



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

RIGHTS OF PERSONS WITH DISABILITIES IN GEORGIA

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(OMBUDSMAN) OF GEORGIA

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GENERAL OVERVIEW

Implementation of the United Nations Convention on the Rights of Persons with Disabilities of 2006 December 13, is still a major challenge for the State. Harmonization of domestic legislation with the Convention as well as its proper practical implementation in real life has been progressing with impediments. The Parliament has not yet ratified the Optional Protocol to the Convention, to allow the persons with disabilities to submit complaints to the relevant UN committee in defense of their rights.

Although the Coordination Council on Issues of Persons with Disabilities under the Prime Minister of Georgia was defined as a responsible body for the implementation of the Convention, the State has failed to create an effective and working mechanism under Article 33 of the Convention to ensure and coordinate its proper implementation. The Council, which is virtually dysfunctional, given its status, composition and format, is unable to perform essential task of an implementing body – to develop and coordinate enforcement of the consistent domestic implementation policy- even in theory.

Since January 2015, the Public Defender’s Office, as the body to monitor implementation, promotion and protection of the Convention, started elaborating a mechanism composed of the Department on the Rights of Persons with Disabilities, the Consultative Council and the Monitoring Group. In order to engage Persons with disabilities in the work of the mechanism, the Consultative Council includes persons with disabilities and their representative organizations. The Council has already held several working meetings to discuss the Public Defender’s past and future activities with a view of promoting, protecting and monitoring implementation of the Convention.

We welcome current changes in the legislation aimed at reforming the legal capacity concept and, in particular, replacement of the term “substitution of a person declared legally incapable” with “supported decision-making”. However, certain aspects have not been properly addressed and foreseen in the process of drafting the amendment. In particular, the changes leave unregulated how various decisions (such as those related to hospitalization, medical treatment, financial transactions, etc.) should be made when a person’s mental health deteriorates significantly and how the threats emerging in such situation should be dealt with. Moreover, the Public Defender has become aware of certain practical problems related to examination of such cases by the courts. The Public Defender will publicize the results of its in-depth study of the reform of the legal capacity concept in the near future.

As we know, the Georgian Government approved Government’ Action Plan on Equalization of Opportunities for Persons with Disabilities¹ and the Governmental Human Rights Action Plan for 2014-2015². These strategic documents envisage important activities to help realize the rights of persons with disabilities more efficiently. Even though timeframes for fulfilling the planned actions are on the verge of expiring,

1 See http://government.ge/files/381_40157_501181_76200114.pdf

2 See http://government.ge/files/382_43290_797918_4452c92c072c14.pdf

responsible government agencies have not completed their obligations under the above mentioned documents – something that certainly affects the exercise of the rights by the persons with disabilities and the quality of their lives.

Access to physical environment, infrastructure, transport and information still remains a challenge for persons with disabilities. In spite of undertaking series of obligations under the Convention and the fact that Georgian Government has approved “Technical Regulations on the Arrangement of the Space Design and Architectural and Planning Elements for Persons with Disabilities”, central and local authorities often ignore special needs of Persons with Disabilities and breach the existing norms while implementing infrastructural projects. In the reporting period, the Public Defender has studied the problem of accessibility to the physical environment. As a result, it has issued and submitted relevant recommendations to the responsible State authorities.

Disregarding the special needs of persons with disabilities during sports, cultural and entertainment events has been a regrettable practice in 2015. Paata Burchuladze’s jubilee concert and the opening of European Olympic Youth Festival “Tbilisi 2015” at Tbilisi Sports Palace are among those cases when the rights of persons in wheelchairs have been violated.

As for the opportunities to exercise the access to information, the broadcasters fail to provide news, reports, movies, entertainment shows and other TV programs in accessible formats for persons with Disabilities. On this issue, the Public Defender has recommended the Georgian National Communications Commission (GNCC) to ensure, that the persons with disabilities have access to information through various forms, methods, means and technologies used by various media outlets while broadcasting different TV programs and movies.

Social protection, right to adequate housing and employment of persons with disabilities still remains as one of the most important challenges for the State. a major increase in the number of persons with disabilities complaining to the Public Defender about the seriously complicated procedure for receiving living allowance under the new methodology³ of evaluation of the socio-economic status of socially vulnerable families (households) have been recorded during the recent months. The beneficiaries have been alleging drastic deterioration of their living standards.

Another matter of concern is the lack of opportunities for exercising their right to work by the persons with disabilities. Even to this date, the State has not developed policies, legal framework and programs to help them lead independent lives and be integrated into the broad society. An interesting fact in this context is that only 112 out of 53,109 employees of the public sector are persons with disabilities.⁴

3 Resolution of the Georgian Government no. 758 dated 31 December 2014 approving the “Methodology of evaluation of the socio-economic status of socially unprotected families (households)”, available at <https://matsne.gov.ge/ka/document/view/2667586>

4 See Civil Service Bureau’s 2015 report, p. 22 available at http://csb.gov.ge/uploads/2015_GEO_web.pdf

The problem is particularly acutely felt by people who have been under State care since their childhood because upon achieving the age of majority they are leaving the State institutions completely unprepared for independent life and remain without shelter in most cases. On this issue, the Public Defender has made a general recommendation to the Georgian Government with certain list of advice on how to help these people become more independent.

Inclusive education is progressing with flaws either. A significant number of children with disabilities, especially those in rural areas, are not involved in general education process. The quality and continuity of education remains a problem as well.

Another challenge is the opportunity for persons with disabilities to exercise their right to health to the full extent. Despite the existence of Universal Healthcare Program, special needs of these persons with Disabilities are not relevantly considered and met. They are not effectively provided with medical supplies as well.

Citizens are facing problems with having their disability status determined. Payment for the determination procedure often turns into a matter of dispute. Although the State Healthcare Program envisages State funding for conducting a social test to determine disability (except for high-tech tests), disagreement over who should pay the fees for the test in the medical service providers remains disputable.

In the reporting period, persons with disabilities have come across with demonstrations of stigma and abusive attitude towards them as well as increasing use of hate speech.

The Public Defender made a public statement in response to KFC's photo add, which displayed stigma and insulting attitude towards persons with mental disabilities.

2015 was marked with a trend that public figures, including politicians, kept using hate speech. The Public Defender called on everyone, especially high-ranking public officials, to refrain from statements that may have the effect of stigmatizing or discriminating persons with disabilities. In addition, the Public Defender urged civil servants to protect the rights of persons with disabilities on equal basis with others and to raise public awareness of this issue.

1. IMPLEMENTING AND MONITORING THE 2006 UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

It has already been several decades that the international community has taken a human rights-based approach to persons with disabilities. But it was only in 2006 that the UN Convention on the Rights of Persons with Disabilities, the most important legally-binding international instrument, was adopted. The Convention constitutes a result of international consensus and supplements other international agreements in the field of human rights. However, legal mechanisms for the beneficiaries to exercise their rights under the Convention are still new to the majority of its member States. Despite the Conventional requirement to designate specific authorities at the national level to take responsibility for the implementation and monitoring of the Convention, the existing practices in this regard are not uniform and rich. The fact that an international instrument such as the Convention has made a very first effort to articulate in detail the issues of implementation and monitoring of the Convention at the national level is one reason of this.

Article 33 of the Convention requires that implementation and monitoring mechanisms were in place at the national level. The States Parties have to designate one or more focal points within the government for matters related to the implementation and coordination. States Parties also have to designate or strengthen one or more independent mechanisms to promote, protect and monitor implementation of the Convention.

Introducing provisions in the domestic law on national implementation and monitoring of the Convention has been considered as a measure to consolidate institutional preconditions necessary to ensure its realization at the domestic level.⁵

The Convention entered into force for Georgia in April 2014. Since then, Georgian Government is obliged to promote, protect and implement the standards introduced by the Convention.

On 27 October 2014, the Coordination Council on the Persons with Disabilities, at its 6th session, designated the State Coordination Council on the Issues Persons with Disabilities as an implementing body of the Convention, while the Government Administration's Human Rights Secretariat has been determined as a coordination mechanism. The Public Defender has been nominated as a body responsible for the monitoring of the promotion, protection and implementation of the Convention.⁶ It has to be mentioned that these decisions are documented only in the Coordination Council meeting protocols,

5 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, par. 7; [<http://www.un.org/disabilities/documents/COP7/COP7/CRPD.CSP.2014.3.E.pdf>]

6 Letter from the Human Rights Secretariat of the Government Administration no. 24332 dated 26 March 2015

which is signed by the Prime Minister but is not further confirmed in any binding legal act.

1.1. CHALLENGES IN THE IMPLEMENTATION OF THE CONVENTION IN GEORGIA

Article 33 of the Convention stipulates that it is an obligation of the Government to implement the Convention at the national level. In order to avoid uncoordinated action or the blurring of that responsibility across government sectors, States are required to designate one or more focal points within government for matters relating to the implementation of the Convention and to consider the establishment of a coordination mechanism.⁷

The Convention itself does not say anything about the format of an implementing authority or the functions incumbent thereon; however, the States Parties agree that adequate resources will have to be allocated to properly support implementation of the provisions of the Convention and coordination will have to be ensured among various agencies to achieve that effect.

At the UN conference,⁸ the States Parties discussed the format of implementing and coordination bodies. The discussion revealed the need for taking into account the following considerations: the implementing body should be as high-ranking as possible; its mandate should be such as to allow for the development and coordination of a coherent national policy on the Convention; the implementing body should be adequately supported in terms of technical staff and resources.⁹ A coordination mechanism's primary function, on the other hand, should be facilitation of implementation actions and processes in different sectors and at different levels. It ought to play a key role in avoiding duplication of activities of various government agencies and correct allocation the small resources.¹⁰

As mentioned above, the State Coordination Council on the Issues of Persons with Disabilities has been designated as the implementing body (focal point) in Georgia. The Council is led by the Prime Minister. The Council membership is as follows: 9 ministries (represented by the respective ministers or deputy ministers), 2 representatives from the Parliament and 10 representatives from the civil sector.¹¹ Pursuant to the statute of

7 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, par. 4 [<http://www.un.org/disabilities/documents/COP/COP7/CRPD.CSP.2014.3.E.pdf>]

8 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York

9 Conference of the States Parties to the Convention on the Rights of Persons with Disabilities, Seventh Session, New York, Report, 1 April 2014, Roundtable 2, matters related to the implementation of the Convention, par. 11, [<http://www.un.org/disabilities/documents/COP/COP7/CRPD.CSP.2014.3.E.pdf>]

10 *Ibid.* paras. 13 and 16

11 15 December 2009 establishing a State Coordination Council on Disabled People and approving the Council's statute, Art. 1

the Council, its paramount function is to coordinate the implementation of a uniform state policy on people with disabilities.¹² The Council convenes at least 4 times per year.¹³

The Council's composition, functions and *modus operandi* are not even formally consistent with the requirements of Article 33 of the Convention with regard to implementation bodies (focal points) and the agreement reached by the States Parties at their seventh conference. More so, in practice, the Council fails to meet its obligation under its own statute and it has only convened once during 2015.

Analysis of the existing situation shows that the focal point for the implementation of the UN Convention on the Rights of Persons with Disabilities is virtually dysfunctional in Georgia. Hence, the process of implementation of the Convention is going with impediments. The Government has to correctly determine the institutional framework required for the implementation of the Convention, re-allocate tasks between the focal point and the coordination mechanism and make these mechanisms truly operational.

1.2. MONITORING OF THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE CONVENTION AT THE NATIONAL LEVEL

For the purposes of Article 33(2) of the Convention, the Public Defender's Office has been designated as a focal point for the monitoring of the promotion, protection and implementation of the Convention.¹⁴ In fulfilling its responsibilities as focal point, the Public Defender will be guided with the UN Convention on the Rights of Persons with Disabilities, the Paris Principles, the approach applied by the UN Committee on the Rights of Persons with Disabilities, experience of successful European countries and, last but not least, the views and feelings of persons with disabilities. The monitoring mechanism includes, along with the Department of the Rights of Persons with Disabilities, the Consultative Council for Monitoring of Promotion, Protection and Implementation of the Convention and the Monitoring Group.

The Consultative Council is a consultative body tasked with determining a strategy and priorities for the monitoring of the implementation of the CRPD. The Council consists of representatives of the Office of the Public Defender, persons with disabilities, their representative organizations and international and local organizations working on disability issues. The Council's composition and statute are approved by the Public Defender.¹⁵ Since July 2015, the Council has held 3 meetings to discuss progress of promotion, protection and monitoring activities and agree on future activities. An action plan for 2016-2017 has been developed.

12 *Ibid.* Annex 1, Art. 2

13 *Ibid.* Annex 1, Art. 4, par. 3

14 The State Coordination Council on Disabled People, Minutes no. 2, 27 October 2014

15 The Public Defender of Georgia, Order no. 186 dated 21 July 2015

Members of the Monitoring Group have been selected through an open competition to carry out monitoring and thematic researches. 5 members will conduct monitoring and research in 2016 according to the priorities set by the Consultative Council.

1.3. PROBLEM WITH RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION

As you know, the Georgian Parliament ratified the UN Convention on the Rights of Persons with Disabilities without its Optional Protocol. It is for this reason that the individual complaint mechanism cannot be used by interested persons to communicate alleged violations of their rights to the UN Committee on the Rights of Persons with Disabilities.

The authorities have not undertaken any concrete measures to ratify the Optional Protocol yet.

Pursuant to Article 7(b) of the Georgian Parliament's resolution on the Public Defender Report on Human Rights in Georgia in 2013, based on the Public Defender's recommendation, the Georgian Ministry of Labor, Health and Social Affairs of Georgia was tasked with submitting a list of measures required for the ratification of the UN CRPD to the Georgian Parliament in the shortest time possible.

Through its letter no. 09-/8319 dated 12 October 2015, the Public Defender's Office requested the Ministry of Labor, Health and Social Affairs of Georgia to provide update on this issue. As a response, the Ministry sent us¹⁶ a copy of a letter (no. 01/7163–03.02.2015) to the Parliamentary Human Rights and Civil Integration Committee on the implementation of recommendations approved by Resolution of 1 August 2014. The Ministry indicated that it considered this submission as communication of a list of measures required for ratifying the Optional Protocol to the Parliament. According to the letter, the Ministry considers that "until the Optional Protocol is ratified, a national mechanism responsible for monitoring implementation of the Convention should be established; a first country report should be submitted to and recommendations should be received from the relevant UN Committee; domestic legislation should be harmonized and State agencies should then produce their reports on the appropriateness of ratifying the Optional Protocol."¹⁷

The Public Defender's Office has not received information about subsequent processes from the Ministry. It was for this reason that the Office addressed the Parliamentary Committee on Human Rights Protection and Civil Integration several times¹⁸ with a request to update us on the situation concerning ratification of the Optional Protocol.

16 Letter from the Ministry of Labor, Health and Social Protection no. 12673/15 dated 23 October 2015

17 Letter from the Ministry of Labor, Health and Social Protection no. 01/7163 dated 3 February 2015

18 Letter no. 09-2/8979 dated 2 November 2015; Letter no. 09–2/9814 dated 1 December 2015; Letter no. 09–2/362 dated 13 January 2016

Through its letter no. 3673 dated 3 February 2015, Assistant to the Prime Minister on Human Rights Protection and Gender Equality responded as follows:

“Full implementation of the UN CRPD and harmonization of the Georgian domestic law requires some time and the measures taken so far are only a part of obligations the State undertook. In addition, we need to consider recommendations issued on the basis of the first country report and actions to be taken to implement these recommendations. For these reasons, procedures for acceding to the Optional Protocol to the Convention have not been commenced at this stage.”

We believe the procedures referred to by the Government do not constitute a necessary precondition for ratifying the Optional Protocol. A majority of countries ratified the Optional Protocol simultaneously with the Convention. 86 out of 119 countries wishing to accede to the Optional Protocol have already ratified it, while 74 countries (including France, Germany, United Kingdom, Belgium, Sweden, Estonia, Italy, Hungary, Spain, and Ukraine) **have ratified the Optional Protocol together with the Convention.**¹⁹

Our conclusion therefore is that the State is evading assuming obligations under the Optional Protocol, including the entry into force of the individual complaints mechanism for Georgia.

The Public Defender has not received credible reasoning or explanation of challenges related to non-ratification of the Optional Protocol from any of the State agencies. All the more so, it remains unclear up to present time which State body the issue of ratification is delayed in and why the prior procedures for ratification are not been implemented. This gives rise to a question as to whether or not the issue of the ratification of the Optional Protocol will be resolved affirmatively in the near future.

19 See official webpage of the United Nations [<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>]

2. ACCESSIBILITY

One of the central issues related to the exercise of the rights of Persons with Disabilities is practical implementation of the principle of accessibility.

The 2006 United Nations Convention on the Rights of Persons with Disabilities recognizes the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication to be ensured for the Persons with Disabilities.

Pursuant to Article 9 of the Convention, States Parties shall take appropriate measures to ensure to persons with disabilities access to communications, information, transportation, facilities and services as well as to buildings, housing and workplaces, both in urban and in rural areas.²⁰

This matter is addressed by such national strategy documents as the “Governmental Action Plan for 2014-2015 on the Protection of Human Rights” (Chapter 20)²¹ and the “Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016.”²²

On 6 January 2014 the Georgian Government approved “Technical Regulations on the Arrangement of the Space Design and Architectural and Planning Elements for Persons with Disabilities”²³ in order to facilitate integration of persons with disabilities into the modern society, their individual development and engagement in public life. However, the Technical Regulations do not address other components prescribed by the Convention (such as physical environment in all forms thereof, services and information). The document has other drawbacks too. The Public Defender has already raised the issue in his 2014 Report on the Situation of Human Rights and Freedoms in Georgia.²⁴

Nevertheless, relevant state authorities have not been taking measures to make social infrastructure (transport, educational and medical institutions, banks, etc.) accessible for persons with Disabilities.

2.1. ACCESSIBILITY OF TRANSPORT AND ROAD INFRASTRUCTURE

An important challenge is an issue of accessibility of transportation and road infrastructure for persons with disabilities. Decision making in this regard often does not take into consideration the interests and specific needs of such people. Persons with

20 <https://matsne.gov.ge/ka/document/view/2334289>

21 <https://matsne.gov.ge/ka/document/view/2391005>

22 http://gov.ge/files/381_40157_501181_76200114.pdf

23 <https://matsne.gov.ge/ka/document/view/2186893>

24 <http://www.ombudsman.ge/uploads/other/2/2439.pdf>

disabilities are not enjoying, on equal terms with others, either public bus and minibus services or the Tbilisi Metro, one of the most affordable means of transportation, thus finding themselves in a discriminated situation. The State is not making effort to find a comprehensive solution to the issue, for example, by adapting the infrastructure of metro stations to the needs of persons with disabilities.

In July 2015, the Public Defender became aware that since 28 July the same year the Legal Entity of Public Law “Municipal Development Fund” renewed construction works at the University metro station. According to the information posted at the official webpage of the Fund,²⁵ there was a plan to construct a new metro station named “University” after the “Vazha Pshavela” station. The works would include repairing the existing tunnels, building underground and on-surface constructions, exits, rail lines, escalators and other objects.

In response to this posting, the Public Defender’s Office formally requested on 29 July 2015²⁶ information on whether the metro construction project was taking into account the need for accessibility of the object for persons with disability and the principle of “universal design”.

According to the reply we received, the government was not planning to consider special requirements for the PWDs in the process of constructing the new “University” metro station. As a justification, the government was referring to the fact that the tunnels and other related objects had been built during the Soviet times and changing the structure and geometrical properties of the construction would be too difficult. The government’s decision in this case not only violates the rights of persons with disabilities in the present time but will most probably lead to additional costs in the future for adapting the infrastructure of the new metro station.

After entry into force of the UN Convention on the Rights of Persons with Disabilities, States must ensure that all, especially new or renovated, buildings, transport or communications are accessible for persons with disabilities through widest application of the “universal design” principle.²⁷ Accordingly, non-compliance by the State with this obligation will lead to breach of an international treaty and neglect of fundamental human rights – something that cannot be justified by making a reference to technical and/or financial problems.

With this background in mind, on 28 October 2015, the Public Defender recommended²⁸ the LEPL “Municipal Development Fund” to give due consideration to the needs of persons with disabilities and give effect to the “universal design” principle while building the new “University” metro station so that all the components of the metro station (such

25 <http://www.mdf.org.ge/?sitelang=ka&site-path=news/&id=1173>

26 Letter no. 09 dated 1/6131.

27 The design of products, environments, programmes and services that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

28 <https://drive.google.com/file/d/0B9BM3M8hbgAUOVA5eFVSM0ZRcGs/view>

as on-surface and underground constructions, exits, escalators, etc.) are accessible for people with disabilities.

2.1.1. ENSURING ACCESSIBILITY OF TRANSPORT AND ROAD INFRASTRUCTURE FOR PERSONS WITH DISABILITIES AT MUNICIPAL LEVEL

When it comes to the accessibility, it is important to know how self-governing units are ensuring to people with disabilities accessibility of transport and road infrastructure.

Pursuant to Article 16 of the Organic Law of Georgia “Local Self-government Code”,²⁹ it is the local authorities’ function to care for municipal territory and develop the relevant engineering infrastructure, arrange municipal transport services, manage local motor roads, provide parking lots for automobiles and regulate the relevant rules.

Municipal obligations in this regard are stipulated in the “Government’ Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016.”³⁰ The action plan tasks the municipalities with both adapting the transport infrastructure (bus stops, crosswalks, intersections and traffic lights) and paying consideration to the needs of persons with disabilities. The municipalities are also responsible for arranging special places at parking lots and informing public transport drivers on issues of serving the people with disabilities.

For the purpose of the monitoring of implementation of the requirements under the UN CRPD, domestic legislation and governmental action plans, the Public Defender’s Office has been periodically requesting local representation bodies of regional centers and self-governing towns (Ambrolauri, Akhaltsikhe, Gori, Zugdidi, Telavi, Mtskheta, Ozurgeti, Tbilisi, Kutaisi, Batumi, Poti and Rustavi) to provide information for the monitoring such as: funds available in 2015 local budget to finance measures to adapt transport means and infrastructure, purchase transport means adapted to the needs of persons with disabilities, allocation of special places for PWDs at parking lots, keeping public transport drivers informed about issues of services for PWDs, whether or not the above activities are paid attention in the course of determining priorities for the 2015 budget.

It should be noted that the municipalities were responding with delay. In some cases, they (Telavi City hall, Mtskheta City hall) provided incomplete and irrelevant information.

Typically, municipalities are not the owners of the means of public transport on their own. The license is held by private companies, which serve the population using their own transport.

Priorities and programs according to 2015 budget of the executive body of Akhaltsikhe Municipality³¹ did envisage certain activities aiming to improve road infrastructure. However, our analysis reveals that neither the above program nor the programs related

29 <https://matsne.gov.ge/ka/document/view/2244429>

30 http://gov.ge/files/381_40157_501181_76200114.pdf

31 <https://www.matsne.gov.ge/ka/document/view/2615414>

to construction repair and maintenance of road infrastructure really heed the interests and needs of people with disabilities.

A letter received from Akhaltsikhe Municipality City hall³² suggests that ramps were arranged at certain places in 2015 (at 6 places in total³³). Special places were allocated for persons with disabilities at town parking lots.³⁴ Similar measures were undertaken by the City Hall of Gori Municipality³⁵ (they improved the road infrastructure and adapted 8 objects in 2015).

According to information received from the City Hall of Mtskheta Municipality,³⁶ the 2015 local budget does not take the needs of Persons with Disabilities into consideration. The City Hall has not yet managed to buy public transport and adapt the road infrastructure because villages are not served by municipal transport.³⁷

Like in other self-governing territories, infrastructural activities undertaken by the City Hall of Ozurgeti Municipality are limited primarily to arranging ramps on sidewalks.³⁸ The municipality has not fulfilled its obligation under the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016 to adapt public transport for people with disabilities. According to the City Hall,³⁹ bus stops in their territory (in 28 administrative units) have been adapted. Public transport drivers have been made aware of services available to people with disabilities. In administrative units where transportation is provided by private companies, public transport drivers will be trained in 2016. In the territories of Ozurgeti Municipality and Ambrolauri Municipality,⁴⁰ Persons with disabilities have no obstacles in accessibility to the road infrastructure. It is for this reason that the two self-governing territories do not consider it necessary to allocate special places for persons with disabilities.

According to the information provided by the transport service of Tbilisi City Hall in April 2015,⁴¹ approval of a Japanese non-project grant for launching hybrid buses in Tbilisi was underway. The City Hall urged that the technical features of the buses could meet needs of people with disabilities. However, the hybrid buses have not rolled in the capital city so far. According to a letter from Tbilisi City Hall,⁴² currently, the Ministry of Economy and Sustainable Development of Georgia is negotiating with Japanese Government over the issue. Besides, Tbilisi City Hall was planning to bring in modern M3 category buses adapted for people with disabilities. However, according to recent information, the buses

32 Letter no. 2156/05 dated 29.12.2015.

33 The central park, Mikutishvili Street, 9 April Street, Kostava Street

34 9 April Street, Natenadze Street, Kostava Street

35 Letter no. 788 dated 07.04.2015; no. 12 dated 05.01.2016.

36 Letter no. 943 dated 08.06.2015.

37 Letter no. 2290 dated 14.04.2015.

38 Letter no. 01-47 dated 12.01.2016.

39 Letter no. 29 dated 08.04.2015.

40 According to the information supplied, because the local government's territorial jurisdiction encompasses villages and districts surrounding the villages, there is no need for allocating special parking places.

41 Letters no. 1-03/499 dated 01.04.2015; no. 06/15091438-17 dated 08.04.2015.

42 Letter no. 12/8367 dated 18.01.2016.

have still not been imported.⁴³ With regard to evaluation of the current bus stops and measures taken to improve them, no such measures have been taken yet. The Ecology and Landscaping Service of the City was working on installing a special elevator designed for moving people down to the Vake Park and installing special ramps in the park to eventually make the park accessible for people with disabilities. The elevators were actually installed on the opposite of the Vake Park and in the underground crosswalk in front of the Opera House but they do not function by this time (December). According to the City Hall's letter, procedures are underway to hand the elevators over for proper exploitation and full-fledged functioning.⁴⁴

According to a reply from Kutaisi City Hall,⁴⁵ the municipality does not have own public bus system and is unable to purchase buses adapted to the needs of persons with disabilities. However, the municipality has developed a concept of how to deal with the issue.⁴⁶ 179 places have been allocated for persons with disabilities on the parking lots in the territory of the municipality. Public transport drivers were trained in services necessary for persons with disabilities on 29 December 2015. The 2016 local budget envisages, along with other activities, installation of audible traffic lights in different districts of the town.⁴⁷

Batumi City Hall carried out some road infrastructure improvement works⁴⁸ of several streets in 2015.⁴⁹ The City Hall is planning to heed the needs of persons with disabilities in 2016 too.⁵⁰ Analysis of the information they supplied shows that the local self-governance bodies are not taking timely and effective measures to ensure equal accessibility of public transport.

In some municipalities, the 2015 municipal budgets were not envisaging buying adapted public transport; nor has it been planned for the year of 2016 (for example, the budgets of governments of Telavi and Ozurgeti municipalities). Unlike these municipalities, Poti City Hall is intending to consider the issue when determining priorities for its 2016 budget. Batumi City Hall has also come forward with an initiative of bringing in new buses that would be both ecological and adapted to the needs of persons with Disabilities.

Some of the self-governing units are not envisaging either infrastructural works or adaptation/purchase of public transportation in their 2016 budgets (for example, the City Halls of Ambrolauri and Telavi municipalities).

43 As we were informed, EBRD is helping the government procure new buses; this time, the needs of disabled people will be given due consideration and public transport drivers will be trained in services available to people with disabilities.

44 Letter no. 18/441 dated 04.01.2016.

45 Letters no. 01–1790 dated 06.04.2015; no. 01/267 dated 11.01.2015.

46 In particular, if private companies are not interested in providing bus service, the municipality will then form a municipal enterprise to renew a municipal vehicle fleet.

47 Including the Paliashvili street located in the downtown

48 As part of the measures, tactile tiles for the visually impaired were installed on 4 infrastructural sections

49 Letter no. 25/11066 dated 08.06.2015

50 Intending to renovate and upgrade 21 streets

We welcome Rustavi City Hall's readiness⁵¹ for replenishing their municipal transport fleet with adapted vehicles.

We note with satisfaction that Gori Municipality City Hall allocated special places for persons with disabilities and marked the relevant places at the parking lots. Several municipalities (such as Gori City Hall, executive government of Gori Municipality) are planning to allocate special places for persons with disabilities on parking lots also in 2016. It must be noted, that unfortunately, with the exception of a few cases (such as the Gori Municipality City Hall), municipalities have not started supervising observance of new construction norms.

We are disappointed by the fact that other than some exceptions (Kutaisi City Hall), public transport drivers have not been trained at the municipality level so far.

In conclusion, we think that, despite some positive developments, enjoyment of the right to equal access to public transport and road infrastructure for persons with disabilities still remains a challenge.

2.2. ENFORCEMENT AND SUPERVISION

Accessibility for persons with disabilities to physical environment cannot be ensured unless proper enforcement and supervision mechanisms are put in place.

Within its competence under law, the Public Defender recommended the Georgian Government as early as in 2013⁵² to revise and update the relevant laws and bylaws with a view to enabling people with disabilities to become more independent in all areas of life by ensuring to them equal access 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.⁵³

The Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016⁵⁴ along with other activities, envisages development and adoption of Technical Regulations on the arrangement of space design and Architectural and Planning Elements for Persons with Disabilities and supervision of application of new construction standards.

As we have already mentioned, the Government of Georgia has already approved the Technical Regulations in 2014, however they fall short of responding to the real challenges and fail to ensure accessible environment and conditions for full-fledged living

51 Letter no. 02/304 dated 06.04.2015

52 Recommendation of the Public Defender no. 452/09 dated 30.04.2013.

53 One of the suggestions was for the relevant authorities to monitor implementation of rules laid down in various normative acts and to apply appropriate sanctions.

54 http://gov.ge/files/381_40157_501181_76200114.pdf

to persons with disabilities. A major problem with these Regulations is that they do not envisage an enforcement mechanism. Besides, the Regulations do not specify interim deadlines to supervise the adaptation process. Further, it is unclear how breaches of the Regulations should be responded to.

2.2.1. THE CASE OF NADZALADEVI

On 13 August 2015, the Public Defender's Office took note of information published on the official webpage of Nadzaladevi District government and in the electronic media. According to the report, ramps for persons with disabilities were installed in several residential buildings in the territory of Nadzaladevi District government. It was clear from the photos published in the media that the structure installed in one of the multi-story residential building was not meeting safety standards and was unfit for independent movement by Persons with disabilities.

In response to these reports, the Public Defender published its official announcement on 13 August⁵⁵ calling on all the relevant authorities to strictly abide by the requirements established by international norms and domestic law, including the Technical Regulations, when carrying out any activity aimed for facilitation of independent living of Persons with Disabilities.

As per Article 16 of the Local Self-Government Code,⁵⁶ the following issues are falling within municipal competences: development of infrastructure for persons with Disabilities at the local level; landscape and territorial planning and determination of rules and standards in the relevant field; issuance of construction permits and construction supervision within the scope determined by the national normative acts.

In connection with the above-described occasion, the Public Defender's Office started examination of the case on its own initiative as determined by Article 12 of the Organic Law on the Public Defender of Georgia.⁵⁷ We had formally requested Tbilisi City Hall,⁵⁸ Nadzaladevi District Government⁵⁹ and the nonprofit legal entity Tbilisi Municipal Laboratory⁶⁰ to provide following information:

compatibility of the structures in the residential buildings mentioned above, with the 2014 "Technical Regulations on the Arrangement of Space Design and Architectural and Planning Elements for Persons with Disabilities"; whether any research was undertaken before making a decision on installing the ramps and whether the project has been approved by the relevant service; whether the appropriate authority supervised

55 <http://www.ombudsman.ge/ge/specializirebuli-centrebi/shshm-pirebis-uflebata-dacvis-departamenti/siaxleebi-ssm/saqartvelos-saxalxo-damcvelis-gancxadeba-nadzaladevis-raionshi-pandusebis-damon>

56 <https://matsne.gov.ge/ka/document/view/2244429>

57 Case no. 9534/15.

58 Letter no. 09-2/6714 dated 14.08.2015

59 Letter no. 09-2/8121 dated 06.10.2015

60 Letter no. 09-2/8120 dated 06.10.2015

adherence to the Technical Regulations and any actions it took. We also requested any legal acts issued in relation to the project and a report produced by Tbilisi City Hall Internal Audit and Monitoring Service.

According to the information we received from Tbilisi City Hall,⁶¹ the requirements set forth in the Technical Regulations approved by Government Ordinance no. 41 should have been taken into consideration when the tender documents were under preparation (when designing the infrastructural part). As we examined the documents, we found out that the decision to install ramps was made on the basis of rules⁶² approved by the municipality legislature.⁶³ The decision-making process was initiated, on its turn, on the basis of a request lodged by chairpersons of a home owners' partnership. The partnership's request was forwarded to the non-profit legal entity (NPLE) "Tbilisi Municipal Laboratory", an expert organization. Pursuant to an individual order, Tbilisi Municipality government of 17 December 2014 and paragraph 3 of the statute of Tbilisi Municipal Laboratory,⁶⁴ the lab is authorized to conduct an evaluation of scheduled construction works both technically and cost-wise. In particular, it exercises technical supervision of ongoing works and inspects cost estimate documents, defective acts and project documents. According to the executive body's letter,⁶⁵ the project was not submitted to industry experts for approval because the NPLE Tbilisi Municipal Laboratory is competent to do all types of expert examination.

According to information received from the executive body, the request of chairpersons of home owners' partnership for funding the works was granted after Tbilisi Municipal Laboratory had inspected and approved the submitted documents.

It is worth noting that the information provided in the letters of the executive government and Tbilisi Municipal Laboratory is contradictory to each other. In particular, the Laboratory reports that Technical Regulations requirements could not be heeded because they never received a project. In other words, the Laboratory did not conduct expert examination of the project documents and only looked into the cost estimate documents that were actually submitted to it (the Laboratory corrected the figures denoting salary amount per work and costs of materials).⁶⁶

On 26 August 2015, the Mayor of Tbilisi stated at a meeting with organizations representing persons with disabilities (attended by a representative from the Public Defender's Office) that their Internal Audit and Monitoring Service would look into the issue and produce a relevant report. In addition, Tbilisi City Hall was planning to produce an internal document within two weeks dividing responsibilities among various government entities in the field of ensuring compliance with the requirements of the Technical Regulations.

61 Letter no. 10-17/8946 dated 13.10.2015.

62 Letter no. 20-110 dated 30 December 2014

63 <https://matsne.gov.ge/ka/document/view/2669640>, Articles 2, 5, 6, 7

64 http://tbilisi.gov.ge/public-info-files/files/g_files/20.12.277_142287896798_tbilisi.gov.ge.pdf Individual Order no. 20.12.277.

65 Letter no. 06/1523087-46 dated 26.08.2015

66 Letter no. 03/1712 dated 13.10.2015

Despite this promise, information received from Tbilisi City Hall on 3 December 2015⁶⁷ suggests that Internal Audit and Monitoring Service of Tbilisi City Hall has not completed examination of the issue and no distribution of responsibilities has been managed so far.

The above example illustrates lack of working, effective mechanism for enforcement and monitoring of accessibility standards at the local self-governance level.

2.3. ACCESS TO INFORMATION

In any country, legal frameworks on freedom of information and accessibility as well as abidance by legally prescribed rules are chief factors indicating the quality of democracy in that country. In Georgia, domestic law governing access of persons with disabilities to information and communications is relatively poor.

People with disabilities are encountering obstacles in exercising their right to equal opportunity. News reports, entertainment and other TV programs and movies are not accessible for them. A majority of broadcasting companies are not using adapted communication terminals, systems and methods.

Pursuant to Article 21 of the UN Convention on the Rights of Persons with Disabilities, States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others. This right should be exercised by using various means,⁶⁸ methods and technologies of communication. It should be emphasized that the Convention particularly focuses on States recognizing and promoting the use of sign languages.⁶⁹

When it comes to accessibility, it is relevant to mention Article 9 of the Convention that sets a general standard. A normative content of the article suggests that the notion of accessibility is not confined to physical environment and transport but encompasses information and communications, communication technologies and other facilities and services.⁷⁰

The Public Defender has voiced the problems existing in this area as early as in 2013 when he publicized his study on freedom of information and accessibility. The Public Defender then recommended⁷¹ TV and radio companies to provide persons with disabilities with access to educational, cognitive, news and entertainment programs. The recommendation encouraged more active use of sign language.

67 Letter no. 7/69932 dated 03.12.2015

68 Including by using audio description, Braille, tactile communication, large print, accessible multimedia, and augmentative and alternate means of communication.

69 UN CRPD, Art. 21(e)

70 UN CRPD, Art. 9(b)

71 Freedom of Information and Access for Disabled People, 2013, p. 38

An important document dealing with accessibility of information is the EU-Georgia Association Agreement.⁷² By signing the Agreement, the Georgian Government made a decision about its telecommunications policy as it undertook to gradually make its domestic legislation on electronic communications and broadcasting fully compatible with the relevant EU regulations, including with the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on Audiovisual Media Services.⁷³

According to the “National Action Plan for 2015 on the Implementation of the EU-Georgia Association Agreement and the Association Agenda” approved by the Government of Georgia (individual order no. 59 dated 26 January 2015),⁷⁴ the National Communications Commission and the Ministry of Economy and Sustainable Development have been designated as bodies responsible for making Georgian domestic law consistent with the Euro-directives.

On 20 January 2014, the Georgian Government approved the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016,⁷⁵ which describes activities incumbent on different State agencies, including a list measures to be undertaken with regard to ensuring freedom of expression and accessibility of information.

In order to monitor fulfillment of the obligations envisaged by the National Action Plan, in the first half of 2015, the Public Defender’s Office requested the authorities to provide relevant information. In particular, we asked the National Communications Commission⁷⁶ to inform us on the following: whether the Commission was looking into the special needs of persons with disabilities for electronic services and into their development perspectives; any activities directed at drafting changes in the legal framework concerning the use of sign language, subtitles, Braille, augmentative and other special communication means; drafting regulatory norms on introduction, production and dissemination of adapted technical devices and systems; the making of TV programs, movies, theater and other cultural activities accessible using the above means and technologies.

The National Communications Commission replied⁷⁷ that, with a view to fulfilling the obligations under the EU-Georgia Association Agreement, the Commission established a working group on audiovisual media services; among other issues, the working group was to look into avenues of providing people with visual and hearing impairment with access to audiovisual services. The relevant bill was scheduled to be drafted by 1 December 2015. However, no effective and results-oriented measures have been taken in this regard. The Commission further informed us that they were part of the process of amending the law; however, it does not suffice that, as now required under the recent

72 <http://www.parliament.ge/ge/ajax/downloadFile/34753/AA>

73 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0022>

74 <https://matsne.gov.ge/ka/document/view/2702520>

75 http://gov.ge/files/381_40157_501181_76200114.pdf

76 Letters no. 09–2/2587 dated 06.04.2015; no. 09–2/4544 dated 05.06.2015

77 Letter no.02/1100–15 dated 23.06.2015.

changes in the Broadcasting Law,⁷⁸ the public broadcaster will heed the interests of people with visual and hearing impairments in TV programs aired only during election campaigning and related to elections/referenda/plebiscites (by providing translation in sign language). The legislation has to envisage equal access to information on a wide range of issues for all persons with disabilities no matter what their disability is (visual impairment included).

According to the letter from the Commission,⁷⁹ which contains information provided by Georgian broadcasting companies (49 broadcasters, including those in the regions), a majority of the companies does not use augmentative communication. The programs are not broadcasted in a format accessible for all persons.

It should be mentioned that the changes effected in the Universal Service Directive in 2009⁸⁰ determined obligations of service providers and competences of regulators. In particular, the Directive articulates what issues the contracts between consumers and service providers should consider and what competences regulators have.⁸¹ The approach of the European Parliament is that it may not be sufficient for service providers to provide subscribers with correct information about traffic management, service quality parameters and limitations or for the regulators to monitor the quality of the service provided; in particular, national regulatory authorities should be authorized, if appropriate, to impose minimum quality of service requirements on undertakings providing public communications networks to ensure that services and applications dependent on the network are delivered at a minimum quality standard.

Bearing in mind the above-described background, on 26 August 2015, the Public Defender addressed the National Communications Commission with a proposal⁸² to take measures, in cooperation with relevant authorities, to make information sources, TV programs and movies accessible for persons with disabilities. The Commission was advised, more specifically, to elaborate an action plan detailing specific measures to be implemented, implementation timeframes, responsible authorities, funding sources and outcome indicators.

In its response to our letter,⁸³ the Commission referred to the role of the State in this process. In particular, pursuant to Article 7 of the Audiovisual Media Services Directive,⁸⁴ Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

78 Article 16(j) of the Broadcasting Law

79 Letter no. 04/1776 dated 15-19.08.2015

80 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0022>

81 Universal Service Directive, Art. 22

82 <http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/winadadeba-komunikaciebis-erovnul-komisias-shezguduli-shesadzleblobis-mqone-pirtatvis-informaciis-misawvdomobis-taobaze.page>

83 Letter of the Commission no. 02/2435–15 dated 26.10.2015

84 http://ec.europa.eu/archives/information_society/avpolicy/reg/tvwf/access/index_en.htm

According to the Commission, it studied the law and practice of EU member states that are considered leading countries in this respect, including the United Kingdom,⁸⁵ Finland,⁸⁶ France⁸⁷ and Ireland.⁸⁸

These examples suggest that, in countries where the law provides the use of special communication means by media outlets to broadcast adapted audiovisual programs for people with disabilities, on the one hand monitoring and management of the process is carried out by national regulators and on the other hand the law obliges broadcasters to take specific measures to facilitate understanding of and benefiting from such programs by such people. The law also specifies the means⁸⁹ to be used for adapting the TV and radio programs as well as deadlines for launching adapted programs and their quotas.⁹⁰ In countries where audio described content is available in limited number or is not available at all in the official State language, the law provides for funding such programs.⁹¹

Based on the law, an independent regulator adopts a normative act laying down guidelines⁹² on how TV programs should be adapted using sign language, subtitles and audio description (audio commentary).⁹³ Notably, such legal provisions are on their turn based on the results of studies and because of the complex nature of the issue, successful implementation cannot be achieved by merely writing up the rules in the law. A series of technical, artistry, logistic and economic issues need to be resolved to get TV programs adapted.

According to the Commission's information, in Georgia, there is a small number of media products adapted for people with hearing impairments. As for the blind and the visually impaired, there is no single media content for them in the TV space.⁹⁴ Hence, the amount of adapted media products in the country is insufficient to fill even a minimum quota of the broadcast programs.⁹⁵ Along with other challenges, technological solution

85 Communications Act of 2003, Television Services for the Deaf and Visually Impaired, Chapter 4, Section 303, available at http://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga_20030021_en.pdf

86 Available at <https://www.viestintavirasto.fi/en/tvradio/programmes/audiosubtitlingandsubtitling-services.html>

87 Available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITREXT000006068930&dateTexte=vig#LEGIARTI000028203342>

88 <http://www.irishstatutebook.ie/eli/2009/act/18/section/43/enacted/en/html#sec43>

89 Sign language, teletext, subtitles and audio description

90 <http://www.irishstatutebook.ie/eli/2009/act/18/section/43/enacted/en/html#sec43>

91 <http://www.csa.fr/Etudes-et-publications/Les-autres-rapports/Rapport-au-Pariement-relatif-a-l-audiodescription-et-au-sous-titrage-des-programmes-december-2>

92 <http://www.bai.ie/index.php/documents/codes-standards/>

93 Such commentary describes actions, location, body language, facial expression and runs in between dialogs

94 Audio description was first added to a movie in Georgia in December 2014 when the Tree of Life Foundation along with its partner organizations implemented a special project for blind and low-sighted children

95 The Commission believes that, in order to ensure access to media services, the broadcasters will have to create or buy media content with audio commentary. Doing this would require not only investment but also the setting of a standard for the linguistic part of the commentary, training of qualified personnel and regulation of a copyright to this part.

is equally necessary for end users to get adapted audio commentary. The same is true for adapted access of people with various hearing impairments to news sources, since their needs differ from each other.

It follows from the Commission's reply that there is an issue with the broadcasters' awareness. In particular, the Commission's question whether TV companies are airing TV programs in a format accessible for persons with disabilities was answered by five TV companies that some of the movies are shown with subtitles. Judging from this answer, one may say that the broadcasters have a low knowledge of standards on accessibility of TV programs for persons with disabilities.⁹⁶ As for translation in sign language, the personnel presenting or translating a program in sign language has to have proper qualifications.⁹⁷

For the purposes of implementing the above-described action and planning results-oriented measures, it is important to be aware of statistical data such as number of people with disabilities, their needs, geographical allocation, social status and age groups.

Materials we received suggest that audiovisual media services are a complex issue and require problem identification and policy development. It was for this reason that the Public Defender recommended the National Communications Commission to come up with an action plan on ensuring access to information for persons with disabilities.

On 16 December 2015, the working group held a meeting at the Government Administration to consult with the governmental and non-governmental sectors on issues of timely and effective performance by the National Communications Commission of its obligations under the "Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016. At the meeting the Commission presented its findings. The working group identified there was a need for establishing a multi-sector group involving various agencies that would function on a stable basis; the group found further that it was necessary to develop an action plan in the shortest time possible. However, the Commission did not implement these measures until the end of 2015.

Against this background, we believe the process has stalled and activities undertaken by the relevant authorities this far do not ensure an accessible format of delivering information to persons with disabilities.

96 A standard for subtitles for deaf people and people with hearing impairments differs from that of subtitles for people without hearing problems who need them just because they do not know a foreign language. In particular, apart from conversations, there are other sound effects (the so-called "off-screen sounds") that matter for getting the content of the conversation rightly. The standard sets requirements related to the size of the text, color, background, number of characters and time periods. Failure to meet these requirements can make the subtitles virtually useless for people with hearing impairments.

97 The law or other regulation should oblige broadcasters to take responsibility for the quality of sign language translation.

3. PARTICIPATION OF PERSONS WITH DISABILITIES IN THE DECISION-MAKING PROCESS

The right of persons with disabilities can only be protected if they and their representative organizations are duly involved in the process of decision-making on issues concerning them.

Although the domestic legislation in Georgia recognizes this right, the existing regulations are not meeting the requirements of the UN CRPD. People with different impairments are still unable to exercise this right.

One of the objectives envisaged by the “Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016” approved by the Georgian Government on 20 January 2014⁹⁸ is involvement of persons with disabilities in the decision-making process. Setting up/making operational regional and local councils working on disability issues with participation of Persons with Disabilities and/or their representative organizations is among the actions prescribed by the Action Plan. The Ministry of Regional Development and Infrastructure of Georgia and local self-government bodies are determined as responsible authorities for this activity. The Action Plan refers to donor organizations, the central budget and the local budgets as sources for funding the activity.

The Public Defender’s Office monitored implementation of the mentioned activity during 2015. With this purpose in mind, we requested information from local municipalities at two phases. Given the goals and the scope of interest of the monitoring, we requested the local municipalities in writing to inform us whether the councils had been set up, number of council members, number of meetings held by the councils and issues discussed during these meetings; whether there are any proposals initiated by the councils; statutes of the councils and information concerning administrative acts founding the councils.

3.1. ESTABLISHMENT OF LOCAL COUNCILS ON ISSUES OF PERSONS WITH DISABILITIES

According to what we were informed by self-governing units of the country at the first phase, local councils on issues of persons with disabilities had been set up only in four municipalities (Chokhatauri, Gurjaani, Lanchkhuti and Chkhorotsku) and two City Halls (Tbilisi and Zugdidi).

98 The Georgian Government Resolution no. 76 dated 20 January 2014 approving a “Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people”

Quite a large number of letters received (40 of them) did not contain information about fulfillment of the above-mentioned obligation under the Governmental Action Plan at all.

At a subsequent phase of the monitoring, 60 out of 75 municipalities responded to the Public Defender’s written requests for information. According to these replies, local councils on issues of persons with disabilities had been set up in 16 more self-governing units: the municipalities of Dmanisi, Tsalenjikha, Bagdati, Shuakhevi, Tsageri, Khulo, Akhalkalaki, Ozurgeti, Tskaltubo, Ninotsminda, Zugdidi, Aspindza, Adigeni and the City Halls of Telavi, Gori and Rustavi.

According to a letter received from Sagarejo, a mobile multitask team was set up there. However, no founding administrative act had been issued; the team was formed simply by the governor’s oral instruction.⁹⁹

Kutaisi City Hall has reported¹⁰⁰ that a Council for the Protection of the Rights of Persons with Disabilities and their Integration was set up in 2010 but it is not active for the moment. We wish to comment that the mere setting up of a council cannot be regarded as fulfillment of the Governmental Action Plan because the fact is that the Council does not function.

Gori municipality executive body replied¹⁰¹ that the local council was established at the base of the non-profit legal entity “Welfare and Development Center”. An official from Gori municipality Healthcare and Social Protection Service was nominated to the council membership. The council operates on the basis of a memorandum of understanding concluded between Gori municipality executive body and the Center.

Kareli self-governing community reported¹⁰² that they entered into a memorandum of understanding with the above-mentioned Center to set up a local council on Persons with Disabilities.

The Center has been contracted also by the executive body of Kaspi municipality,¹⁰³ which reported that their local council on persons with disability was established in 2014.

Information received from the above-mentioned regions (Gori, Kaspi, Kareli) suggests that their councils have been set up within the frameworks of an NGO project.

According to Akhagori municipality executive body,¹⁰⁴ no local council has been established there. A letter from the municipality suggests that, following the August 2008 war, the municipality’s self-governing body is stationed on the territory of Mtskheta municipality. Legal acts governing various matters are issued by Mtskheta municipality, while Akhagori municipality is responsible for the execution of the legal acts thus issued.

99 Letter no. 02/2463 dated 04.12.2015.

100 Letter no. 01/267 dated 11.01.2016

101 Letter no. 4228 dated 01.12.2015

102 Letter no. 05/2238 dated 02.12.2015

103 Letter no. 2/2661 dated 30.12.2015

104 Letter no. 2–1149 dated 11.12.2015

As for Mtskheta municipality, no local council on persons with disabilities has been set up there yet.¹⁰⁵

Some municipalities informed us that they were working on setting up such councils (the municipalities of Marneuli, Senaki, Abasha, Samtredia, Oni, Akhaltsikhe, Gardabani, Kharagauli, Dedoplistskaro, Kareli, Terjola, Lagodekhi, Tkibuli, Signagi, Akhmeta, Mestia, Kurta, Eredvi, Poti, Ozurgeti City Hall, Telavi executive body).

By February 2016, local councils on the issues of persons with disabilities have been set up in 22 municipalities.

3.2. GROUNDS FOR THE ESTABLISHMENT OF THE COUNCILS AND THEIR ACTIVITIES

As for the grounds for setting up councils on disability issues, information from the municipalities suggests that most of them were established on the basis of the local self-governance units' administrative acts (orders).

The councils operate in accordance with the statutes of the respective local self-governance units and their own statutes approved by City Halls and relevant legislatures. According to municipalities' reports, there are no uniform practices of establishing the councils and approving their statutes across the country.

For example, the statute of Zugdidi municipality, council is approved by the local legislature's individual order.¹⁰⁶ The same practice was followed by Bagdati municipality as it approved a plan of action for the local council on persons with disabilities.¹⁰⁷

Gurjaani municipality executive body provided us with only a copy of an order establishing the council. In their letter,¹⁰⁸ they suggest the council does not need to have a statute because the founding order articulates all the important matters related to the operation of the council.

As we have mentioned earlier, most councils were established on the basis of administrative acts (orders) of local self-governance units. In some municipalities, statutes of the councils have been approved by the same orders.

The councils were created on the basis of orders in Gori City Hall and the executive bodies of the municipalities of Ckhrotsku, Lanchkhuti, Tsalenjikha, Ozurgeti, Khulo, Shuakhevi and Tskaltubo. However, letters from these localities say nothing about approval of councils' statutes.

105 Letter no. 2223 dated 30.12.2015

106 Letter no. 04-5427 dated 09.12.2015.

107 Letter no. 41/3651 dated 10.12.2015.

108 Letter no. 6436 dated 25.11.2015.

While establishing councils on disability issues is important, it is equally necessary to look at their actual operations, since formal existence of the councils cannot ensure the achievement of the goals set out in the Governmental Action Plan.

According to the information provided by the municipalities, the councils hold scheduled meetings once in a period ranging from one to four months. The councils in the municipalities of Akhalkalaki, Gurjaani, Khulo and Shuakhevi and Zugdidi meet once every two months. The councils in Chokhatauri and Telavi meet once a quarter; and the council in Rustavi City Hall meets once every four months.

Zugdidi municipality has a good practice in this respect. A Council on Persons with Disabilities was set up in June 2015 and it met four times until January 2016.

In Bagdati municipality executive body, the council was established in July 2015. Two meetings have been held since then. A council was set up in Tbilisi City Hall in February 2015 having held two meetings till now.¹⁰⁹ In their replies, Bagdati municipality executive body and Tbilisi City Hall provided us with lists of issues discussed by their respective councils.

In its letter,¹¹⁰ Chokhatauri municipality executive body reports that their council held a meeting on 17 July 2015 but says nothing about the number of meetings the council held in total.

A council meeting in Rustavi City Hall has not held yet.¹¹¹ Ninotsminda municipality executive body also reported no meeting by their council.¹¹²

A letter from Tskaltubo municipality executive body¹¹³ says nothing about the number of council meetings held but reports that it was at the council's recommendation that they identified and registered building that had no ramps.

3.3. REPRESENTATION OF THE PERSONS WITH DISABILITIES AND/OR THE ORGANIZATIONS WORKING ON DISABILITY ISSUES IN THE COUNCILS

It is crucial that persons with disabilities partake in the work of the councils on disability issues at regional and local levels.

Some municipalities did not provide us with information on the engagement of persons with disabilities and their representative organizations in the councils. In their letters, the municipalities did mention invited members and civil society representatives

109 Letter no. 10/73588 dated 08.12.2015.

110 Letter no. 2027 dated 15.12.2015.

111 Letter no. 02/10489 dated 30.11.2015.

112 Letter no. 898/15 dated 04.12.2015.

113 Letter no. 31/5242 dated 10.12.2015.

but did not specify whether these individuals and entities were representing PWD organizations.

The information we received from Bagdati municipality executive body on this matter was comprehensive. In their letter,¹¹⁴ they specify, that 6 out of 11 council members are persons with disabilities. Kaspi municipality executive body also reported¹¹⁵ that five members of their local council are PWDs and two members come from an organization of persons with disabilities. A council in Tbilisi City Hall has 11 representatives from non-governmental organizations working on disability issues. In the council at Gurjaani municipality executive body, there is one person with disability and two representatives of organization of disabled people (DPO). In Chokhatauri municipality, four people are representatives of an organization of people with disability but none of the members is an individual with certain disability.

In Chkhorotsku municipality executive body, there is only one person with disability in the council and no representatives of organizations of persons with disabilities. There is one representative of an organization of persons with disabilities in each of the councils of Lanchkhuti and Gori and Tsageri municipalities.

In Rustavi City Hall, council members are heads of local budget-funded not-profit legal organizations.

Persons with Disabilities and their organizations are not represented in the councils of Tsalenjikha¹¹⁶ and Telavi¹¹⁷ municipalities.

It should be noted that persons with disabilities are not always participating in the work of the advisory bodies at the regional level – something that certainly does not ensure their engagement in the decision-making process, especially on the issues concerning their own needs.

3.4. PROBLEMS IDENTIFIED IN THE PROCESS OF CREATION AND OPERATION OF THE COUNCILS

The Public Defender’s Office identified a series of flaws while monitoring implementation of an activity under the Governmental Action Plan entitled “Setting up and putting to operation councils on issues of persons with disabilities at the regional and local levels”.

First of all, we wish to note that many of the municipalities did not furnish us with the requested information within the legally established timeframe. Besides, information they did provide was incomplete. These factors certainly impeded our ability to objectively evaluate and analyze the situation.

114 Letter no. 41/3651 dated 10.12.2015.

115 Letter no. 2/2661 dated 30.12.2015.

116 Letter no. 1565 dated 15.12.2015

117 Letter no. 1358 dated 28.12.2015

The information we received suggests that, by January 2016, i.e. 2 years after the adoption of the Action Plan, the councils were established only in 22 municipalities throughout the country – a number that is significantly less compared with the total number of municipalities in Georgia (75). This situation has to do with the lack of involvement of persons with disabilities in the decision-making at the regional and local levels directly. Without their participation, issues related to them cannot be resolved properly. Sharing knowledge and experience of persons with disabilities and heeding their advice is truly important and, in fact, mandatory, in this process.

The municipalities did not furnish us with sufficient information to evaluate how the operation of the councils affected the rate of taking into consideration the needs of persons with disabilities in the self-governing territories and the planning of programs and events important to these people.

Monitoring has one more time revealed that local self-government bodies have low awareness of rights of Persons with disabilities. Responsible persons of the municipalities are not honoring their obligation under the Governmental Action Plan to timely give effect to the councils and include persons with disabilities (and their representative organizations) in the councils' activities.

According to information we received from the Ministry of Regional Development and Infrastructure of Georgia¹¹⁸ within the frameworks of our monitoring of the Governmental Action Plan, the Ministry confined its efforts to merely handing the Government Individual Order no. 76 approving the Action Plan over to the municipalities. It also requested the local self-governance bodies to fit into the established timeframes when performing their respective obligations.

In the same letter the Ministry states that, because it is the municipalities' direct responsibility to establish and put to operation the councils on the issues of persons with disabilities and the municipalities are not obliged to report to the Ministry in this area, the Ministry has no knowledge of whether the municipalities' have performed their duties or not.

118 Letter 01/335 dated 05.02.2016.

4. RAISING AWARENESS ON THE ISSUES CONCERNING PERSONS WITH DISABILITIES

Despite abundance of documents and endeavors, reality is that persons with disabilities are still encountering barriers in participating in public life as full-fledged members of the society and their rights still get breached, something that is caused by unhealthy attitude towards them.

It should be well noted that the media possesses a great deal of ability to influence social change; it can also impede or speed up structural changes. Nevertheless, it often turns into a source of hate speech, discrimination and segregation on various grounds. Neglect of interests of persons with disabilities and their stigmatization are frequent occurrences. Negative trends are often displayed through the formats of TV programs. On its turn, this points to the need for raising awareness of the personnel of broadcasting companies and making self-regulation mechanisms more effective.

The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD),¹¹⁹ which has entered into force on 12 April 2014 in Georgia, , along with other important issues, speaks of measures to be taken by States Parties in terms of education and awareness raising.

Pursuant to Article 8 of the Convention, States Parties undertake to adopt immediate measures to raise awareness about persons with disabilities throughout public society, including at the family level, and to foster respect for the rights and dignity of persons with disabilities. They must combat stereotypes, prejudices and harmful practices related to persons with disabilities, including those based on sex and age, in all areas of life. They should also promote awareness of the capabilities and contributions of persons with disabilities.¹²⁰ Measures to achieve these goals should include initiating and maintaining public awareness campaigns designed to nurture receptiveness to the rights of persons with disabilities, promote positive perceptions and greater social awareness towards persons with disabilities, and promote recognition of the skills, merits and abilities of persons with disabilities.

The Council of Europe Recommendation CM/Rec (2007)2 on media pluralism and diversity of media content¹²¹ stipulates that pluralism and diversity are essential for the functioning of a democratic society and for fostering public debate, political pluralism and awareness of different viewpoints. Media plays a central role in forming public perception, ideas, attitudes and values.

For now, rules and guidelines for broadcasters on producing and airing programs are prescribed by the Broadcasters' Code of Conduct approved by the National

119 <https://matsne.gov.ge/ka/document/view/2334289>

120 Article 8, par. 1., subparagraphs a, b and c

121 <https://wcd.coe.int/ViewDoc.jsp?id=1089699>

Communications Commission through its Resolution no. 2 dated 12 March 2009.¹²² The Code obliges broadcasting companies in Georgia to take the interests of various social groups into consideration. They must refrain from publishing materials that are able to fuel intolerance based on sex, language, religion, political or other beliefs, belonging to a social group, disability, sexual orientation or other reasons. Broadcasters must display an attitude of fairness and respect towards all natural persons and legal entities. Further, creators/producers of TV programs must treat potential participants with respect for the above principles. Under Article 33(6) of the Code, broadcasters shall use non-insulting terms when describing persons with disabilities. They must pay special attention to the right of persons with disabilities to inviolability of private life, their physical and moral wellbeing and obtaining their consent.

Article 55 of the same Code lays down safeguards against airing harmful and offensive material by broadcasters. In particular, transmitting a potentially offensive material by a broadcaster can only be justified by the editorial context and the fact that it serves public interests. Broadcasters must strike a reasonable balance between the freedom of expression and the interests of persons with disabilities. In addition, in order to reduce potential damage, they must adduce preliminary information or warning.¹²³

Media outlets remain a major source of information in Georgia for the moment.¹²⁴ It is therefore indispensable to make sure that essential standards of journalism such as balance, objectivity and respect for fundamental rights are adhered to while making journalistic products.

According to paragraph 7 of the Charter of Journalistic Ethics,¹²⁵ a journalist must realize the threat posed by encouraging discrimination and must make all efforts to prevent negative process/consequences thereof. In particular, journalists should take measures to avoid discrimination against anyone based on race, sex, sexual orientation, language, religion, political or other beliefs, national or social origin or for any other reason.

In the context of awareness-raising about persons with disabilities, it is relevant to recall activities outlined in the national strategy document.

Under Chapter 2 (awareness-raising) of the “Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016”,¹²⁶ the National Communications Commission should, along with the Public Broadcaster and other media outlets, conduct campaigns and produce social ads to support raising public awareness and ensure media coverage of the issues concerning persons with disabilities, including by fulfilling the following (paragraph 1.1): establish correct terminology and inspire positive attitude of the public towards persons with disabilities with a view to

122 <https://matsne.gov.ge/ka/document/view/82792>

123 Article 55(1)

124 In-depth study of the Georgian media: summary of results. August-November 2009, Caucasus Research Resource Center, EU-funded project http://www.epfound.ge/files/geo_media_research_report_ge_4.pdf

125 <https://matsne.gov.ge/ka/document/view/82792><http://qartia.org.ge/>

126 http://gov.ge/files/381_40157_501181_76200114.pdf

eliminating stigma and discrimination against such people and respecting their rights and dignity. The Governmental Action Plan projects measuring the success of these activities through indicators such as increased number of radio and TV programs aired and increased coverage of disability issues by the *printed* and electronic media. Donor support and the State Budget are referred to as sources of funding.

The Action Plan envisages informing journalists and other media personnel, and training them in issues concerning persons with disabilities.¹²⁷ An indicator for this outcome is at least 50 journalists trained. Donor funds are referred to as a funding source for this activity. It should be noted that responsible partners for the activity is “interested bodies”, as general as that; this term is obviously too broad and vague and may eventually result in poor fulfillment of the objective.

The Public Defender’s Office requested information from both the National Communications Commission¹²⁸ and the Public Broadcaster¹²⁹ concerning fulfillment of these obligations.

The Commission replied¹³⁰ that implementing some of the tasks under the Government Action Plan in the broadcasting media requires creation of an appropriate legal framework and changing the Broadcasting Law, since the current regulations are not sufficient to achieve the goals set. It is for this reason that the Commission is in the process of drafting the changes in the law.

According to Programmatic Priorities for 2015-2016 approved by the Public Broadcaster’s board of trustees,¹³¹ when choosing topics for its programs, the Public Broadcaster should look to important and urgent social issues that matter for the development of the country but not to agendas of individual media outlets.

As the Public Broadcaster replied,¹³² its Channel One and Channel Two are systematically playing social ads concerning the issues of Persons with Disabilities. In addition, the Moambe news program of Channel One¹³³ and the Public Radio are constantly covering the problems of, news about and rights of persons with disabilities.¹³⁴

Despite some of the positive steps taken by the Public Broadcaster, raising public awareness and involvement of other media outlets in this process remains a challenge.

127 “Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people”, Chapter II, Awareness Raising, par. 1.2

128 Letter no. 09-2/6434 dated 06.08.2015.

129 Letter no. 09-2/488.

130 Letter No. 03/2158 dated 15–05.10.2015.

131 <http://gpb.ge/uploads/documents/propri1516.pdf>

132 Letter no. 202/1 dated 21.01.2016.

133 Channel One has prepared the following TV blogs: “The Children of the Sun”, “I can talk”, etc. Programs by the “Real Space” Talk Show: “Social enterprises”, “Reforming the notion of civil capacity in Georgia”, “Corporate social responsibility”, “Adapted driving lessons”, “Handicapped environment”, “Life of children and adolescents with hearing impairments”, etc. Various topics on this matter have been discussed in the following TV programs: Communicator, Our Morning, Channel One Morning, etc.

134 Programs most that covered the topic of rights most frequently were “Rights and Freedoms”, “Open Studio” and “Rush hour”, <http://radio1.ge/ge/home.html>

It has to be mentioned that, according to Article 59¹(1) of the Broadcasting Law, violations of the norms under Articles 52, 54, 56 and 59 of this Law and violations of the ethical norms and professional standards envisaged by the Code of Conduct may only be responded to within the self-regulatory mechanism indicated in Article 14(1) of this Law, which mechanism must be such as to ensure timely examination of complaints and reasoned action-taking. It follows that the Commission has not power to react to airing a material that is insulting or discriminatory due to disability, status or features of an individual or a group of individuals or when the material is overly focused on such circumstances.

Further, under the laws now in force, it is beyond the Commission's mandate to supervise the printed media. An exception to this rule is the activity of newspapers funded from the central or local budget related to pre-election ads. Hence, the regulating authority believes it would be more appropriate for the Governmental Action Plan to indicate another agency (not the Commission) as the responsible body in this direction.¹³⁵ The letter says the Commission had raised this concern before the Ministry of Labor, Health and Social Affairs of Georgia earlier in writing when the Governmental Action Plan was still a draft¹³⁶ but their views were not heeded then.

All these background reasons suggest that the matter needs a systemic and holistic approach, which should have been reflected in the Governmental Action Plan too. Incomprehensive regulation impedes the implementation process and indicators to measure the outcomes are lacking as well.

135 Letter no. 03/2158 dated 15; 05.10.2015.

136 Letter no. 03/2510–13 dated 19.11.2015 and no. 03/2824–13 dated 25.12.2013.

5. CHILDREN WITH DISABILITIES

Despite a number of positive steps made towards the protection of the right of children with disabilities, various challenges remained unresolved in the reporting period.

Especially acute was the issue of socially vulnerable families with children with disabilities having difficulties in getting State aid. Getting the right to the State-paid social assistance has been made much more difficult for many families after the new “Methodology on the Evaluation of the Socio-economic Status of Socially Unprotected Families (households)”¹³⁷ was introduced. This fact has further aggravated their socio-economic condition.

The Public Defender’s Office has had the opportunity to explore the cases related to the above-mentioned problem on the basis of the citizen complaints submitted to the Public Defender and information obtained from other sources.¹³⁸ For further action, we requested the Social Services Agency to furnish us with details. Letters received from the Agency are not referring to any specific reasons for stopping payment of State aid to individual beneficiaries. The letters just keep describing the legal procedure of evaluating families as determined in the relevant normative acts. In none of its letters has the Agency referred to any measures taken to deal with this common problem that disturbs a certain group of citizens. The attitude demonstrated by the Agency does not really help the families suffering from economic hardship – a situation that generates even more citizen dissatisfaction with the Government agencies.

Providence of children with disabilities with indispensable services remains a concern. One reason is that, for years, responsible authorities have been designing the services without first assessing the existing needs properly. As a result, some people are not benefiting from various sub-programs under the State Program for Social Rehabilitation and Child Care. It is necessary to change the current practice to make sure that all children with relevant needs are included in the program and no one remains neglected.

Lack of information about the programs and services available is another issue. That is particularly true for rural population. People in regions normally have no understanding of what documents they need to collect and what procedure they should go through to become recipients of various services offered by the State programs (including aiding equipment).¹³⁹

Another matter of concern is the quality and continuity of inclusive education. Many children with disabilities, especially those from the regions, are not benefiting from such education. The number of teachers and their qualifications are insufficient. There is a limited availability of teaching institutions and materials.

137 <https://matsne.gov.ge/ka/document/view/2667586>

Resolution of the Georgian Government no. 758 dated 31 December 2014 approving the “Methodology of evaluation of the socio-economic status of socially unprotected families (households)”

138 Cases no. 9838/15; no. 10906/15; no. 12172/15; no. 12642/1.5

139 Case no. 2993/15.

Some people with special learning needs residing in Sachkhere municipality had problems with getting mobility aids and education materials as well as with accessibility of physical environment of educational institution.¹⁴⁰ In Kakheti, teachers are not receiving special training as required and there is a lack of school inventory such as adapted desks and chairs;¹⁴¹ children with disabilities are not benefiting from the education process.¹⁴²

One problem we identified in the reporting period is that public figures, especially high-ranking officials, demonstrated low acceptance and even stigmatized people with disabilities in their public speeches. These events were followed by harsh protests by parents of the children and representatives of the civil society organizations.

The Public Defender responded to discriminatory statements by calling on everyone in Georgia to refrain from displaying stigma and negative attitude towards people with disabilities; instead, the Public Defender, encouraged protection of rights and showing respect for the dignity of PWDs.

In the reporting period, there was some positive movement towards decentralization of the large children's institutions. On 18 January 2016, a memorandum of understanding signed by the Ministry of Labor, Health and Social Affairs of Georgia, the (LEPL) "Social Services Agency" and the United Nations Children's Fund. The memorandum envisages setting up alternative, smaller, family-like institutions providing services for children in need of care and children with serious and deep disabilities – beneficiaries of large children's institutions. As we know, there is an ongoing process of a multidisciplinary team (composed of pediatricians, psychologists, social workers, and occupational therapists) evaluating the needs of children at the Tbilisi Infants Home.

The Public Defender believes the process must continue to make sure that the children get services tailored to their needs and are able to live in a family-like environment.

140 Case no. 933/15; Case no. 18509/1.

141 Case no. 10934/15.

142 Case no. 896/16.

6. SUPPORTING PERSONS WITH DISABILITIES LIVING INDEPENDENTLY

In the reporting period, persons with disabilities have continued to struggle with the problem of retaining the ability to lead an independent living. The issue needs to be well thought through in the light of other factors such as employment opportunities for these individuals. Despite concrete obligations assumed under both international standards and domestic law, the State remains incapable of implementing an effective and results-oriented policy in this regard.

According to the UN Convention on the Rights of Persons with Disabilities, the purpose of the Convention is to ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Article 19 of Convention obliges States Parties to take all effective measures to promote independent living by the persons with disabilities. Guaranteeing independent living, on its turn, implies equal access so that individual needs of persons with disabilities can be met. According to the Convention, States must create and strengthen services to help beneficiaries lead independent lives. An indispensable precondition to this is to provide the beneficiaries with vocational education and employment opportunities.

6.1. RIGHT OF PERSONS WITH DISABILITIES TO WORK

States' obligations related to employment of persons with disabilities are contained mostly in Article 27 of the Convention, which stipulates that the States Parties must enable persons with disabilities to have effective access to general technical and vocational guidance programmes, and vocational and continuing training; promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding employment; employ persons with disabilities in the public sector; promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.

The overall goal of the Convention is to ensure to people with disabilities employment opportunities in the open labor market, on equal terms with others. However, until this overarching objective is reached, the Convention allows for interim measures such as positive discrimination, incentives, and support measures and programs as forms of justified interference.

The applicable law and leading strategic documents at the domestic level are overly general when it comes to regulation of persons with disabilities' employment and independent living. Existing State programs are insufficient or inadequate.

The right of persons with disabilities to work is governed by the Labor Code as well as provisions of the Law on Civil Service and the Law on Social Protection of Persons with Disabilities. Unlike the established practices in foreign countries where a set of various measures is used to encourage recruitment of persons with disabilities, the Georgian domestic legislation deprives persons with disabilities of the entitlement to receive social assistance in case if they get hired in civil service. The only exception relates to people who have severe disability or profound visual impairment.¹⁴³ Because of such regulation, many people with disabilities are simply forced to waive their right to social assistance in exchange for getting a job. This measure clearly does not encourage employment but can actually serve to the contrary.

As early as in 2008, The Georgian Parliament announced that promotion of hiring of persons with disabilities was a priority under the State policy on persons with disabilities.¹⁴⁴ Various Governmental action plans¹⁴⁵ envisage improvement of existing laws and bylaws to promote employment of PWDs, creation of a database of job seekers, creation of a database of potential employers of persons with disabilities, development and implementation of State programs to help such people find jobs including at State agencies and institutions, encouragement of private sector to hire them, etc. However, no significant moves have been made in this regard so far. No active and targeted State policies are being implemented. Importantly, the above listed activities can only be implemented if there is a political will to do so and if the State actually carries out relevant programs.

It is worth noting that, according to the 2015 State Program for Social Rehabilitation and Child Care, and namely its sub-program for the promotion of employment of people with disabilities only one service provider is obliged to employ a certain percentage of persons with disabilities in manufacturing wheelchairs in Georgia (more than 50% of employees should be persons with disabilities)¹⁴⁶ but this single measure is insufficient even hypothetically to meet the exiting demand.

As the Ministry of Labor, Health and Social Affairs of Georgia reported, they are planning to facilitate hiring of vulnerable groups and to promote equal opportunities for less competitive workforce as part of the State's labor market policy; to this end, an annual budget of GEL 100,000 is allocated each year for the period of 2015-18.¹⁴⁷ The State Program for Developing Employment Services envisages finding a model to facilitate

143 Resolution of the Georgian Government no. 279 dated 23 July 2012 on the rules of determining social package, Art. 6

144 Resolution of the Parliament no. 604-II dated 2 December 2008 on social integration of disabled people

145 "Governmental action plan for 2014-2016 on ensuring equal opportunities to disabled people" approved by Resolution of the Georgian Government no. 76 dated 20 January 2014; "Governmental action plan for 2014-2015 on the protection of human rights" approved by Resolution of the Georgian Government no. 445 dated 9 July 2014

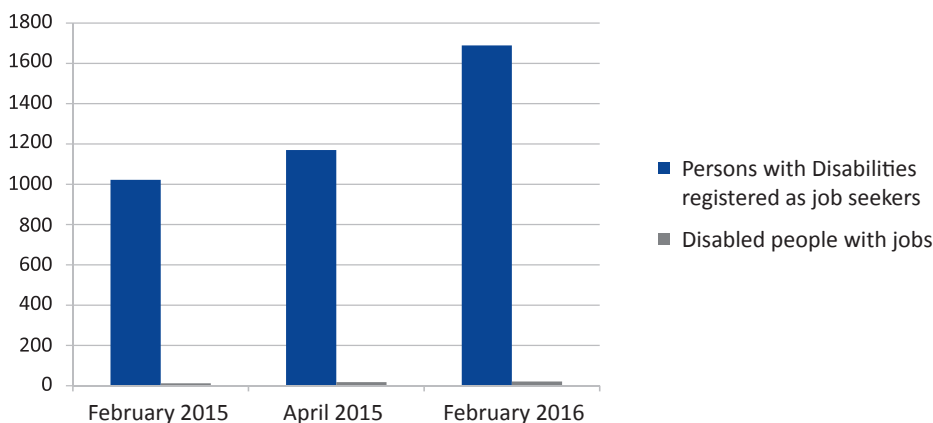
146 2015 State Program for Social Rehabilitation and Child Care approved by Resolution of the Georgian Government no. 138 dated 30 March 2015, Annex 1.6.1. Provision with wheel chairs and helping disabled people with finding jobs, Art. 5(a)

147 Letter from the Ministry of Labor, Health and Social Protection no. 01/9660 dated 12 February 2015

hiring of vulnerable and less competitive groups.¹⁴⁸ At this stage, the Ministry, together with the LEPL “Social Services Agency”, is working to develop such a model, which will then be approved by the Governmental resolution. The Ministry of Education and Science of Georgia and the LEPL Social Services Agency have entered into a memorandum of cooperation on introducing employment services. A competition was held to select employment support consultants and a coordinator (11 people in total: 1 employment support coordinator and 10 employment support consultants) but not all the staff have been hired yet. The consultants will help persons with disabilities and persons with special learning needs contact potential employers and get hired. The Ministries are intending to send the consultants on a study visit to the United Kingdom in June 2016 for qualification rising and experience sharing. The Ministry of Education and Science of Georgia has also produced a guide for employers explaining what it means to hire a person with disabilities and why the employers may benefit from doing so.¹⁴⁹

Despite the Government’s declared intent to ensure employment opportunities for persons with disabilities and despite the existence of a number of projects serving the same aim, PWDs are not actually able to exercise their right to work because there are no proper legal mechanisms, practical help and effective enforcement. This statement is supported by employment statistics and results of studies.

According to the data provided by the Ministry of Labor, Health and Social Affairs of Georgia, only a few persons with disabilities who registered themselves as job seekers at worknet.gov.ge, a unified online system run by the LEPL “Social Services Agency”, got hired. Namely, by February 2015, out of the 1,022 persons with disabilities registered as job seekers, only 12 people have got their jobs. By April 2015, 18 out of 1,170 registered job seekers were successful to get hired.¹⁵⁰ By February 2016, 21 out of 1,689 persons with disabilities registered in the labor market management system have been actually hired.¹⁵¹



148 Letter from the Ministry of Labor, Health and Social Protection no. 01/23910 dated 3 April 2015

149 Official website of the Ministry of Education and Science: [http://mes.gov.ge/content.php?id=6151&lang=geo]

150 Letters from the Ministry of Labor, Health and Social Protection no. 01/9660 dated 12 February 2015 and no. 01/30293 dated 30 April 2015

151 Letter from the Public Law Entity “Social Services Agency” no. 04/7381dated 1 February 2015

The State is not properly meeting its obligation under the UN Convention in regard to employing Persons with Disabilities in the public sector either. According to a 2015 report of the Civil Service Bureau, out of the 53,109 individuals employed in the public sector, only 112 are persons with disabilities. Statistics of PWDs working for State institutions are shown on a diagram below:¹⁵²

Persons with Disabilities employed in the public sector	
Government Administration and Presidential Administration	1
Parliament of Georgia	0
Autonomous republics of Achara and Abkhazia	9
Administrations of Governors (State representatives)	0
Ministries and state ministries	22
Local government	77
Courts	1
Public law entities	2
Total	112

A study carried out by the Research Center on Persons with Disabilities at Ivane Javakhishvili Tbilisi State University¹⁵³ has confirmed that it is virtually a mission impossible for a person with disability to get a job, especially through an open competition. In most cases this happens because of their low qualifications and/or lack of education certificates. If they do get employed, it only happens on the initiative of individual organizations (such as the Public Registry or local municipalities) and only as part of campaigning. Public transport and work environment not adapted to the needs of Persons with disabilities are significant obstacles for getting to the workplace, performing the work and socializing with the rest of the staff. Remuneration paid to PWDs is normally much lower compared with others, something that in conjunction with other factors makes their employment economically unfeasible. In addition to all these issues, if an individual with disability starts a job, he/she risks losing his/her social package and his/her family will no longer receive the State-paid allowance.¹⁵⁴

A relevant passage from the paper reads:

“The non-adapted physical environment and public transport is a serious obstacle for the persons with disabilities in the sense of both getting and maintaining a job. It significantly limits the ability of persons with disabilities to receive education and develop their vocational skills; they are also prevented from partaking in the public life and staying active. [...] Lack of access of persons with disabilities to education is

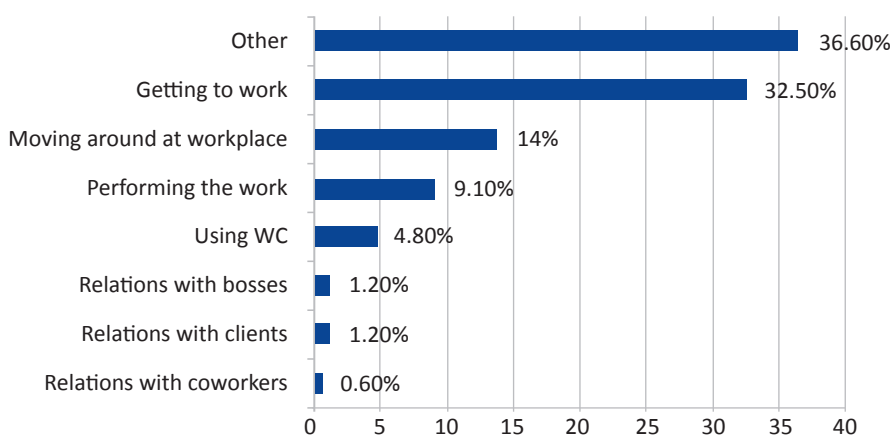
152 The Civil Service Bureau, 2015 Report, p. 22, available at <http://csb.gov.ge/uploads/2015_GEO_web.pdf>

153 *Special issues related to adaptation of disabled people to the work environment: attitudes of disabled people, employers and industry experts*, Results of a quantitative study, Ivane Javakhishvili Tbilisi State University, 2015

154 *Ibid.* pp. 94–95.

a prerequisite for their low professional competence and low competitiveness on the labor market. [...] Due to insufficient professional qualifications, they can hardly keep their jobs. [...] Inclusive learning introduced in schools and vocational institutions does not provide for necessary knowledge for the persons with disabilities to get jobs. [...] We believe it is necessary to have a consistent State policy that would be based on the essential principles and values enshrined in the 2006 UN Convention. Consistent and effective implementation of these values will help persons with disabilities get hired as part of State policies. The respondents in our study think that the individual measures taken by the State to improve the rate of employment of persons with disabilities and their socio-economic conditions are insufficient, since they are sporadic and unable to change the overall picture.¹⁵⁵

The below chart gives an idea of problems faced by persons with disabilities who have managed to find jobs:¹⁵⁶



6.2. SUPPORTING PERSONS WITH DISABILITIES LEAVING THE STATE CARE TO LIVE INDEPENDENTLY

An opportunity of living an independent life is particularly limited for persons with Disabilities leaving the State care system because they have, since their childhood, spent their entire lives in State institutions and, having attained the age of majority, are now forced to exit this care system unprepared. The State is not offering them adequate support for which reason, along with other socio-economic problems, they remain without a roof and relevant services.

Applications received by the Office of the Public Defender¹⁵⁷ show that a major problem faced by people in the process of leaving the State care system is lack of proper home,

¹⁵⁵ *Ibid.* pp. 96–97.

¹⁵⁶ *Micro and macro factors affecting adaptation of disabled people to the work environment and work effectiveness*, study report, part 1, Tbilisi State University publishing, 2015, p. 19, chart 4

¹⁵⁷ Cases no. 1314/15; no. 3820/15; no. 6066/15; no. 9697/15.

something that is tightly linked to their ability of exercising the rights to health, social protection, education, employment and other fundamental rights. This interconnection between State care and homelessness is prepositioned by the following: high rate of mobility of individuals under State care (frequently changing the institutions), unplanned and unprepared process of exiting State care, unsuccessful efforts to re-integrate into their families, and lack of essential social skills.¹⁵⁸ These factors become particularly exacerbated for people with disabilities considering a whole series of other obstacles they encounter in the existing environment.

It would not be reasonable to assume that persons with disabilities, being left without State care and family support, will be able to live their lives independently against the background that they have limited access to home, after-school education, vocational training and employment opportunities.

Having looked into the issue, the Public Defender's Office found that Georgia does not have a strategy and action plan on how to prepare children living in State-run institutions for an independent life; in particular, such strategy and action plan could envisage educating such children, training them in vocational and everyday skills and offering them support after leaving the State care system. Because of lack of such measures, a majority of people leaving the State care system does not manage to re-integrate into the society and get a job; they often become socially unprotected and even homeless. This matter is sporadically regulated by some provisions in the domestic legislation but even these provisions are not working in real life.

In its reply¹⁵⁹ to our query about any measures taken by the State to help persons with disabilities leaving State care start an independent life, the Ministry of Labor, Health and Social Affairs of Georgia refers to various documents such as Youth Policy Document,¹⁶⁰ Youth Policy Development Action Plan for 2015-2020¹⁶¹ and Community Organizations Sub-program stating that the Ministry does not have funds under the State budget to provide housing for Persons with Disabilities.

Only a few paragraphs of the Ministry-referenced Youth Policy Development Action Plan for 2015-2020 mention support measures for Persons with Disabilities; in particular, under the Action Plan, State obligations are confined to merely involving PWDs in teaching courses, informal education, vocational and craftsmanship training, cultural, artistic, sports and recreational events,¹⁶² development of vocational programs¹⁶³ and provision with student dormitories.¹⁶⁴ Certainly, the latter task does not imply handing

158 Philip Mendes, Young people leaving state out-of-home care (2014), p. 4 available at <<http://monash.academia.edu/philipMendes>> [last viewed 24.03.2016].

159 Letter from Head of Social Protection Department, Ministry of Labor, Health and Social Protection, no. 01/42145 dated 12 June 2015

160 Approved by an individual order of the Georgian Government no. 553 dated 2 April 2014

161 Approved by an individual order of the Georgian Government no. 349 dated 5 March 2015

162 Action Plan for 2015-2020 for Development of State Policy on Youth, par. 4.2.3.1. [<https://matsne.gov.ge/ka/document/view/2766763>]

163 *Ibid.*, par. 4.2.2.2.

164 *Ibid.*, par. 4.1.2.1.

the temporary homes over to persons with disabilities for a long time or permanently.

The State must help persons with disabilities who have left State care integrate into social, economic and public life. To do so, early interference with support programs and measures is necessary. State interference should not occur only after it discovers a crisis when it may be too late to prevent negative results.¹⁶⁵

Analysis of statistics received from the Ministry of Labor, Health and Social Affairs of Georgia¹⁶⁶ (36 persons with disabilities left State care during the last 5 years) shows that it is not going to be an insurmountable obstacle and will not take the State to spend extraordinarily large resources to implement measures to help the State care leavers; this would only require a will of the Government.

With these reasons in mind, on 24 August 2015, Public Defender sent his General Proposal (no. 09-3/6891) to the Georgian Government on measures to help persons with disabilities leaving State care with starting an independent life. However, despite the 20-day response term established by the law,¹⁶⁷ we have not received a response from the Government about their views concerning our proposal.¹⁶⁸

RECOMMENDATIONS

TO THE PARLIAMENT OF GEORGIA:

- Ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities as soon as practicable
- Amend labor and employment legislation in a way to fully incorporate State obligations under the UN Convention on the Rights of Persons with Disabilities
- Legislate on measures to help persons with disabilities live an independent life after leaving the State care in accordance with State obligations under the UN Convention on the Rights of Persons with Disabilities

165 Philip Mendes, Young people leaving state out-of-home care (2014), p. 3 available at <<http://monash.academia.edu/philipMendes>> [last viewed 24.03.2016].

166 Letter from the Ministry of Labor, Health and Social Protection no. 01/60987 dated 14 August 2015

167 Law on Public Defender, Art. 24

168 On 9 December 2015, we sent the Georgian Government another letter no. 09-3/10003 reminding them of their duty to reply to our general proposal.

TO THE GOVERNMENT OF GEORGIA:

- Correctly determine an institutional framework of implementation of the UN Convention on the Rights of Persons with Disabilities, re-distribute functions among the implementing and coordinating mechanisms and make these mechanisms truly operational
- Amend the “Technical Regulations on the Arrangement of Space Design and Architectural and Planning Elements for the Persons with Disabilities ” with a view to setting up an effective mechanism for the enforcement and monitoring of accessibility standards
- Timely take relevant measures, in cooperation with the National Communications Commission and other agencies, to make mass media, TV programs, movies and other sources of information accessible for the persons with disabilities, including by way of introducing mandatory regulations
- Implement a comprehensive approach to the persons with disabilities by media and an effective policy for awareness raising
- Study the existing needs and requirements until the State Program for Social Rehabilitation and Child Care is approved and plan measures in pursuance with the needs identified as a result of such study
- Develop a consistent State policy and a strategic document on facilitation of hiring of persons with disabilities, in line with the principles prescribed by the UN Convention on the Rights of Persons with Disabilities
- Facilitate, through State policies, opportunities for persons with disabilities to get hired on equal terms with others in the labor market
- Implement measures and programs to encourage and support employment of persons with disabilities in the public and private sectors in the open labor market
- Through legislative regulations, eliminate obstacles impeding recruitment of persons with disabilities such as expected loss of the right to a social package and subsistence allowance
- Supervise and coordinate timely and effective fulfillment of obligations under the Governmental Action Plans concerning employment of persons with disabilities by the relevant executive authorities
- Develop a strategy and an action plan, in cooperation with the responsible State agencies and persons with disabilities, on measures to help persons with disabilities live independently after leaving the State care (the strategy and action plan to include specific programs and clearly formulated tasks indicating responsible agencies, performance indicators, shortest timeframes and specific funding sources)

- Immediately provide people leaving State care with shelter and adequate social protection measures if they have a critical need therefor

TO THE MINISTRY OF LABOR, HEALTH AND SOCIAL AFFAIRS OF GEORGIA

- Raise public awareness of services envisaged by the State Program for Social Rehabilitation and Child Care, in an accessible form, especially at rural level
- Revise the “Methodology of Evaluation of the Socio-economic Status of Socially Unprotected Families (households)” in a way to pay State assistance to families with children with disabilities in need of such assistance
- Set up alternative, smaller family-like care services for children in need of care and children with serious and deep disabilities – beneficiaries of large children’s institutions – in the course of deinstitutionalization process
- Develop proposals to heed the needs of persons with disabilities and incorporate the obligations under the UN Convention on the Rights of Persons with Disabilities into domestic labor legislation
- Develop, in cooperation with Persons with disabilities, an unified strategy document on providing persons with disabilities with jobs
- Maintain statistics of employed persons with disabilities in public and private sectors
- Make sure, that State Programs concerning integration of persons with disabilities duly cover the issue of their employment
- Initiate and implement, within its competence, incentives for the private sector to employ persons with disabilities

TO THE MINISTRY OF EDUCATION AND SCIENCE OF GEORGIA

- Ensure quality and continuous learning in the process of inclusive education
- Enhance activities aimed for raising special teachers’ qualifications, especially at the regional level
- Accelerate measures to make educational institutions accessible
- Facilitate raising the professional qualifications of people with disabilities and their competitiveness

TO THE MINISTRY OF REGIONAL DEVELOPMENT AND INFRASTRUCTURE OF GEORGIA

- Heed the problems and needs of persons with disabilities in draft proposals on the development of continuous learning for public officials employed at local self-governance bodies
- Involve local self-governance bodies in dealing with the problems of persons with disabilities

TO THE NATIONAL COMMUNICATIONS COMMISSION

- Study the need of persons with disabilities for electronic services and avenues for their development
- In cooperation with the relevant agencies, ensure timely and quality accessibility of mass media, TV programs and movies through sign language, audio description, Braille, tactile communication, large print, multimedia, augmentative and alternative communication and other accessibility forms, methods, means and technologies for Persons with disabilities
- With a view to ensuring access to information for the persons with disabilities, elaborate an action plan detailing specific measures to be implemented, with implementation timeframes, responsible authorities, funding sources and outcome indicators

TO THE PUBLIC BROADCASTER AND OTHER MEDIA OUTLETS:

- Promote production of public awareness raising campaigns and social ads as well as media coverage of issues concerning persons with disabilities from the perspective of eliminating stigma and discrimination and promoting respect for the rights and dignity of persons with disabilities
- While preparing and broadcasting programs and shows, always be guided by the principles of diversity, equality and tolerance; never encourage infringement upon the dignity of persons with disabilities and strictly uphold relevant requirements envisaged by international standards and domestic legislation

TO TBILISI CITY HALL:

- Develop effective policies for the enforcement and supervision of accessibility standards
- Establish an effective mechanism to supervise the process of setting up

-friendly physical environment for persons with disabilities; designate a service that would be equipped with effective mechanisms to monitor and enforce accessibility standards (through sanctioning and preventive measures, including construction permit denial, inspection, fines and other measures)

TO THE LOCAL SELF-GOVERNANCE BODIES:

- Adapt public transport and road infrastructure to the needs of persons with disabilities
- Heed the needs of persons with disabilities in the process of procuring new municipal transport
- Allocate special places for PWDs on parking lots
- Inform public transport drivers about services available to persons with disabilities
- Introduce construction rules that take the needs of persons with disabilities into consideration and supervise their practical enforcement
- Timely fulfill their obligations under the Government Action Plan on Equalization of Opportunities for Persons with Disabilities for 2014-2016
- Make sure that the persons with disabilities and/or representative organizations take part in the process of setting up and putting to operation regional and local councils on disability issues
- Ensure equal participation by persons with disabilities and their representative organizations in the membership of the local councils