilities and state institutions.¹ And the mentioned indicates that no standards are followed in practice, which are established by technical regulations.

Since adoption of 2006 United Nations Convention on the Rights of Persons with Disabilities (hereinafter UNCRPD), protection of rights of PWDs in the world have moved to a new level. Georgia ratified the Convention in December 2013 and it entered into force in March 2014 and as a result, it has become important to reflect necessary mechanisms for

¹ Public Defender's 2018 Parliamentary Report on the situation of human rights and freedoms in Georgia. pg.263. Tbilisi 2019; available at <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf> {03.12.19}.

ensuring equal opportunities for PWDs in state programs. Before ratification of the Convention, the 1995 Law of Georgia on “Social protection of people with disabilities”, aimed at protecting rights of persons with disabilities was in force (which still is). However, the main “shortcoming” of the aforementioned Law may be the fact that there is no legal mechanism of exercising the rights envisaged by law in practice – the enforcement mechanism.

The UNCRPD provides the definition according to which the term “persons with disabilities” include all persons who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal footing with others.²

Based on the definition three factors may be outlined that sums up the disability. These are:

- Different types of impairment of person;
- Long term effect;
- Barriers – that includes attitude, environment and institutional barriers, and lead to exclusion, isolation and failure to exercise those rights on the equal footing with others that are inherent to each person at birth.³

The Convention considers the disability as an interrelation between the person and the environment and does not relate it to the nosology, thereby changing the medical approach. The Convention tries to develop Human Rights-based vision towards the persons with disabilities. It seeks to show the member-states the problems that hinder the PWDs to enjoy the basic human rights and freedoms.⁴

Although 7 years passed since UNCRPD ratification, nothing has substantially changed during these years in terms of improving human rights situation of PWDs living in Georgia, as no actual reforms have been carried out by the State in this regard. The State have not yet developed the social model for evaluation of needs of the PWDs, neither have

² UNCRPD, Article-1, available at <https://matsne.gov.ge/ka/document/view/2334289?publication=0> {12.06.2019}.

³ V. Menabde, “The rights of people with disabilities - a universal challenge”, Konstantine Korkelia – Collection of Articles, 2011, Tbilisi, 157.

⁴ Recommendation Concept on Implementation of United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) EMC, 2014, Tbilisi.

developed the mechanism responsible for implementation of the Convention, nor have maintained the thorough statistics of the persons with disabilities etc.⁵

The study is accompanied by recommendations for the relevant agencies. GYLA hopes that the findings and recommendations of the study will be used to promote human rights of persons with disabilities.

⁵ Ibid.

Methodology

The document reviews compliance of the Government Action Plan 2018-2020 with the United Nations Convention on the Rights of Persons with Disabilities. The legislative amendments conducted since ratification of the Convention and the programs developed in line with the principles of the Convention are analyzed. The Law of Georgia on “Eliminating all forms of discrimination” is reviewed and followed with examples from different countries that represent the oversight bodies on elimination of discrimination and equality.

The research was prepared through different tools:

- **Public information** – GYLA requested relevant information from the following bodies: Social Service Agency, Social Service Bureau, Ministry of Justice of Georgia, National Agency of Statistics and the Government of Georgia.
- **Analyze of the legislation and relevant standards** – GYLA analyzed the compliance of the national legislation with United Nations Convention on the Rights of Persons with Disabilities. Furthermore, during the research, national legislation was analyzed towards the international legislation aimed at protecting rights of PWDs.
- **Human Rights Action Plan 2018-2020** – GYLA analyzed Chapter 19 of the Human Rights protection that covers the rights of the persons with disabilities. The compliance of the mentioned chapter with the principles of the UNCRPD was analyzed within the frameworks of the mentioned research.

- **Programs approved by the Government Decree** – within the frameworks of the mentioned research GYLA analyzed the State programs considered for the PWDs. The relevance of the mentioned programs was established with the needs of the PWDs.

Key Findings

- Analysis of the Human Rights National Action Plan revealed that majority of the activities under the plan are not realized yet. The mentioned had a negative impact in terms of rights of PWDs.
- There were no significant changes made to Georgian legal system to address the requirements envisaged by the UNCRPD and for implementation of the principles of the Convention.
- The research has outlined that the issue of full realization of inclusive education is yet an important problem. Despite the changes in the mentioned field, the students with special needs face such problems as unadapted infrastructure, lack of special education teachers.
- Although the right of PWDs to education is recognized on the level of organic laws, there still are barriers in terms of realizing this right. The legislative framework of inclusive education does not establish structured and flexible system adjusted to child and student individual needs.
- The issue of the children with special educational needs remains problematic. At the Ministry of Education, Science, Culture and Sports, statistical data only on those students is available, who are enrolled in school. There is no statistical data in the country regarding how many children with special educational needs are left out of the formal education.
- The rule for determining the status of the PWDs is still based on medical diagnosis of the person. PWDs statistics and analysis remains the problem, which is essential for

effective implementation of the Convention – to develop and implement policies and to implement approaches based on program planning and implementation needs.

- The Government of Georgia have not yet designated the state body responsible for coordination of UNCRPD.
- The Parliament of Georgia have not yet ratified the Optional Protocol of the Convention, which would allow persons with disabilities to address directly the UN relevant committees in the event of a violation of their rights.
- As the analysis of the draft law “On the rights of persons with disabilities” has shown, although the State is making efforts to bring the legal system into line with the UN Convention, it does not express readiness to perceive the realization of these rights as obligation and depends its enforcement only on good will.

Certain progress can be seen in employment sphere. However, the measures taken by the States are insufficient and require more efforts and active work from the relevant State Agencies.

- Small amount of employment consultants, their professional competence and in general, the issue of development of this profession remains a problem;
- Small amount of PWDs involved in employment program is still problematic;
- No tax exemption is provided in case of employment of the PWD by the private company;
- The issue of accessibility remains problematic, which impedes the PWDs to enjoy the right to independent living. There are numerous challenges that hinder the PWDs to participate in the labor market and in public and political life.
- Effective oversight on the implementation of building standards of space arrangement in practice for the PWDs and on their enforcement remains problematic;
- So far the document indicated in the Decree #41 of the Government of Georgia dated of January 28, 2016 on approval of “Safety regulations for buildings”, “Accessible and usable buildings and objects” (ICCANSI A.117.1.2009) have not been translated into Georgian language and nor has it been registered in accordance with the legislation at the LEPL - Georgian National Agency for Standards and Metrology.

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

On July 18, 2009, the Representative of Georgia to UN, within the frameworks of special authority granted by the President of Georgia⁶ signed the United Nations Convention on Rights of Persons with Disabilities and thereby verified the compliance of State goals with the goals and principles of the Convention. However, the Parliament of Georgia ratified the Convention only after four years, on December 28, 2013 that entered into force on April 12, 2014. The Convention was ratified without Optional Protocol and even today, the issue of ratification of the Optional Protocol of the 2006 Convention on Rights of Persons with Disabilities is still open. In case of ratification of the Optional Protocol the PWDs will be given the opportunity to apply directly to the Committee of Persons with Disabilities of the UN on individual violations.

Ratification of the Convention obliges our country to create equal environment for the PWDs – to consider their interests and needs in all areas of the social functioning: available and needs-based education, employment, support in social and political activities. Furthermore, the State shall revise the legislation of Georgia and secure its harmonization with the Convention to ensure full compliance of Georgian legislation with the Convention. Additionally, Georgia shall take all the measures to ensure that the rights under Convention are exercised in practice.

⁶ Decree of the President of Georgia #249, May 14, 2009, Tbilisi, on granting the authority to A. Lomaia. Available at: <https://matsne.gov.ge/ka/document/view/1267445> {12.12.2019}.

According to the Convention, the State shall consult with the persons with disabilities, their legal representatives and Organizations working on the rights of PWDs when developing and implementing legislation and policy document necessary for implementation of Provisions of the Convention.

Furthermore, the Member-state shall take appropriate measures to realize economic, social and cultural rights by utilizing significant part of its resources. This commitment, also called as Progressive Realization, recognizes that it often takes time to fully exercise the mentioned rights. E.g. when improvement of the social or healthcare systems is needed to protect the rights.

Pursuant to Article 33 of the United Nations Convention on Rights of Persons with Disabilities, States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention.⁷ States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention.⁸

After the ratification of the Convention the State Interagency Coordinating Council, working on the issues of PWDs was designated as the agency responsible for the implementation of the Convention⁹ and Human Rights Secretariat of the Administration of the Government of Georgia was designated as the coordination mechanism. Should be noted, that the mentioned agencies were created on the meeting of the Coordination Council and further it has not been secured with relevant statutory records. Furthermore, should be noted that the State Coordinating Council, working on disability issues, represented permanent advisory organ of the Government of Georgia for the protection of rights of PWDs, aimed at coordination of implementation of unified state policy within this area. Based on the mandate of the Council, it could not be considered as the body responsible for the implementation of the Convention, as it only had consultative function and was not making decisions regarding the State policy. Moreover, the composition of the

⁷ United Nations Convention on Rights of Persons with Disabilities (UNCRPD), Article 33, paragraph 1; available at <https://matsne.gov.ge/ka/document/view/2334289?publication=0> {12.12.2019}.

⁸ Ibid. Paragraph 2.

⁹ The decree #231 of the Government of Georgia of December 15, 2009 on “establishment of coordination council working on issues of the persons with disabilities and approval of its statute; available at <https://matsne.gov.ge/ka/document/view/3214?publication=0> {12.12.2019}.

Council was not renewed within the prescribed period and as of today, it no longer represents the functioning body. Accordingly, after 7 years since the ratification of the UNCRPD, the State agency responsible for implementation on national level, have not been designated.

According to the letter of the Administration of the Government of Georgia,¹⁰ at the moment, with the support of the United Nations Development Program (UNDP) and the Office of the United Nations High Commissioner for Human Rights, Human Rights Secretariat of the Administration of the Government of Georgia is working on developing the coordination mechanism envisaged by the United Nations Convention on the Rights of Persons with Disabilities.

One of the most significant documents that the Government adopted after the ratification of the Convention, was the “Action Plan for Equal Opportunities of Persons with Disabilities 2014-2016”. The content of the Action Plan fully complied with the principles of the Convention. However, effective implementation of the plan was depended on the financial part. In particular, no funds were allocated from the State Budget to carry out activities under the Plan and it depended solely on donor funding, which raised an expectation that the mentioned Action Plan, similar to its predecessor, would not be implemented in practice.

Upon ratification of the United Nations Convention on Rights of Persons with Disabilities, “Technical regulations on arranging space for persons with disabilities and of architectural and planning elements” (ordinance #41) was adopted. The mentioned document is aimed at supporting adaptation, individual development and involvement in public life of PWDs. Moreover, to consider standards of accessible physical environment for PWDs in planning and construction process. The given document is beneficial in terms of setting standards of environment accessibility and disseminating them accordingly. However, should be noted that the document has number of shortcomings and furthermore, there is no mechanism for enforcement that undermines its effectiveness.

National Human Rights Strategy 2014-2020 was prepared within the frameworks of EU-Georgia Association Agreement Agenda and adopted by the Parliament, in which the following priorities are underlined together with other issues:

¹⁰ Letter of the Administration of the Government of Georgia, March 13, 2020. #3-04/40-20.

- a) Ensure equal rights for persons with disabilities, considering their specific needs and requirements, according to the ‘reasonable accommodation’ principle;
- b) Encourage greater independence and ensure active involvement of persons with disabilities in the decision-making processes concerning them – thus helping to preserve their dignity;
- c) Encourage the full and active participation of persons with disabilities in political life;
- d) Provide greater support for the employment of persons with disabilities;
- e) Ensure full access to public services and transport for persons with disabilities;
- f) Raise public awareness on disability issues.¹¹

The mentioned strategy is based on an idea of enjoying the human rights in everyday life and defines long-term priorities and tasks of the Government of Georgia aimed at developing inter-agency, multi-sectoral, unified and consecutive policy, implementing the “good governance” and strengthening human rights. The National Strategy provides for the equal opportunities for the PWDs and their full involvement in public life. The Strategy is aimed at protecting rights of PWDs taking into account the principles of reasonable accommodation and universal design and at their involvement in the decision-making process and supporting independent living of these individuals, as well as providing public facilities and transportation for the PWDs. For the implementation of the mentioned Strategy the “Action Plan of the Government of Georgia on the Protection of Human Rights (2014-2015)” was approved by the Government of Georgia with the decree #445 dated of July 9, 2014. Furthermore, the chapters on persons with disabilities of the Government Action Plans of Human Rights Protection 2014-2015 and 2016-2017 provided for the measures for the implementation of the Convention principles. Also, “Government Action Plan for equal opportunities for persons with disabilities 2014-2016” was approved with the Decree #76 of the Government of Georgia dated of January 20, 2014, which consolidated all the measures to be taken by the Government of Georgia in terms of protecting the rights of the PWDs and implementing the principles of the Convention.

¹¹ National Strategy of Human Rights 2014-2020, paragraph 15. available at <http://myrights.gov.ge/ka/documents/documents/strategy> {12.12.2019}.

However, should be noted that the measures provided for by the previous years' Government Action Plans, may be said to have not been implemented at all, and this had a negative impact on realization of rights of PWDs. And the mentioned puts the people with disabilities in an unequal position with respect to others.

Human Rights Action Plan of 2018-2020 of the Government of Georgia

The Government of Georgia approved the Human Rights Action Plan 2018-2020 with the decree #182 dated of April 17, 2018.¹² The plan is a tool for implementing the 2014-2020 National Strategy for the Protection of Human Rights in Georgia. The document includes number of rights (including accessible justice, freedom of expression), as well as the chapters aimed at protecting the rights of different minorities (gender equality, rights of child, rights of ethnic and religious minorities, rights of PWDs).

Chapter 19 of the mentioned plan which deals with the rights of people with disabilities addresses wherever possible the challenges facing the PWDs. Should also be noted that some progress has been made in terms of employment policy, vocational and pre-school education. The amendments to the Law of Georgia on “General Education” of 2018 are also noteworthy¹³ according to which the general education institutions are obliged the create relevant environment for inclusive education. However, the measures taken in certain cases are insufficient to promote independent living of the PWDs and more efforts are needed from the relevant state agencies to implement the measures under the Action Plan.

¹² Decree of the Government of Georgia №182 dated of April 17, 2018 on approving Human Rights Action Plan of the Government of Georgia (2018-2020). available at <https://www.matsne.gov.ge/ka/document/view/4153833?publication=0> {12.15.2020}.

¹³ On amendments to the Law of Georgia “On General Education”, available at <https://matsne.gov.ge/ka/document/view/4249959?publication=0> {12.15.2019}.

It is noteworthy that some of the activities in the Action Plan are narrowly defined that creates legitimate expectation that the PWDs will not be able to fully enjoy the rights, even if these activities are carried out. E.g. As the Action Plan of previous years, the 2018-2020 Action Plan also defines the issue of access of PWDs to political and public life as the obligation of the Central Election Commission (19.1.4). Furthermore, the plan does not address the gender issue of PWDs. The budgetary resources are as well problematic. In particular, the issue of non-indication of relevant budgetary resources for the activities defined with the Action Plan.

Human Rights Action Plan of 2018-2020 of the Government of Georgia, as well as in Action Plan of Previous years (2016-2017) provided for the issue of harmonization of the legislation with the UNCRPD. However, unfortunately the mentioned issue remains unfulfilled and no substantial amendments have been made to the national legislation for the purpose to comply with the Convention.

It can be said that in most cases the Action Plan managed to reflected the commitments required to establish institutional mechanisms consistent with the requirements of the Convention. However, the Government failed to meet its commitments up till today.

Health and social care

Rehabilitation of the persons with disabilities is a prerequisite for the full realization of their rights to health, education, employment, participation in social life and the right to live independently.

The Action Plan provides for improvement in enjoyment of right to social care of PWDs. Development and implementation of the new tool for evaluation of the PWDs is defined as an indicator. First, it can be noted that in the mentioned situation we face the problem of relevance of the task and activity. Developing new model for evaluation of PWDs and granting the status should have been defined as the separate goal. Furthermore, the Action Plan does not address the issue of evaluating the persons with disabilities with the medical model.

The Universal Insurance remains problematic as the beneficiaries are not informed what kind of services will be covered by the state under the universal health care program. Furthermore, should be noted that under the Universal Insurance program it is difficult to receive services for patients in psychiatric inpatient care establishments. They are not provided diagnosis or treatment of somatic diseases. It is also problematic for the people receiving psychiatric inpatient services to be included in Hepatitis C Elimination Program¹⁴. Another major problem is full realization of reproductive and sexual health and rights of

¹⁴ Public Defender's 2018 Parliamentary Report on the situation of human rights and freedoms in Georgia; available at <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf> {02.07.2020}.

women/girls with disabilities. The mentioned is due to lack of adaptation of infrastructure of medical institutions and medical equipment.

“Social rehabilitation and childcare state program” is being approved yearly, which provides the PWDs with means of additional support. However, the major challenge of the mentioned program is that the services fail to be planned based on the needs survey.

The Action Plan provides for increasing availability of the rehabilitation/abilitation services for the people and children with disability (19.1.6.). Article 26 of the UNCRPD addresses rehabilitation and abilitation. According to the mentioned Article the member-states take effective and appropriate measures, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability. However, the Action Plan does not provide for the rehabilitation program for the adult persons with disabilities and the mentioned is defined only as a task indicator.

Unavailability of services of rehabilitation centers for the adult people with disability is one of major problems. Certain components of state-run social programs partially support the goals of supporting social rehabilitation of people with disabilities, however there are no adequate specialized services available to all persons with special needs.

“Procedure for determining social package” is approved by the decree #279 of the Government of Georgia, that implies defining differentiated social package according to the categories of PWDs.

In accordance with the Article 82 of the Tax Code of Georgia, income tax shall not be levied on the taxable income of up to GEL 6 000 earned during a calendar year by a person with a disability since childhood, as well as by a person with severe and persistent disabilities. The aforementioned applies only to a person employed on one workplace. Also, it should be noted that the social package will be terminated for the persons with significant and moderate disabilities when employed in the public service.

According to the Georgian Legislation the Status of the PWD shall be defined in accordance with the provisions of the Law of Georgia on “Medical and social expertise”. When conducting the medical and social expertise, the disability status is defined based on the list of diseases, anatomical and mental impairments defined by the normative acts of the

Ministry of Labor, Health and Social Affairs of Georgia.¹⁵ Based on severity and degree of disability, the following statuses of the disability are defined: 1. Person with major disability, 2. Person with severe disability, 3. Persons with mild disability.

It is noteworthy that the procedure of establishing the status of disability is based on medical model that emphasizes on persons nosology. The perception of disability should not be tied to nosology only, as disability is caused by the surrounding barriers that hinder the PWDs to realize their own rights. The mentioned issue is not considered in the Action Plan.

The UNCRPD indicates that children with disabilities are the most vulnerable group and accordingly obliges the states to take appropriate measures.

In regards to the mentioned issue, the National Maternal and Newborn Health Strategy 2017-2030 and three-year Action Plan (2017-2019) provides for the access of PWDs to age-appropriate education, family planning and sexual, reproductive health services.

¹⁵ Order N62/5 of the Minister of the Labor, Health and Social care dated March 17, 2003 on “Approving the instruction on rule of establishing “Child with the status of disability”, the Order N1/5 of the Minister of the Labor, Health and Social care dated March 13, 2003 “on approval of instructions for the procedures of determining disability status”

Employment

In accordance with Article 26 of the Constitution of Georgia, the obligation of protection of labor rights, fair remuneration of labor and safe, healthy working conditions is recognized. In 2005 the Parliament of Georgia ratified the European Social Charter with certain reservations thereby recognizing particular importance of right to work and undertaking to ensure that all citizens of Georgia, including persons with disabilities, shall realize the right to work and fair remuneration.

Article 27 of the Convention on the Rights of Persons with Disabilities provides for the right to work and employment. To realize this right the State shall create equal conditions of work and employment for PWDs, including though establishing additional incentives. According to the Convention the State should ensure that PWDs can enjoy equal opportunities as others in the open labor market, without any discrimination. The Convention considers the employment opportunity for the PWDs in accessible and inclusive work environment, in public and private companies.

The Universal Declaration of Human Rights and Fundamental Freedoms recognizes the right of everyone to work, free choice of employment, just and favorable conditions of work and to protection against unemployment and without any discrimination, the right to equal pay for equal work.

International Covenant on Economic, Social and Cultural rights recognizes the right to work, which includes the right of everyone to the opportunity to gain his/her living by work which s/he freely chooses or accepts.

In accordance to UN standard rules on the Equalization of Opportunities for Persons with Disabilities, “States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labor market”.¹⁶

The labor rights are provided for in more detail in the Organic Law of Georgia “Labor Code of Georgia”. Based on the amendments to the Labor Code, discrimination was defined and discrimination on disability grounds was added next to other protected grounds. According to the Law of Georgia on Public Service, all public servants are equal before the law and the exercise of legal rights of any citizen of Georgia involved in official legal relations may not be restricted or obstructed including, irrespective of their disability. However, realizing the right to work still remains as one of the major problems for the PWDs and as challenge to the State. Proper enjoyment of labor right is a complex problem based on the variety of its complexity. In an open labor market, the issue of irrelevant and noneffective legislative base as well as barriers in practice and environment, represent the barrier for employment of the PWDs. Based on the stereotyped attitude of the society the PWDs are not considered as the potential members of the labor market. Misconceptions of the employers are mainly related to improper assessment of PWD skills, as well as “costliness” of adaptation of work-places and environments for them.

Chapter V of the Law of Georgia on Social Protection of Persons with Disabilities regulates the work of PWDs and sets the obligations of the State, and measures to be taken. The Law recognizes that “persons with disabilities, shall have the right to work at enterprises, institutions and organizations operating under normal labor conditions, irrespective of their form of ownership and business, at specialized enterprises, workshops and units where the labor of persons with disabilities is used; also they shall have the right to conduct individual and other forms of labor activities permitted by law”. However, the mentioned law is also called as a “dead law” as there is no legal leverage to implement the provisions of this law.

¹⁶ UN Standard rules on the Equalization of Opportunities for Persons with Disabilities adopted by the UN General Assembly on December 20, 1993, with the Resolution 48/96; paragraph 1 of the Rule 7.

Furthermore, Government Action Plan 2018-2020 foresees realization of labor rights for PWDs and provision of employment (19.1.8.).

It is noteworthy that there are factors hindering the employment of PWDs, such as:

- Unadapted physical environment and work environment;
- Education system not adjusted to PWDs;
- Employers stigma and stereotypes towards the PWDs;
- Refusal on “reasonable accommodation” is not considered as a discrimination by today's legislation;

Based on the information provided by the Civil Service Bureau,¹⁷ as of December 31, 2019, the total number of employees of public services was 47 657. And total number of PWDs was 89.

As of December 2019, 304 624 jobseekers are registered on the labor market management information system www.worknet.gov.ge.¹⁸ Statistical data by years looks as follows:

Jobseeker PWDs employment rate by employment support services

Services/period	2018	2019
Within the frameworks of training-retraining program	10	16
Employment forum	10	19
Intermediary services	11	22
Supportive employment	31	33
Internship	13	16
Subsidy	24	2

¹⁷ Letter of the Civil Service Bureau of February 11, 2020 №1224.

¹⁸ Letter of the Ministry Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia #05/36, 19.02.2020.

Several programs and strategies approved by the Government of Georgia provide for the employment of PWDs, including “Employment support services development program”, “National Strategy of forming the Georgian labor market and Action Plan for implementation of National Strategy of forming the Georgian labor market 2015-2018”, “State program of vocational training/retraining and professional development”.

Based on the Decree of the Minister of Labor, Health and Social Care (Decree N01-258/მ of December 19, 2013), the information management system of labor market worknet.gov.ge has been operating in the Social Service Agency since December 25, 2013, the purpose of which is to create database of jobseekers, study the challenges of the labor market, identify demanded professions of the labor market and inform the public regarding the career planning issues.

Within the frameworks of the study we requested the public information from the LEPL Social Service Agency regarding the statistical information of PWDs registered on worknet.gov.ge. However, the Agency provided us only with data of 2017¹⁹, according to which 1070 PWDs were registered on worknet.gov.ge during 2017, out of which labor contract was signed with 103. 42 PWDs were employed through intermediary services within the frameworks of supportive employment. Should also be noted that based on the Annex provided by the same Agency, duration of the employment of PWDs is from one to 12 months.

The Social Service Agency have approved 50% wage subsidy program for the PWDs and persons with special educational needs. The Resolution of the Government of Georgia dated of December 28, 2018²⁰ provided for the state program on development of employment support services 2019.²¹ The mentioned program provides for subsidy of 50% of remuneration of beneficiaries employed on new or existing working places, not more than GEL 560 (five hundred sixty) per month, during 4 (four) calendar months. Jobseeker citizens of Georgia registered on labor market management information system (www.worknet.gov.ge) can benefit from the subsidy component:

¹⁹ Letter of LEPL Social Service Agency of April 4, 2019 #04/18550.

²⁰ Resolution of the Government of Georgia N665 „on approval of the state program on development of employment support services of 2019“. available at <https://matsne.gov.ge/ka/document/view/4440968?publication=0{02.10.2020}>.

²¹ Resolution of the Government of Georgia N665 „on approval of the state program on development of employment support services of 2019“, available at <https://matsne.gov.ge/ka/document/view/4761861?publication=0 {02.10.2020}>.

- ✓ Youth from 16 to 29 from the vulnerable groups (IDPs, socially vulnerable persons, who's score is less than 100 000);
- ✓ Persons under state care or out of state care;
- ✓ Youth who discontinued study because of non-payment;
- ✓ Youth, who are victims of domestic violence and trafficking, women in marriage from early age;
- ✓ Persons with disabilities (PWD) and persons with special educational needs (PWSEN) who can provide the conclusion of the multidisciplinary group and/or experts of the Ministry of Education, Science, Culture and Sports and express the will to work.

The monitoring conducted by the Public Defender in 2018²² confirms that it is a major challenge for the PWDs to get employed. The employment mainly is done in accordance with the separate initiatives of the organizations and is of a campaign nature. After the expiration of state support, the labor relations with the PWDs are rarely continued. Inaccessible environment is a major barrier for the PWDs to arrive at the workplace, conduct the work and to integrate with the society. The remuneration is too low, which, considering the other barriers, makes the work of PWDs unprofitable.²³

Based on all abovementioned, in order to make PWDs competitive on equal footing with others, it is necessary to:

- Make systematic changes in the field of education – increase the inclusion in vocational and higher education;
- Adaptation of environment and infrastructure – allocation of necessary funds by the local self-government authorities;
- Number of employment consultants and increase of geographic coverage;
- Study the issue of introducing tax concessions in case of employment of PWDs by the private sector and initiation of proper changes.

Furthermore, should be noted that the measures taken for the purpose of quality control of the employment support services provided for by the State programs, are insufficient and no PWDs and/or their representatives are involved in the process of monitoring and evaluation.

²² State programs supporting employment of the PWDs, Monitoring Report, the Office of the Public Defender of Georgia. Tbilisi, 2017.

²³ Ibid.

Education

Pursuant to Article 27 of the Constitution of Georgia, everyone has the right to receive education and the right to choose the form of education they receive. In 1994 Georgia joined the Convention on the Rights on the Child, which provides for protection and realization of the right to education of every child, including the children with disabilities.

Action Plan paragraph 19.1.3 deals with education issues and is aimed at improvement of availability of education for PWDs. Article 24 of the UNCRPD calls on states parties to ensure an inclusive education system at all levels and lifelong learning. It is noteworthy that the Ministry of Education and Science started implementation of inclusive education at general education level even before UNCRPD ratification, in 2006. Even though the right to education of the PWDs is recognized in Georgia with the organic laws, there still are barriers in terms of realization of this right. The legislative framework of inclusive education does not establish structured and flexible system adjusted on child and student individual needs.

Inclusive education in Georgia is regulated with three basic laws – “Law of Georgia on general education”, “Law of Georgia on vocational education” and “Law of Georgia on higher education”.

On November 28, 2014 the amendments were made to the “Law of Georgia on general education”,²⁴ based on which regulations related to the students with special needs have been refined. Namely, the multidisciplinary group of inclusive education of the Ministry of Education and Science was granted the authority to evaluate any person other than pupil, with no educational background, in order to define the special educational needs and select best form of education (Report of the Ministry of Education and Science, 2015).

Should be noted, that with the Decree №16/6 dated of February 21, 2018 of the Minister of Education and Science, the rules implementation, development and monitoring of inclusive education, as well as the mechanism for identification of students with special educational needs was approved.

As the education experts indicate, the national curriculum does not allow in all cases (especially in sever and multiple mental disorders) for the children to develop functional and academic skills. Furthermore, the curriculum does not allow for setting up different types of learning arrangements, which is often needed for effective involvement of children with deep intellectual and multiple disorders in the learning process. The mentioned contradicts the UNCRPD principles.

On July 7, 2018, the Parliament of Georgia adopted the amendments to the “Law of Georgia on general education”,²⁵ based on which the significant changes were made to the inclusive education:

- Special teacher has become teacher;
- The system recognized alternative and expanded curricula;
- The status of special schools has changed, and they became resource schools;
- The definitions of terms for integrated and specialized classes have emerged.

Based on the amendments to the law, the specialists in the inclusive education were recognized by the system as teachers. The mentioned change shall be welcomed as before the amendments to the law the special teachers were considered as the part of administration.

²⁴ “On the amendments to the Law of Georgia on “General Education” (November 28, 2014 ., N2822-1b) available at <https://matsne.gov.ge/ka/document/view/2601513?publication=0> {02.10.2020}.

²⁵ Law of Georgia On the amendments to the Law of Georgia on “General Education” (document number 3025-6b) available at <https://matsne.gov.ge/ka/document/view/4249959?publication=0>.

Should be noted that the issue of receiving general education by the PWDs have to be addressed. There is no relevant infrastructure, training programs, audio and Braille books etc. Lack of special teachers and lack of qualification remains problematic. The major challenge is the existence of specialized schools in the county, which does not meet the requirements of the Convention.

Furthermore, it remains problematic that no legislative amendments were made so far to eliminate the barriers of exchanging information between the agencies regarding the children with disabilities, no mechanism of monitoring of children under the risk of school dropout have been developed and no strategy to prevent the dropout. There still are no statistical data regarding the children with disabilities left out of formal education and their needs.²⁶ The lack of abovementioned information makes it difficult to plan and implement relevant interventions.

The UNCRPD provides for the obligation of the States to ensure equal access to vocational education for the PWDs. The challenge nowadays is the refinement of the existing law on vocational education. Moreover, there are no needs-based studies. Also, the issue of geographical access to vocational education still remains problematic.

On the level of vocational education, besides the amendments to the organic law, elaboration of regulatory bylaws is necessary to regulate the procedures of enrollment of students with special educational needs, issues of evaluation, obligations and functions of administrative and academic personnel, mechanism of monitoring etc.

In the higher education, compared to the general education, situation is more difficult in terms of defining the legislative frame. Should be noted that existing legislation does not fully provide the right to inclusive education on a higher education level. “The Law of Georgia on Higher education” only states that “higher education institution shall provide for benefits for students with disabilities in order to create the necessary conditions for their education”, and according the subparagraph “e” of the Article 10 of the Higher Education Institution Authorization Standard “the higher education institution shall have adapted environment for the students with special educational needs”. However, no specific efforts have been made to adjust the legislative framework at higher education level.

²⁶ Public Defender's 2018 Parliamentary Report on the situation of human rights and freedoms in Georgia. Pg. 265. Tbilisi, 2018 . available at <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf> {02.07.2020}.

Statistics of the persons with disabilities

UNCRPD obliges the member-states to maintain statistics. In accordance with the Article 31, the state parties shall undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.

However, even after 5 years from ratification of the Convention, the State does not have full statistical data regarding the PWDs. According to 2014 census, there are 100 113 persons with disabilities in Georgia, while as of March 1, 2015 the Social Service Agency has registered 118 651 PWDs receiving only social assistance and in 2017 – 125 104.

Furthermore, should be noted that the abovementioned statistical data is based on questionnaires filled in by the respondents during the census, i.e. based on self-evaluation. Thus, this type of statistical data is less relevant and informative, as their credibility is based solely on the willingness of the population to indicate or not their or their family member's status and additionally, on their knowledge and awareness of the disability.

According to latest census data of 2014, received from the National Statistics Office, there are 100 113 PWDs in Georgia that is approximately 2,7% of the total population. Should be noted that, according to Geostat data, there was no indication, or the respondent refused to answer in case of 82 000 persons. That means that the number of PWDs in Georgia likely to be higher.

The Social Service Agency also records the statistical data of the PWDs, which only shows the PWD beneficiaries of the social package and other state benefits. This statistical data also includes the total number of PWDs by regions and by groups of defined disability statuses. According to the data of the Social Services,²⁷ as of January 2020 the number of beneficiaries receiving different state allowances based on the status of disability (“social package”, “state compensation”, “household subsidy”) is 129 753, among them 27 889 are the beneficiaries of cash social assistance - “Living allowance”.

²⁷ Letter of LEPL Social Service Agency of February 12, 2020 N04/4585.

Accessibility

Realization of right to accessibility is one of the most important preconditions to ensure the full value life for PWDs. One of the major problems is that the needs related to the accessibility is not studied on national level. Using the social facilities, municipal transport and road infrastructure is a challenge facing PWDs. Therefore, in most cases the disability is not due to the persons resources but the environment that puts them in discriminatory position.

In accordance with the Article 9 of the UNCRPD, States Parties shall take appropriate measures to ensure to persons with disabilities the access, on an equal footing with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas,²⁸ that includes buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; Information, communications and other services, including electronic services and emergency services.

Furthermore, UNCRPD introduces the principles of “Universal design” and “reasonable accommodation”. The “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.²⁹ “Reasonable accommodation”

²⁸ available at <https://matsne.gov.ge/ka/document/view/2334289?publication=0> {02.07.2020}.

²⁹ UNCRPD, Article-2.

means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedom.³⁰ Accessibility challenges may be avoided or significantly reduced by use of a reasonable and cost-effective universal design that would be beneficial for everyone.

Pursuant to Article 7 of the Law of Georgia “On social protection of persons with disabilities” adopted in 1995,³¹ state authorities, enterprises, institutions and organizations shall provide the PWDs the conditions for using housing, public and industrial buildings, transport and transport services, means of communication and information, free orientation and movement. The mentioned legislation does not meet requirements of modern standards and it is not implemented in practice due to lack of enforcement mechanism.

One of the goals of the National Strategy for Human Rights Protection (2014-2020) is to ensure that PWDs enjoy their rights on equal footing with others and that they are fully involved in social life. One of the tasks is to “ensure accessibility of public facilities and means of transportation for the PWDs”.³²

On January 6, 2014, the Government of Georgia approved “Technical regulations on arranging space for PWDs and of architectural and planning elements”.³³ The mentioned document is aimed at adaptation of the PWDs in society and involvement in social life. Moreover, to consider the standards of physical environment during design and construction process. LEPL Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development and LEPL Architecture Service carry out the supervision on enforcement the abovementioned provisions. However, the standards provided for in the document are outdated and have number of shortcomings.

³⁰ Ibid.

³¹ available at

<https://matsne.gov.ge/ka/document/view/30316%3E%20%E1%83%91%E1%83%9D%E1%83%9A%E1%83%9D%E1%83%A1%20%E1%83%9C%E1%83%90%E1%83%9C%E1%83%90%E1%83%AE%E1%83%98%E1%83%90?publication=9> {02.07.2020}.

³² available at <https://matsne.gov.ge/ka/document/view/2348314?publication=0> {02.07.2020}.

³³ available at http://gov.ge/files/381_40157_501181_76200114.pdf {02.07.2020}.

Article 12 of the Decree #57 of the Government of Georgia dated of March 24, 2009 “On the procedure for granting a construction permit and conditions for a permit”³⁴ provides for using the buildings and public spaces of the PWDs. Pursuant to paragraph 1, of the same Article, processing of documents for the construction of public buildings is impermissible without considering the conditions provided for by the legislation for the PWDs. And the paragraph 2 of the same Article defines those objects that shall meet the requirements provided for in the first paragraph of the Article 12:

- Public, administrative, cultural, trade-household and specialized industrial buildings for the persons with disabilities;
- Buildings of healthcare, education, science and banking-financial institutions;
- Sports-recreational and sports buildings;
- Parks, gardens, boulevards, squares and all recreational objects on such territories;
- Objects of civil transport service and communication, including railway and bus stops, airports, all types of city and intercity transport stops;
- Streets and sideways. And pursuant to paragraph 3 of the Article 12, when processing the documents for residential (besides individual housing) buildings, consideration should be given to the possibility of their use by PWDs, in accordance with the requirements of the construction regulations.

Unlike the “Technical regulations on arranging space for PWDs and of architectural and planning elements” approved by resolution N41 of the Government of Georgia on January 6, 2014, the Decree of the Government of Georgia №41 “Safety regulations for buildings” dated of January 28, 2016 can be evaluated positively.³⁵ Provisions of the Chapter 11 of the Decree regulate design and construction of PWD accessible facilities.³⁶ Design and construction of buildings and facilities accessible for the PWDs shall be in accordance with rules and ICC A 117³⁷.³⁸ According to the letter received from the LEPL - Georgian National

³⁴ available at <https://matsne.gov.ge/ka/document/view/5014%3E?publication=0> {02.07.2020}.

³⁵ Decree of the Government of Georgia №41 “On approval of safety regulations for buildings” dated of January 28, 2016 available at <https://matsne.gov.ge/ka/document/view/3176389> {02.17.2020}.

³⁶ Ibid. Chapter 11, sub-charter 1101.

³⁷ ICC A 117 – accessible and usable buildings and objects. available at https://cdn.ymaws.com/www.aiatriangle.org/resource/resmgr/CE_/ICC_A117.1-09.pdf {02.17.2020}.

³⁸ Decree of the Government of Georgia №41 “On approval of safety regulations for buildings” dated of January 28, 2016 Chapter 11, sub-charter 1101.2; available at <https://matsne.gov.ge/ka/document/view/3176389?publication=0> {02.17.2020}.

Agency for Standards and Metrology³⁹ as of today, no request have been submitted to the Agency so far regarding starting the necessary procedures for adopting ICC A 117 standard (together with Georgian text) as standard of Georgia.

Pursuant to Article 16 of the “Local Self-government Code”, municipality shall develop appropriate infrastructure in local facilities for persons with disabilities, prepare and approve spatial planning schemes and define norms and rules in relevant field; furthermore, issuing construction permits on its territory and conduct supervision.⁴⁰ Pursuant to Articles 178¹ and 178² of the Administrative Offences Code of Georgia, evading the creation of the conditions necessary for persons with disabilities to use residential, public and commercial buildings, transport and transport services, communication and information media, also for their free movement is an administrative offence.⁴¹

Should be noted that the Parliament of Georgia adopted “Georgian Space Planning, Architectural and Construction Activity Code” on July 20, 2018,⁴² the purpose of which is the legal regulation of space planning, urbanism planning, architectural and construction activities on the territory of Georgia. Article 85 concerns the provision of access to buildings and public spaces for PWDs. Pursuant to paragraph one of this Article – the building (other than individual housing) shall be designed and constructed in such manner as to meet the conditions envisaged by the legislation of Georgia for the PWDs.⁴³ This request also implies the plots belonging to the buildings, as well as public spaces (parks, gardens, boulevards, squares, streets, sideways etc.).⁴⁴

The parliamentary report of the Public Defender 2018 indicates that there is a tendency in some municipalities, that the construction standards of space arrangement for the PWDs are not implemented and no supervision is conducted over their enforcement.⁴⁵

³⁹ Letter #1098 received from the LEPL - Georgian National Agency for Standards and Metrology February 28, 2020.

⁴⁰ available at <https://matsne.gov.ge/ka/document/view/2244429?publication=41> {02.07.2020}.

⁴¹ available at <https://matsne.gov.ge/ka/document/view/28216?publication=433> {02.07.2020}.

⁴² Available at <https://matsne.gov.ge/ka/document/view/4276845?publication=1> {02.07.2020}.

⁴³ Ibid. Part one of the Article 85.

⁴⁴ Ibid. Part two of the Article 85.

⁴⁵ Public Defender's 2018 Parliamentary Report on the situation of human rights and freedoms in Georgia. Tbilisi, 2018 . available at <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf> {02.09.2020}.

Based on analysis of the abovementioned legal norms, it can be said that Georgian legislation still do not comply with international standards in terms of accessibility and contradicts the CRPD principles.

Law of Georgia on “Elimination of all forms of discrimination”

Persons with disabilities are still the victims of discrimination. The aforementioned is indicated in the parliamentary report 2018 of the Public Defender.

Based on the Action Plan of 2014 on visa liberalization between EU and Georgia, the Government of Georgia undertook to develop the mechanism of fighting with discrimination, based on which the Parliament of Georgia adopted the Law of Georgia on “Elimination of all forms of discrimination” (hereinafter – anti-discrimination law).

The aforementioned law represents an important leverage to ensure the equality of the PWDs. The Law of Georgia on “Elimination of all forms of discrimination”, among other grounds, envisages discrimination on disability grounds.

The Law of Georgia on “Elimination of all forms of discrimination” defines the term of discrimination, the scopes of the law, the list of the main grounds on which the discrimination is prohibited, furthermore, the measures are introduced and defined, that should be carried out to eliminate the discrimination. Additionally, together with the adoption of the law, the amendments were made to the Civil Procedure Code of Georgia and Section 73 was added which regulates the procedures of applying to the court regarding discrimination cases.

Should be noted that among other grounds, the Law directly indicates such ground as - disability. Furthermore, the law defines the discrimination types – direct and indirect discrimination according to which direct discrimination shall be any treatment or creation

of any conditions putting a person in a disadvantaged position in the enjoyment of the rights determined by the legislation of Georgia based on any of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such treatment serves a legitimate purpose, including protection of public order and morale, has objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose, and Indirect discrimination shall be a condition, where a provision, criterion or practice of a conditionally neutral and essentially discriminatory content exists, putting in a disadvantaged position persons under one of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such a condition serves a legitimate purpose, including protection of public order and morale, has an objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose. Furthermore, encouragement and support of discriminatory actions is also prohibited by law. The paragraph 4 of Article 2 of the Law shall also be noted, which deals with discrimination on multiple grounds.

Pursuant to the Law of Georgia on “Elimination of all forms of discrimination”, oversight function on the issues of elimination of discrimination and provision of equality shall be carried out by the Public Defender of Georgia. Based on the aforementioned, the Equality department was established at the Public Defender’s Office.

It is noteworthy that in order to establish the fact of alleged discrimination, it is very interesting to use both mechanisms in one case. Furthermore, extending the period of appeal from 6 months to 1 year should be assessed as positive, as very often the victim was uninformed and missed the time limits for appeal. Moreover, the fact that natural persons and legal entities under private law shall be subject to the legal regime of public entities should be positively assessed, that implies the obligation of private individuals to submit the requested information to the Public Defender's relevant Office in the course of investigating alleged fact of discrimination and also to provide information on the outcome of a recommendation of the Public Defender. In case if the private person fails to comply to the given recommendations, based on the amendments, the Public Defender is authorized to apply to Court for enforcement.

Should be noted that the given law needs further refinement. The aforementioned law would have been more effective if remained as it was in the original version, which provided for introduction of the new agency – Equality Protection Inspector.⁴⁶ Pursuant to the initial version of the draft law, the Equality Protection Inspector would have been granted more authority, in particular, the Inspector would have been authorized to draw up a protocol of administrative offences in case of established fact of discrimination and fine the natural person or legal entity conducting the offence. Furthermore, the Law provided for granting the Inspector with investigative powers. In addition, it also provided for involving the authorities or representatives of legal entities in the investigation.

As for the examples of other countries. Albania has the Commissioner for Protection against Discrimination (CPD),⁴⁷ which was established since 2010, pursuant to the Law on “Protection against Discrimination”. The Commissioner is elected by the Parliament of Albania and is the legal entity of public law, who is responsible and provides effective protection against discrimination. CPD covers several structural entities, granted with relevant authorities. E.g. Division for Administrative Investigations consisting of 5 inspectors, considers the complaints of natural and legal persons to establish the facts of alleged discrimination. The Legal department provides judicial representation, prepares the lawsuits and controls the enforcement of monetary penalties imposed by the CPD. The Division of Monitoring, Reporting and Communication – provides the reports to the International and regional agencies; maintains the regular dialogue regarding the issues of discrimination with relevant social groups, including non-governmental organizations.

In Austria there is Austrian Disability Ombudsman for the protection of PWD rights⁴⁸ and Ombudsman for Equal Treatment – for the equality⁴⁹ issues. The first was established in 2006 on the basis of anti-discriminatory law. The Ombudsman shall be appointed by the Minister of Social Issues for a 4-year term. The aforementioned body is mainly of tribunal type (quasi-judicial), as regards the equality ombudsman – it was established in 1991 and considers the applications or complaints of those natural persons or legal entities or the group of persons, who consider themselves as victims of the discrimination in the field of employment and services on the grounds of sex, ethnicity, religion or belief, age or sexual orientation.

⁴⁶ OPINION ON THE DRAFT LAW ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION. pg: 15.

<https://www.refworld.org/docid/537499f04.html> {02.17.2020}.

⁴⁷ https://equineteurope.org/author/albania_cpd/ {02.17.2020}.

⁴⁸ https://equineteurope.org/author/austria_ado/ {02.17.2020}.

⁴⁹ https://equineteurope.org/author/austria_oet/ {02.17.2020}.

In Croatia, as the national equality organ, the Ombudsman⁵⁰ is responsible to ensure equality and submits the reports to the Parliament. It has the authority to receive the complaints to establish the facts of alleged discrimination on such grounds as discrimination on the grounds of race and ethnicity, religion and belief, age etc. (in total twelve grounds). Because its mandate does not extend to gender, the complaints regarding gender identity and sexual orientation, disability or child discrimination, as there is a designated, mandated Ombudsman for each abovementioned issue.

Ombudsman for Persons with Disabilities⁵¹ was first appointed by the Parliament of Croatia in 2008 pursuant to the Law of Croatia on “Protection of persons with disabilities”. It is an independent organ. The priority tasks of the Ombudsman’s Office are protection, support and monitoring of the rights of PWDs in Croatia. The institute acts as the equality organ, fights against discrimination on disability grounds and as the independent organ, controls the implementation of UNCRPD. It considers the complaints of natural and legal persons regarding the alleged facts of discrimination. The mentioned institute also monitors compliance of laws and regulations with legally binding international documents in terms of protection of rights of PWDs. Furthermore, it also proposes to make amendments to the laws and regulations regarding the rights of the PWDs.

From the examples of several countries mentioned above, it is clear that strengthening the existing institute is effective for the protection of rights of persons with disabilities and preventions of discrimination against them.

⁵⁰ https://equineteurope.org/author/croatia_ombudsman/ {02.17.2020}.

⁵¹ https://equineteurope.org/author/croatia_opd/ {02.17.2020}.

Law of Georgia on “the Rights of Persons with Disabilities” (Draft)

On February 3, 2020, the draft law of Georgia on the Rights of Persons with Disabilities was registered in the Parliament of Georgia. This law defines the basic principles and mechanisms of accessibility for PWDs without discrimination and on equal terms. The Ministry of Justice of Georgia worked on the draft law. The UN Convention on the Rights of Persons with Disabilities requires that PWDs, their representatives and non-governmental organizations working on this issue be actively involved in the decision-making process.⁵² It is noteworthy that the draft law was not available to some stakeholders and no PWDs or community organizations were involved in its preparation process.⁵³

The draft law proposes number of positive amendments, such as the Special Claimant Institute, the Personal Assistant Service, at the same time it focuses on the needs of children with disabilities etc. Furthermore, the draft law introduces concepts such as reasonable accommodation and universal design. However, it also contains significant shortcomings.

Pursuant to the section “c” of the Article 2 of the draft law “reasonable accommodation is the principle which in each particular case, implies necessary and appropriate changes that do not impose a disproportionate or excessive burden or obligation and ensures the exercise of the rights and freedoms of PWDs on an equal footing with others”.

⁵² UN Convention on the Rights of Persons with Disabilities. Article 4, section 3.

⁵³ Disability rights organizations and activists respond to the draft law “On persons with disabilities” Available at <https://gyla.ge/ge/post/shshm-pirta-uflebebze-momushave-organizaciebi-da-aqtivistebi-shshm-pirta-uflebebis-shesakheb-kanonproeqts-ekhmianebian#sthash.iJWH4LRa.dpbs>.

The proposed draft law does not specify "those necessary and appropriate changes" that have to be made for the rights and freedoms of PWDs to be exercised on an equal footing with others, making the content of these measures ambiguous. Furthermore, the proposed draft law does not define the "disproportionate or excessive burden or obligation" of the reasonable accommodation and there are no clear criteria for determining the proportionality of the burden for PWDs when taking specific measures. GYLA believes that in assessing the proportionality of the burden, not only should State support programs be taken into account, but first and foremost, the financial and intangible capabilities of a particular institution (public/private) so that the private sector, and not only the State, can bear the burden reasonable accommodation.

According to the section "d" of the Article 2 of the draft law, "the universal design is a design of a product, environment, teaching, program and service that gives every person access to it without the need for special adaptations. Universal design does not exclude the use of aids and/or various forms of support by a specific group of persons with disabilities, if necessary."

GYLA believes that the concept of universal design proposed by the draft law sets a lower standard compared to the Convention. In particular, according to the Convention, the "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. However, the draft law does not exclude application assistive devices and/or other type of assistance for particular groups of persons only "when needed", although it does not specify what cases it may consider.

A small chapter of the draft law is devoted to social protection,⁵⁴ however, it is not clear what does social protection imply. At the same time, it is unclear what measures will the State take for the social rights of PWDs to be exercised. Furthermore, the draft law does not address the issue of deinstitutionalization and the State's obligations in this regard. Besides, the Law of Georgia "on social protection of persons with disabilities" will be declared invalid upon the entry into force of the aforementioned law. Even though this law was mostly ineffective, after its invalidation, the issue of social protection of PWDs remains without solid guarantees.

⁵⁴ Law of Georgia on the Rights of Persons with Disabilities (Draft), Article 14, available at <https://info.parliament.ge/file/1/BillReviewContent/243315?fbclid=IwAR3Q4ODBZW2ogVera-PkwsS5A8ydv69rEKWgJsW1BKF6SHcBQj5BzN1KJww> {02.18.2020}.

The Special Claimant Institute does not apply to appealing to the Constitutional Court and the Public Defender; The needs of women with disabilities are not emphasized and are not separately addressed as an article or a chapter. Freedom of movement, freedom of expression of thought and belief of PWDs are not ensured. Neither the definition of the term and nor the indirect discrimination include refusal to the reasonable accommodation as a type of discrimination. In addition, it is narrowly defined in the draft law and only as part of the adaptation to the physical environment. The draft law imposes the same term for the public and private sectors to comply with the requirements of this law. This will still impede the exercise of certain rights by PWDs (right to education, labor right, etc.). The concept of inclusion is not defined separately in the draft law and is limited to inclusive education only.

The draft law indicates in terms of all articles that the state actually expresses its good will in regards of realizing the rights of people with disabilities.⁵⁵ Whereas pursuant to the UN Convention and national legislation, the protection of the rights of persons with disabilities in all areas, is the obligation of the State and not its will.

⁵⁵ Ibid.

Conclusion

The study found that despite the measures in different fields and amendments to the legislation implemented by the State, it still does not meet fully the requirements of the UN Convention on the Rights of Persons with Disabilities.

One of the major challenges is the faulty physical environment and infrastructure and the lack of an efficient legal system in place. It is noteworthy that even after 7 years of ratification of the Convention, the Optional Protocol to the Convention on the Rights of Persons with Disabilities has not yet been ratified. The agencies responsible for the implementation and coordination of the Convention have not yet been identified in accordance with the requirements of the Convention.

State programs do not identify the individual needs of PWDs in the realization of their right to health. In addition, there are no adult rehabilitation programs.

One of the major challenges in terms of inclusive education is accessibility of the physical environment of public schools. The positive amendment that special teachers are equated with teacher category should be emphasized. However, the small number of special teachers and absence of personal assistants at schools is a problem.

The employment support programs should be positively assessed. Although as the study found, it needs improvement. In particular, according to statistical data the number of employed PWD is very low compared to persons without disabilities. Therefore, it is

necessary to increase the number of employed PWDs. At the same time, it is necessary to increase both the scale and budget of the employment program.

Considering the abovementioned we hope that the Georgian legislation will be revised and harmonized with the UN Convention on the Rights of Persons with Disabilities and will be monitored in terms of its implementation in practice.

Recommendations

Government of Georgia:

- Timely identification of effective mechanisms for the implementation and coordination of the Convention on the Rights of Persons with Disabilities. In particular, identification of a State agency responsible for coordination;
- Elaboration of a national plan on accessibility identifying specific actions, terms of implementation, entities responsible for their implementation both on central and local levels. Identification of financial components and measurable indicators;
- Identification of budgetary resources for the activities envisaged by the action plans for the coming years. Identification of agencies responsible for implementation;
- Ensure elaboration and implementation of specialized sub-program of habilitation / rehabilitation of adults with disabilities within the framework of the State Social Rehabilitation Program. Promotion of the creation and strengthening of rehabilitation centers following the principle of geographical distribution.

Parliament of Georgia:

- Ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities enabling PWDs to directly appeal to relevant UN committees in the event of a violation of their rights;
- Ensure amendment of the text of the draft law for the Law on Persons with Disabilities to become a real instrument of protection of rights of PWDs;

- All rights under the Convention shall be defined by law. Including the definition of concepts of reasonable accommodation and universal design in accordance with the standards set forth in the Convention;
- Include reasonable accommodation as one of the forms of discrimination in the Law of Georgia on the Elimination of All Forms of Discrimination, which will enable it to be used in relation to all rights.

Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

- Modification and standardization of the instruments necessary for biopsychosocial model introduction and acceleration transition to the social model in the system of disability assessment and determination of a status to ensure individual assessment of PWDs and identification of their needs;
- Ensure increase of employment program quality including improvement of the employment consultant qualification and increase of PWDs employment. Increase both the number of employment consultants and the coverage of the geographical area.

Ministry of Education, Science, Culture and Sport of Georgia:

- Ensure a higher standard of inclusive education monitoring system. This will help both timely identification of problems and allow policy makers to make the step-by-step development scheme more visible;
- Ensure personal assistant service to the students with special needs, if necessary (to allocate respective financial resources and staff);
- Maintain statistical data of students with special educational needs who are left out of education. This requires: Coordinated work of various agencies, creation of a list of information requirements, and development of a clear system for storing and transmitting information.

Ministry of Finance of Georgia:

- Ensure elaboration of a package of amendments to the Tax Code that will determine the introduction of tax benefits in case of employment of PWD by the private sector.