

PUBLIC DEFENDER OF GEORGIA

RIGHTS OF PERSONS WITH DISABILITIES IN GEORGIA



2016



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INTRODUCTION

In 2016 already two years passed after the ratification of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the Convention) . Nevertheless, major challenges in the process of effective implementation of the convention are still in the agenda. Despite the specific recommendations from the Public Defender, the Optional Protocol to the Convention has not been yet ratified.

There were no substantial changes in terms of harmonization of the national legislation with the requirements of the Convention. In addition to the fact, that certain number of National Legal Acts are not in compliance with the approach of the convention, some of them even contradicts it. The terms like: handicapped,¹ or invalided² are still included. Georgian legislation does not recognize the notion of “reasonable accommodation” and “universal design”.

.Creation of efficient and effective enforcement mechanism of the convention, final formation of which is important for ensuring coordination between responsible state agencies, still remains a challenge.

Implementation of social model has to be noted among other challenges in the process of implementation of the Convention in practice. Unfortunately, the status of a disabled person is still based on an individual medical diagnosis.

Main state challenges also include providence access to social protection, realization of the right to adequate housing and employment of persons with disabilities. In addition to this, issues of accessibility to the physical environment, infrastructure, transport and information remain a problem. Public institutions, including majority of the ministries, do not use adequate supply methods to ensure information / services accessibility for the persons with disabilities. Web-pages are not being modernized or adapted.

The “State Program on Social Rehabilitation and Child Care “, which is annually approved and is aiming to ensure social integration of persons with disabilities, including children with disabilities and their engagement in the social life, does not fully meet the target groups’ needs and is not geographically available.

Inclusive educational process is progressing with shortcomings. The large part of children with disabilities is not involved in the process, especially in the regions. In addition, teaching quality and continuity is a challenge.

The number of state programs promoting employment is insufficient. Effective implementation of the few existing programs remains a challenge. Low number of employment of persons with disabilities undermines effectiveness of the various activities implemented by the state in order to promote employment. By 2016, 52 persons with disabilities were

1 Ethics Code of Georgian Police, annex N2.

2 The Law of Georgia on Health Care, Article 3,„S1“ < <https://matsne.gov.ge/en/document/view/29980> >; The law of Georgia on General Education, Article 485 and The law of Georgia on Patient’s Rights , article 12, article 25.

employed in the public sector,³ and the number of persons employed in the private sector reached only 32.

The statistics about the persons with disabilities, necessary to ensure formulation and implementation of relevant policies, as well as planning and enforcement of subsequent programs and establishment of need-based approach giving effect to the Convention, are not collected and analyzed in the state⁴.

During the reporting period, acts of discrimination against persons with disabilities have also occurred. The Public Defender addressed relevant state agencies with recommendations in certain cases⁵ Including: to the Ministry of Internal Affairs concerning discrimination of persons with disabilities⁶ and to the Ministry of Education and Science, regarding the prevention of discrimination on the ground of disability in the process of inclusive education.⁷

MONITORING OF THE PROMOTION, PROTECTION AND IMPLEMENTATION OF THE CONVENTION

The monitoring mechanism of the UN Convention on the Rights of Persons with disabilities 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 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.⁸ During the reporting period, the Consultative Council renewed its composition of representative members and by 2016, it council consists of 15 members.⁹

3 Letter of the Civil Service Bureau N 215–18.01.2017.

4 Proposal to Government concerning Collection and Maintenance of Statistical Data on Persons with Disabilities, December 13, 2016. <<http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/proposal-to-government-concerning-collection-and-maintenance-of-statistical-data-on-persons-with-disabilities.page>>.

5 See the detailed information in the chapter about Equality Rights.

6 Recommendation to Ministry of Internal Affairs concerning Discrimination of Person with Disabilities, August 26, 2016 <<http://www.ombudsman.ge/en/recommendations-Proposal/rekomendaciebi/recommendation-to-ministry-of-internal-affairs-concerning-discrimination-of-person-with-disabilities.page>>.

7 General Proposal on Prevention of Discrimination on Grounds of Disability in Inclusive Education, December 28, 2016 <<http://www.ombudsman.ge/en/recommendations-Proposal/zogadi-winadadeba2/general-proposal-on-prevention-of-discrimination-on-grounds-of-disability-in-inclusive-education.page>>.

8 <http://www.ombudsman.ge/en/specializirebuli-centrebi/shshm-pirebis-uflebata-dacvis-departamenti/shshm-pirta-uflebebis-konvenciis-monitoringis-meqanizmi/sakonsultacio-sabcho>

9 <http://www.ombudsman.ge/uploads/other/4/4006.pdf>

During 2016, in compliance with the Consultative Council statute, the advisory body has held five sessions. Among them, one was an extended workshop session for broader target audience, attended by persons with disabilities and civil society activists.¹⁰

Activities aiming at the popularization of the Convention for the year 2016 included: publication of the Public Defender’s Parliamentary Report of 2015 in accessible formats;¹¹ preparation and distribution of Information booklet on rights of persons with disabilities; Organizing public debates and trainings. The training for the persons with disabilities and the representatives of the organizations working in the field of disability on the topic of the monitoring and implementation of the Convention on the Rights of Persons with Disabilities was the most notable one.¹² Another important training was conducted for the public servants of self-governing City Halls and City Councils working on financial-budgetary and social issues on the topic of “involvement of people with disabilities and their requirements in the budgeting process.”¹³

In 2016, within the framework of the promotion, protection and implementation of the mechanism of UN Convention on the Rights of Persons with Disabilities were planned and implemented actions to monitor the governmental action plan, analyzed the legal reform on capabilities, along with national prevention program for disabled person’s boarding houses were monitored as well, prepared special reports. In 2016, Monitoring of the Governmental Action Plans concerning Persons with Disabilities were planned and conducted, Legal Capacity Reform was analyzed, Boarding Houses for Persons with Disabilities were monitored together with the National Preventive Mechanism and Special Reports were Prepared within the frameworks of the Monitoring Mechanism of the popularization, protection and implementation of the Convention.

MONITORING OF LEGAL CAPACITY REFORM

In 2016 the research – “Legal Capacity – Reform without Implementation“ was developed within the framework of the activities of the monitoring mechanism of the implementation of UN Convention on the Rights of Persons with Disabilities. The purpose of the study was to appraise the part of the reform implemented after the decision of October 8, 2014 of the Constitutional Court, concerning the recognition of the persons as a support recipient and the scope of such support. Common court decisions related to the subject was studied and analyzed in the process of working on the report.

10 <http://www.ombudsman.ge/en/news/expanded-meeting-of-consultative-council-for-monitoring-the-promotion-protection-and-implementation-of-the-un-convention-on-the-rights-of-persons-with-disabilities.page>

11 Short version of the report is published in the audio form; the information on the conditions of persons with disabilities was printed in Braille script.

12 <http://www.ombudsman.ge/en/news/training-for-representatives-of-organizations-working-on-issues-on-the-rights-of-persons-with-disabilities.page>

13 <http://www.ombudsman.ge/en/news/training-held-by-human-rights-academy-of-public-defender-for-representatives-of-city-halls-and-city-assemblies.page>

The study has revealed that the legislative reality after the reform mostly takes into account the individual needs of persons with psycho-social needs and except for few exceptions, is in line with the Constitutional Court and UN CRPD requirements.

The legislation provides for a possibility of Common Courts to appoint support in the part of petty deals in contrast to the Constitutional Court judgment. The legislation envisages supporter's obligation to constantly supervise medical service of the support recipient even if no medical support is appointed for the person. The legislation provides for blanket deprivation of some of the rights of support recipients without individual and judicial evaluations. These rights are: the parental and some of the related rights, the right to hold position in public service, the right not to become an object of medical research without informed and clear consent. In relation of the Common Courts, it was revealed, that some courts did not observe procedural terms., the vast majority of the judgments on recognition of individuals as support recipients include only the resolution part in accordance with the procedural legislation, which makes it impossible to find out the content of the decision and relevance of the support to the individual needs of support recipient. Common Court judgments, which contain motivations, are template and unsubstantiated. In addition, there is no unified form of the resolution part of the judgments.

There are still systemic problems of blanket appointment of support, full deprivation of legal capacity and plenary guardianship in the process of reform implementation.

The recommendations related to the current challenges are included in the report.¹⁴ In this regard, the Supreme Court considered it relevant to hold a joint meeting with an engagement of the representatives of Ombudsman Office, judicial and executive branches of the government.¹⁵

MONITORING OF THE STATE CARE INSTITUTIONS FOR PERSONS WITH DISABILITIES

In 2016, Human Rights situation of persons with disabilities in state care institutions were monitored within the frameworks of the activities of the National Preventive Mechanism and the mechanism for the monitoring of popularization, protection and implementation of UN Convention on the Rights of Persons with Disabilities – the two significant mandates granted to the Public Defender's Office under internationally recognized obligations. .

The representatives of the public defender's office inspected the level of protection of human rights of PWD beneficiaries placed in five state residential institutions: Tbilisi Infants'

14 Legal Capacity – Reform without Implementation, October 21, 2016. <<http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-capacity-reform-without-implementation.page> <http://www.ombudsman.ge/uploads/other/3/3949.pdf> >.

15 The Letter of the Supreme Court of Georgia N01/82–30.11.2016. In January 26, 2017 a discussion dedicated to resenting recommendations reflected in Public Defenders Special Report was held.

House, Kojori Boarding House for Children with Disabilities, Dzevri Boarding House for Persons with Disabilities, Dusheti Boarding House for Persons with Disabilities, Martkopi Boarding House for Persons with Disabilities and their compliance with the standards established by the UN Convention on the Rights of Persons with Disabilities, other international documents and national legislation.

The monitoring revealed that institutional arrangement of the daily specialized institutions for persons with disabilities, non-adapted infrastructure, lack of professional and support staff, lack of psycho-social services and relevant professional personnel and their low qualification creates significant challenges in terms of offering services relevant to the individual needs of people with disabilities.

Non-adapted infrastructure, lack of communication with the outside world and their families (including children), social inactivity and isolation from the society, as well as deficiencies related to administration and medical care are also among main challenges in the process of implementation of the convention.

The monitoring showed that care for beneficiaries' safety and security, their emotional, physiological well being and mental health, also the level of the service providers' awareness on the violence-related legal regulations and standards is extremely low. The beneficiaries are not aware of their rights. The administrations of the institutions do not consider the issues as an important care standard.

It is worrisome that all existing situation in the state care institutions leads to the blatant violation of the beneficiaries' rights, including discriminatory treatment, and sometimes violation of the persons with disabilities right to life. Based on identified problems the Ombudsman has developed recommendations for relevant state agencies, administration of specialized daily institutions for people and children with disabilities.¹⁶

Despite the recommendations reflected in the Special report, the situation has not changed in most of the boarding houses during the reporting period. After the monitoring, the Public Defender's Office has received information about increased dynamics of transferring Martkopi boarding house beneficiaries to the Mental Health Institutions,¹⁷ as well as about the increased numbers of conflicts between the beneficiaries of the same boarding house.¹⁸

The study of the cases revealed that the facility is overcrowded, administration doesn't have management mechanism of persons with severe disability, mental health and behavioral problems, and as a result, transferring beneficiaries in mental health institutions or threat of such transfer is a commonly established mechanism for conflict management.

16 Legal Situation of Persons with Disabilities in the State Care Institutions, October 21, 2016 <<http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-situation-of-persons-with-disabilities-in-the-state-care-institutions.page>>

17 Public Defender's Office Case N11746/16–12.09.2016; N12558/16–28.09.2016; N14619/16–14.11.2016.

18 Public Defender's Office Case N14098/16–02.11.2016.

The recommendation addressing Martkhopi boarding House problems was drafted and represented to the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking by the Public Defender of Georgia.¹⁹

PERSONS WITH DISABILITIES' PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Participation in political and public life for persons with disabilities includes enjoying the right to active and passive voting hold public positions at any level of state governance, to perform public functions, if necessary, through using new supporting technologies.

Participation of persons with disabilities and their representative organizations in the decision-making process on the different levels of governance is crucial for their engagement in political and public life on an equal basis. The measures, necessary to achieve this goal had been determined by various state policy documents and action plans since 2010, however no tangible results have been achieved so far.

One of the main tasks of the Action Plan on Social integration of persons with disabilities of 2010-2011,²⁰ was to deal with the problems of increasing the participation in the local self-government decision-making process. The main goal of the „ Government Action Plan 2014-2016 on Providing Equal Opportunities for the Persons with Disabilities, “ was to involve these individuals in the regional and local level councils' creation/ activation process. The same goal is included in 2016-2017 Action Plan on the protection of human rights as well.²¹

CREATION/ ACTIVATION OF REGIONAL AND LOCAL COUNCILS WORKING ON DISABILITY ISSUES

As it has already been mentioned above, one of the forms of participation in political and social life for persons with disabilities is creation/activation of the regional and local Councils working on disability issues with an engagement of persons with disabilities in this process. .

19 Recommendation concerning Problems in Martkopi Boarding House for Persons with Disabilities <http://www.ombudsman.ge/en/recommendations-Proposal/rekomendaciebi/recommendation-concerning-problems-in-martkopi-boarding-house-for-persons-with-disabilities.page>

20 Order of the Government of Georgia issued on December 15, 2009 N978 on confirming the 2010-2012 action plan on social integration of persons with disabilities .

21 2017-2017 State Action Plan for the Protection of Human Rights

As a result of the analysis of the issue by the Public Defender, it was revealed that in 2016 only 34 local government units have created advisory boards (local councils working on disability issues), which is not even the half of the total number of municipalities (75). Thereby, it can be concluded that number of local self-governing units has not implemented obligation determined by the Government Action Plan, thereby preventing engagement of persons with disabilities in the process of development of important activities, major plans, and programs concerning them.

Public Defender's Office has also examined level of engagement of persons with disabilities and organizations working on their rights in the advisory boards' composition and work in the municipalities, where such boards were created. Study results suggest that, apart from few exceptions, persons with disabilities and their representative organizations' involvement in the local councils' is extremely low, which may be caused by lack of information with respect of the rights of persons with disabilities and importance of their participation, as well as absence of local civic organizations and /or their inactivity.

One of the important issues is the proper functioning of the existing councils, in particular, timeframe of the boards' meetings and consideration of their initiatives by the local self-government bodies. It should be noted that in some municipal units several meetings of local Council has been held during the reporting period, held (Gurjaani -8 meeting; Zugdidi, Bagdadi 6 meeting, Tskhaltubo, Lanchkhuti 5 meetings; Ozurgeti Chkhoroktsu -4; Chokhatauri -3; tsageri Board - 2; Adigeni -1). However, no relevant requested information was provided for the Public Defender's Office by number of other municipal units, which causes reasonable doubt that the sessions have not been held in those municipal units at all.

Tbilisi City Hall has informed the Public Defender's Office, that reorganization of the Council working on disability issues had started in January 2016. In order to prevent Council working delay caused by the reorganization process, the work has continued in thematic groups. During 2016, the thematic groups had held 15 meetings.²²

As for the issues initiated and discussed by the Council boards, identified obstacles and consideration of these issues by the local governments, the correspondences received from the majority of the municipalities reveals, that topics related to the creation of the environment adapted to the needs of persons with disabilities were mainly discussed during the sessions. According to their information, there were no obstacles in the implementation of the issues presented before local government units by the Councils.

It should be noted that, the needs of persons with disabilities are not sufficiently reflected in the self-government budgets for the year of 2017. For years, the social programs include same one time activities supporting persons with disabilities, such as: financial support, allocation of funds to purchase medicines, sports and cultural activities dedicated to International Day of persons with disabilities or other holidays.

Planning and implementation of abovementioned events are not enough to respond to different needs of persons with disabilities. It is important to ensure their full and effective

22 Correspondence N10/267700–11.10.2016 Public Defender's Office registration N13283/16–12.10.2016.

tive engagement in the process of implementation of the rights of persons with disabilities and the proper implementation process of the UN Convention.

RIGHT TO VOTE FOR PERSONS WITH DISABILITIES

Equal access to right to vote for persons with disabilities is important for their full and effective participation in political and public life.

Despite the fact that active and passive voting rights are guaranteed by national legislation for all Georgian citizens, persons with disabilities meet certain barriers in the practical realization of these rights, which in turn are linked with the accessible environment, public transport, access to information and communication problems.

Mentioned challenges create barriers for persons with disabilities in terms of participation in election commissions' work, as well as performing functions of an observer during the electoral process. It is important for persons with disabilities to enjoy the right to passive voting; however, certain preconditions are necessary to be met for its implementation, including political parties and unions' willingness to widely engage persons with disabilities in their activities, to recognize their role. It is equally important to change public attitudes towards persons with disabilities.

During the 2016 parliamentary elections, election programs of only three political parties²³ were accessible for persons with disabilities.

The Central Election Commission's website, which according to the current information submitted to the Public Defender's Office by the Agency, is fully adapted for persons with disabilities including blind persons' needs is not accessible without special software.²⁴

According to the "2014-2016 Government Action Plan on Providing Equal Opportunities for Persons with Disabilities", the Central Election Commission, along with local self-government bodies, was obliged: to adapt the polling stations for voters with movement disabilities, construct permanent / temporary ramps; construct and arrange special voting booths for voters with mobility problems; create the video for deaf voters explaining election procedures in sign language and broadcast it through public broadcaster; display video clip in certain polling stations using portable computer software providing access to election for blind voters.

According to Information provided by Central Election Commission, regarding the above-mentioned measures, during parliamentary elections of October 8, 2016, out of 3 634 polling stations included in 73 electoral districts, only 1115 polling stations were

23 Political parties: Georgian Dream, United National Party, Georgian Republican Party.

24 Policy Document on "Right to Vote for Persons with Disabilities", Giorgi Noniashvili, 2016. International Society for Fair Elections And Democracy .

adapted,²⁵ which is only one third of the existing stations. Consequently, 70% of the polling stations are not accessible for persons with disabilities. It should also be noted that the quality of adaptation is not fully consistent with the standards established by the convention. In general, during the electoral process universal design principles of accessibility established by the Convention are not applied.²⁶

As it was reported by the Central Election Commission, for the local elections of June 15, 2014 local elections, as well as for other elections held afterwards, the special voting booths were placed in more than 800 polling stations. As for the dissemination of the video via portable computers in certain identified electoral areas, 400 polling stations were provided with such computer for deaf voters.

Public Defender welcomes the fact that during June 15, 2014 Local Government elections, October 31, 2015, and May 22, 2016 by-election, the Information prepared by Central Election Commission for deaf voters were disseminated with sign language interpretation. During May 22, 2016 by-election day, for the first, the Central Election Commission briefing was broadcasted live with sign language translation.

STATISTICS AND DATA COLLECTION

States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention (Article 31).

“2014-2016 Government Action Plan on Providing Equal Opportunities for Persons with Disabilities” envisaged creation, development and improvement of the individual database of persons with disabilities. In particular, improvement of statistical methodology, including information gathering and research taking into consideration the international practices; consideration certain information concerning persons with disabilities in the population census questionnaires and creation of a database of the persons with disabilities.

With regard to this issue, the Public Defender’s Office requested relevant information from the National Statistics Office of Georgia, the Social Service Agency and from relevant Ministries.²⁷ Information requested from the named state agencies was regarding the statistics produced, processed and distributed within their competences.²⁸

25 Central Election Commission’s response, correspondence N01–07/2394 (21.09.2016).

26 Policy Document on “ Right to Vote for Persons with Disabilities “ , Giorgi Noniashvili, 2016. International Society for Fair Elections And Democracy.

27 Overall from sixteen Ministries.

28 The Ministry of Economy and Sustainable Development (letter N09-1 / 7967), the Ministry of Energy (letter N09-1 / 7962), Ministry of Foreign Affairs (letter N09-1 / 7962), the Ministry of Labor, Health and Social Affairs (letter N09-1 / 7481), Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation And Refugees Of Georgia (letter I N09-1 / 7968), the Ministry of Education and Science (letter

Based on the analysis of received information, data collection about persons with disabilities in Georgia is only limited to the statistics gathered during census through counting the total number of persons with disabilities, on the ground of information provided by persons with disabilities themselves, based on self-identification, which cannot give complete and precise information about persons with disabilities and their needs. Similarly, the Social Service Agency's statistics are limited only by the number of persons with disabilities receiving social package and other allowances and the number of job seekers, which obviously doesn't provide relevant information on the number of individuals with specific functional disabilities. It also doesn't make it possible to completely identify job seekers' individual needs.

Taking into consideration the complex nature of disability, existing statistics and data cannot guarantee collection of information necessary for the monitoring of the protection of rights of persons with disabilities.

The statistics and data produced by state on persons with disabilities do not reflect fair and accurate picture of the protection of the rights of persons with disabilities. Accordingly, it is difficult to make a proper analysis about the quality of protection of their rights by the state.

Therefore, the Public Defender addressed the Government of Georgia with General Proposal²⁹ on the statistics and data collection about Persons with disabilities. The General proposal reflects recommendations about the measures to be taken by the State Government.

CHILDREN WITH DISABILITIES

Article 7 of the UN Convention on the "Rights of Persons with Disabilities" of 2006,³⁰ refers to children with disabilities and establish state obligation to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children. According to the Convention approaches, in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

N09-1 / 7484), Ministry of Agriculture (letter N09-1 / 7965), the Ministry of Regional Development and Infrastructure (letter N09-1 / 7924), the Ministry of Finance (letter N09-1 / 7961), the Ministry of Culture and Monument Protection of Georgia (letter N09-1 / 7923), the Ministry of Sport and Youth Affairs (N09-1 / 7920), the Ministry of Defense (letter N09-1 / 7963), Ministry of Justice (letter N09-1 / 7966), the Ministry of Internal Affairs (letter N09-1 / 7552), the Ministry of Corrections Georgia (letter N09-1 / 7555), the Ministry of Environment and Natural Resources (letter N09-1 / 7960), National Statistics Office of Georgia (letter N09-1 / 7478) and the National Social Service Agency (letter N09-1 / 7483).

29 Proposal to Government concerning Collection and Maintenance of Statistical Data on Persons with Disabilities, December 13, 2016. <<http://www.ombudsman.ge/en/recommendations-Proposal/winadadebebi/proposal-to-government-concerning-collection-and-maintenance-of-statistical-data-on-persons-with-disabilities.page>>

30 The United Nations Convention on the Rights of Persons with Disabilities <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

CHILDREN UNDER THE STATE CARE

By 2016, two state care institutions were functioning for children with disabilities – branches of State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking: Tbilisi Infants' House and Kodjori boarding house for children with disabilities. By 2016, the number of beneficiaries living in the mentioned institutions reached 86.

Public Defender welcomes the fact of signing Memorandum of Understanding between the Social Service Agency and the United Nations Children's Fund on January 18, 2016. The memorandum includes creation of an alternative small set of services for the infants' house beneficiaries – namely for children with severe disabilities in need of care.

Based on the observation of the current processes, it becomes clear that there is an urgent need for more active work to be performed in a timely manner, so that the state provides high-quality alternative services close to family environment for the children beneficiaries as soon as possible, (such as: foster care, small family type home services).

The number of alternative care services is very low, which increases the risk of abandonment of children with disabilities and hinders process of deinstitutionalization. According to the data of September 2016, the number of children involved in the state sub-program of the small family type homes consisted with 10 beneficiaries. At the same time, there are long waiting lines of beneficiaries willing to benefit from the service offered by the sub program. . It should be noted that a number of flaws were recorded in the foster care³¹ and reintegration sub-programs' monitoring process.³² The Public Defender's Office emphasized the need of constant monitoring of the situation of children placed under the services mentioned above to be conducted by the state.

L.B. CASE - MINOR'S HEALTH AND SOCIAL RIGHTS VIOLATIONS IN FOSTER CARE

In 2016, the Public Defender's Office studied the case,³³ about 5 years old child with disabilities (Down syndrome), L.B's needs. In particular, the condition of the child was extremely deteriorated while being under foster care, so that there was an urgent need to place the child in intensive care unit. According to the case files, from 2009 until 2016 L.B's foster family hosted 16 children, including six children with disabilities and others with different kinds of health-related problems. Currently, a family hosts five minors, including three children with disabilities. L.B. was placed in foster care since October 27, 2011.

According to the information received from the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking and the Social Service Agency's department

31 Special Reports on Monitoring of State Subprogram of Foster Care, July 20, 2016 <<http://www.ombudsman.ge/uploads/other/3/3825.pdf>>.

32 special report on the Monitoring of State reintegration service <http://www.ombudsman.ge/uploads/other/3/3824.pdf>>

33 Case N15539/16.

of care and social programs³⁴ due to the child's health condition, the case of foster care in terms of this particular child was closed and after getting relevant treatment, child was placed in Tbilisi infants' house, where the beneficiary was provided with subsequent service from the specialists. Currently the child is involved in the early development state sub-program.

Taking into Consideration extremely heavy health condition of L.B, Social Service Agency City Center's argument claiming, that the Child was getting foster care service from 2011 to 2016 under proper monitoring on behalf of the state in compliance of existing legislation, given that the child was not even engaged in any other programs or services except from the foster care and early childhood development programs, must be considered unjustified and unreasonable. In addition, after December 2013, the child was no longer receiving service within early childhood development sub program any more.

This case study clearly indicates that children are not placed in foster families based on reasonable research of situation (including quantitative terms) and the sub-program is not sufficiently monitored by the State, , which in turn threatens lives, health, development and security of children.

RIGHTS TO SOCIAL PROTECTION

During 2016, cases analysis of the Public Defender's Office shows that children with disabilities are living in poverty and cannot effectively enjoy the right to a proper and adequate life. Issue of receiving Social allowances for the families with children with disabilities is one of the most important problems. . After the approval of,, vulnerable families (households) socio-economic status assessment methodology "³⁵ for many of them it became more difficult to obtain the right to allowance.³⁶

From July 1, 2016 the social package for persons with severe disabilities and children with disabilities was increased and amounted 180 GEL. It should also be noted that the increased amount of social package still is not enough to cover the needs of children with disabilities.

Effective social protection of children with disabilities in the country is hindered by the fact, that disability status is not based on social model, and accordingly does not highlight the functional needs of children with disabilities. As it is known, the disability status is being determined based on requirements of the Law of Georgia on „medical-social examination“.³⁷ The law introduces some progressive regulations; however determination

34 №07/1654–28.12.2017; №04/2041–13.01.2017.

35 Decree of the Government of Georgia on the Approval of the Methodology for evaluation of Socio-economic situations of the Households.

36 „Right of the Persons with Disabilities“. Special Report , 2015, pp 44. <<http://www.ombudsman.ge/uploads/other/3/3728.pdf>>.

37 The Law of Georgia on Medical and Social Exemption <https://matsne.gov.ge/en/document/view/15772>

of disability status is still regulated based on the list of anatomical and mental diseases, determined by the order of the Ministry of Labor, Health and Social Affairs which is direct medical approach and clearly needs to be changed.

Determination of the disability status of at early age (0-3) still remains a problem. The current regulations do not allow the possibility for the early identification of problems, timely intervention and effective management ability.³⁸

RIGHT TO HEALTH, CHILD CARE AND SOCIAL REHABILITATION

Right to health is not sufficiently guaranteed for all children with disabilities. Due to the lack of financial resources of the families and insufficient involvement on behalf of the state / local government agencies, certain number of children do not receive the necessary medical consultations, examinations and drug assistance.

State Program on „Social Rehabilitation and Child Care“,³⁹ to some extent is oriented to the interests of children with disabilities however it does not fully cover all their requirements. This is partly due to the reason that over the years, activities are planned without the statistics and data collection and thereby in absence of needs based analyses on the target group. The analysis of the information obtained from the Ministry of Labor, Health and Social Affairs⁴⁰ reveals that the sub-programs can not cover existing needs (see. Table 1).

The mentioned state program includes “early childhood development” component, which covers the target group of up to 3 years or from 3 to 7-year old children with disabilities or at risk of disability, however service delivery is problematic in terms of geographical areas of the country. In particular, the service is provided only in the following cities: Tbilisi, Kutaisi, Batumi, Kobuleti, Zugdidi, Chkhorodsku, Lagodekhi and Telavi. In addition, the limited budget of the sub-program cannot provide adequate services to the needs of all children. The situation is similar in terms of “home care sub-program for children with severe and profound mental retardation”, due to the fact that the service delivery is available only in Tbilisi.

“Children Rehabilitation and Habilitation” sub program is also implemented within the frameworks of the State Program on “Social Rehabilitation and Child Care”. Subprogram service is available for children with disabilities up to 3 years and from 3 to 18 years. Sub program’s limited budget is not enough for the needs of its beneficiaries in this case as well.

38 „Human Rights and Freedoms in Georgia“ Public Defender’s Report, 2013.
<<http://www.ombudsman.ge/uploads/other/1/1934.pdf>>.

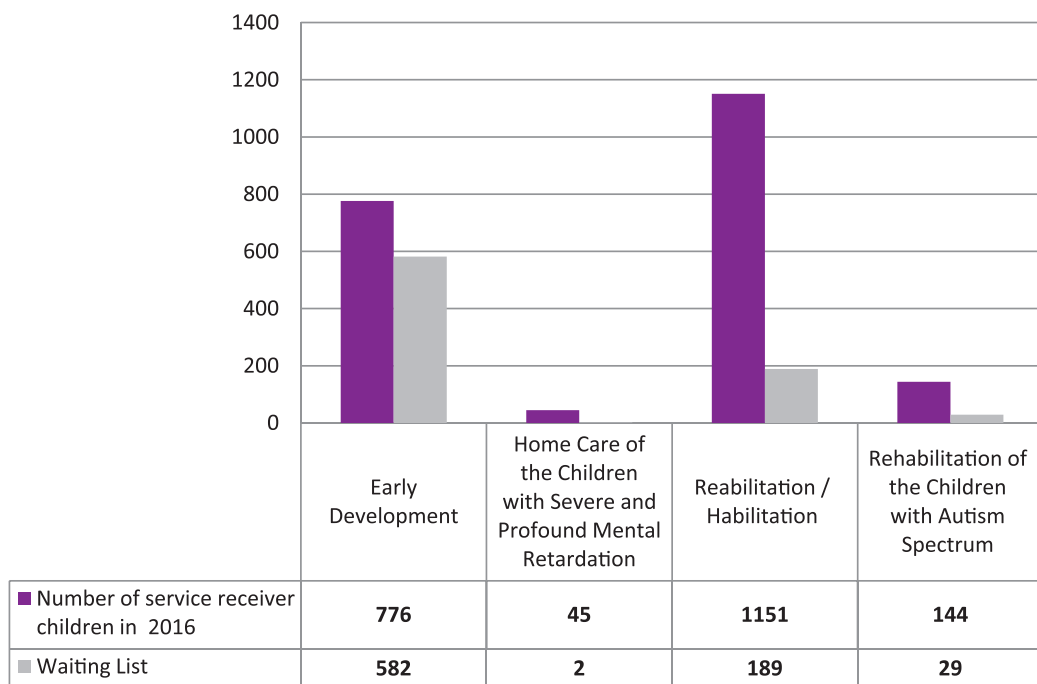
39 The Decree of the Government of Georgia on the Approval of Social rehabilitation and Child Care State Program for the year 2016.

40 Correspondence: №04/78048, №01/72262, №04/6624.

“Day Care Center” subprogram is aiming at supporting families and prevention of the abandonment of persons with disabilities. Program target groups include children from 6 to 18 and persons with disabilities from 18 and above. Geographical coverage of the day care centers includes both - the cities and regions, although the number of centers is not enough to fully supply existing demand. In 2016, 718 children with disabilities benefited from the day care sub-program, including 63 children with severe and profound mental retardation.. According to the information submitted to the Public Defender’s Office,⁴¹ waiting list of people in need of the service offered by the sub-program exists, t, however the numbers are not specified.

The sub program on the “Rehabilitation of Children with Autistic Spectrum“ aims to promote early development of children with disabilities. Mentioned sub-program is funded by Tbilisi City Hall from the resources of municipal budget. In addition to few numbers of children with disabilities engaged in sub-program, the challenge is that the service was delivered only to the children with disabilities registered in Tbilisi until July 2015, creating unequal conditions for the children living in regions, who are also in need of such services.

Table 1



In 2016, the Public Defender’s Office was studying the case, concerning medical needs of a child with autism spectrum;⁴² in particular, the child needed psycho-social rehabilitation course. The child’s parents were unable to cover service value and asked for help in funding. According to the information received from the Ministry of Labor, Health and Social Affairs⁴³ within the framework of the “referral services” the patient’s request was reject-

41 Correspondence: №04/6624–03.02.2017.

42 N14530/16 – 10.11.2016.

43 №01/90040–12.12.2016.

ed. Therefore, child could not receive the necessary service. It is obvious that such cases highlight the need to expand the capacity of existing services.

Individual case study reveals that children with disabilities have limited possibility to benefit from different target social programs. Among them should be noted the “urgent state assistance sub-program for families with children in crisis”. Parents of children with disabilities are not properly informed about the program even during its implementation. Similar to last year,⁴⁴ the population still does not have adequate information about existing state and local government programs and social assistance.

In conclusion, the sub-programs of the state program on “social rehabilitation and child care” are insufficiently accessible due to the lack of funding, limited geographical coverage and other factors. Majority of the sub-programs focusing on Children with disabilities have the waiting lists.

In addition, it is noteworthy that due to the absence of the quality services for persons with disabilities after 18, they remain without service they need. Therefore, the continuity of service delivery is violated. The inefficiency of subprograms is also caused by insufficient equipment of social services with human and technical resources.

RIGHT TO EDUCATION

INCLUSIVE EARLY AND PRE-SCHOOL EDUCATION

We can say that the dynamics of the implementation of inclusive education, in terms of access to education, on the vocational and general education level (especially in the capital) is increasing, while there are significant barriers in terms of access to inclusive education on the pre-school stage.⁴⁵

In order to effectively implement pre-school education, the Ministry of Education and Science has developed “pre-school education program”, which is based on, in “early childhood learning and development standards”,⁴⁶ however due to its recommendatory nature it does not allow modification of learning and development plans for children with disabilities, according to individual approach to a child.

The adoption of law of Georgia on “Early and pre-school education”⁴⁷ is a step forward, however, Public Defender’s Office case study in 2016 confirms, that⁴⁸ that there are still

44 „Situation on Children’s Rights“ Special Report of the Public Defender, 2015, p. 53 <<http://www.ombudsman.ge/uploads/other/3/3704.pdf>>

45 Civil Development Institute, Inclusive Education Practice in Georgia“, Alternative report of 2016.

46 Early Age Education and Development Standards, National Curriculum and Assessment Center, UNICEF, 2013.

47 The Law of Georgia on Early and Preschool Education. Adopted by the Parliament of Georgia on June 8, 2016.

48 Case N10401/16.

number of problems in pre-school institutions and pre-school education is not fully accessible for children with disabilities.

In order to ensure quality implementation of pre-school education, it is important to establish uniform approaches on the municipal level within the frameworks of obligations determined by law.⁴⁹ Practical and timely implementation of pre-school education by the municipalities, including providence of school readiness program, is also very important. The mentioned municipality Councils in turn should issue a regulatory act on the monitoring, evaluation and reporting system of the program. In addition, in order to ensure equal access to inclusive education, in the process of authorization and supervision, the needs of children with disabilities and identification of qualified service should be taken into account.

It is problematic that there is no official database on children registered in the kindergarten; also there is no differentiated data on types and character of disabilities and about the children's needs.

One of the main problems is that the teachers do not have sufficient support in the process of working with children with disabilities. They do not possess relevant skills and specific knowledge for effective communication with them. Kindergarten associations still autonomously decide what kind of training to organize and the training themes are not prioritized as well.⁵⁰

E.M'S CASE – VIOLATION OF THE RIGHT TO PRESCHOOL INCLUSIVE EDUCATION

In 2016, the Public Defender was addressed⁵¹ by the citizen E.M living in Marneuli municipality village of Shulaveri. The notification was about his/her 4-year-old child with disabilities, the alleged violation of the right to pre-school inclusive education of E.M. As reported, in June 2015 the child was enrolled in Kindergarten in Shulaveri for the probation period. Five days later the kindergarten administration refused to register child due his health condition, and recommended to the parent, to transfer the child to the kindergarten in Kizil-ajlo, a village in Marneuli Municipal territorial unit. Where there is a special class for children with special needs.. Kindergarten staff due to the lack of qualified personnel could not manage child's behavior, which is why the child was aggressive, refusing to take any food or drink. As a result, the kindergarten administration called the parent to take the baby out of the garden. The head of the kindergarten demanded from the parent to make his/her child go through special medical treatment and represent relevant health certificate in order to be registered in the kindergarten.

In the official correspondence received from the Kindergartens' union^{52, 53} the representative of the pre-school education institution was appealing to the child's difficult and

49 The Law of Georgia on Early and Preschool Education, article 7, 8, 10, 14.

50 Goal-oriented Research in Georgia, implemented by the company "Geo-Well" World Vision, within the Project "Social Inclusion of Children with Disabilities in Caucasus Region", Tbilisi, 2014.

51 Case N12467/16.

52 To study the case, the public defender's office officially address to the kindergarten union on the Marneuli Municipality territory (pre-schooling center).

53 N13430/16-18.10.2016.

aggressive behavior, which, according to them, negatively reflected on other children and threatened the staff. From the case analysis it becomes clear, that, to the contrary of the Convention approaches, the administration had chosen easy way out and refused appropriate service delivery. The fact of probation period enrollment of the child must be negatively assessed as well as the fact that the village Shulaveri kindergarten staff does not possess specific skills for adequate communication with children with disabilities and for the management of their behavior. Such practices should be regarded as unjustified and appropriate. Relevant measures must be taken for integration of children with disabilities in the community and residential care / education system.

GENERAL EDUCATION

It should be noted that inclusive education funding on the level of general education is fragmented, and there is no special uniform mechanism in financing students with special educational needs. Existing model does not meet requirements of all children with such needs.

After the ratification of the UN Convention on the rights of Persons with Disabilities, integration of the rights of persons with disabilities to inclusive education, and its implementation in the law of Georgia on “General Education”⁵⁴ should be considered as positive step. However, despite the changes, the statutory regulation of Inclusive education in general education institutions still is meant as a matter of authority not the obligation.⁵⁵ In addition, the law on general education in relation with the accessibility of inclusive education focuses on geographical and linguistic barriers and does not consider disabilities in the similar context.⁵⁶ The status of Special teachers’ and issues related to integrated classes still are not regulated on the legislative level. There is no concept of integrated classes and legal act, which regulates it.

Approval of “Inclusive Education Monitoring Program” should be assessed as a positive step.⁵⁷ However, it is important to enforce mentioned monitoring instrument on the general level of education as soon as possible.

The Ministry of Education and Science does not have statistics of children with disabilities enrolled in general education institutions. By the time of submission information to the Public Defender’s Office, the ministry was generating common data only about the student with special educational needs.⁵⁸

Specialized education system is still functioning in Georgia. Despite the current inclusive education model, existing legislation and practice allows the possibility of specialized schools. Such institutions are incompatible with the objectives of the Convention, which, in turn, is focused on transforming the education system in an integrated and inclusive manner. Herewith, in contrast to the capital, only a few specialized schools operate in

54 The Law of Georgia on “General Education”.

55 Article 33, (2), „c“ of the Law of Georgian on „General Education“

56 Ibid, article 7.

57 Order N31 of January 20, 2016 of the Minister of Education and Science of Georgia January 20, 2016.

58 Correspondence MES 4 16 0050628; 27.05.2016.

regions, which are not accessible for the population due to the physical environment and transportation accessibility issues. In 2015, three blind students were given the opportunity to continue their studies in a public school instead of in special boarding school.⁵⁹ However, this is a single case and such an approach does not have a systematic character.

Teaching quality and continuity of inclusive education remains a challenge. Important number of the children with disabilities, especially in the regions, is not involved in the educational process. Number of teachers and the specially qualified personnel, not adapted physical environment, transportation, not accessible educational institutions, classroom equipment and teaching materials still represents a problem.⁶⁰

Situation in terms of realization of right to inclusive education is especially difficult in regions. Only 171, out of 505 mountainous village schools, have implemented inclusive education.⁶¹ However, even in these cases, inclusive education does not have a complex, comprehensive character. The main problem is that, as a rule, funds allocated for inclusive education are usually spent on the salaries of special teachers and/or psychologists. At the same time funds are not directed on students themselves, in accordance with the individual assessment of students with special educational needs - depending on what the needs of a particular student has e.g. adapted technologies and educational resources, the school's physical adaptation, other support specialists of the school – nurse, a speech therapist, sign language teacher, assistant, transportation, etc.).

The process of Inclusive education is hindered by not adapted public transportation and road infrastructure, as well as not adapted physical environment of educational institutions. According to information of the Ministry of Education and Science,⁶² 777 public schools have a ramp or simple adaptation facilities. Named number is less than one-third of the total number of schools in Georgia. The mentioned adaptation level is extremely low, as just only ramps cannot provide a comprehensive and complete access. It should be noted that there is only a pilot version of alternative educational plan for students with hearing and visual impairments and it is not fully implemented. In terms of adapted educational resources and technologies, progress is less visible at the level of General Education System, compared with specialized schools and professional institutions.⁶³ By March 2016, 1372 special teachers are employed in the public schools, which do not meet all existing needs in practice. In 2016, the Ombudsman's Office studied the case concerning insufficient number of special teachers and psychologists at public schools,⁶⁴ the case concerns situation in N21, N24, N166, N175 and N181 public schools in Tbilisi. The case materials⁶⁵ revealed that number of staff in some schools has not been reasonably chosen and were not in line with actual needs of students. In particular, at N21 public school there was a need to increase the number of special teacher. At N 166 secondary

59 Correspondence MES 4 16 0050628; 27.05.2016.

60 „The Situation of Human Rights and Freedoms in Georgia“ Annual Report of the Public Defender, 2015. <<http://www.ombudsman.ge/uploads/other/3/3892.pdf>>.

61 Civil Development Institute,, Inclusive Education Practice in Georgia “, Alternative report of 2016.

62 Correspondence of May 27, 2016 MES 4 16 00570628.

63 Civil Development Institute,, Inclusive Education Practice in Georgia “, Alternative report of 2016.

64 Case N12707/16.

65 Official Response of the department of inclusive education of the Ministry of Education and Science of Georgia N13457/16-18.10.2016.

school appropriateness of adding new special Teacher or psychologist resource has been revealed, while in contrast to the above-mentioned schools, at N175 public school there were 3 special teachers assigned for 20 students with special educational needs.

It should be noted that special teachers do not have necessary skills to create individual learning plans this can be caused due to the fact that their training quality is not being monitored. In addition, other teachers' engagement in the process of creation of individual educational plan is extremely low. Situation is the same in specialized schools.

In addition, insufficiently low salaries paid to special teachers in most cases attracts non-professional or low quality professional staff, resulting in frequent termination of employment, which adversely affects motivation and education process quality. Unlike other academic discipline teachers, there are no mechanisms to encourage motivation of special teachers which would make it possible to improve their financial situation along with professional development.

Several other problems revealed with regard to the multidisciplinary team should also be noted.⁶⁶ The quantity and systematic involvement of the team members in the educational process is an issue - the team members have obligation to provide student's assessment, re-evaluation, consult special teachers and monitor. Practice analysis shows that due to insufficient number of the team members, they are mostly limited to the initial appraisal of the student. Consultation is provided only when the school asks for immediate intervention, to solve specific problem related to the student with special educational needs.

At the same time, assessment / re-evaluation of the students with special educational needs, as well as case management, inclusive education progress measurement, monitoring of the learning process and supervision of the teaching process are not / cannot properly be implemented. One of the challenges is the lack of narrow profile specialists in the multidisciplinary team. Properly trained human resources and a shortage of specialists such as occupational therapist, psychologist, and child psychiatrist are also in the agenda.

Inconsistent approach to the different needs of children with disabilities, also insufficient legislative basis of inclusive education, to some extent, promotes discrimination against children with disabilities. Functions of a multidisciplinary team members of inclusive education should be defined by legislation in detail, which will increase its effectiveness at schools in terms of the monitoring and supervision of the implementation of inclusive education and . The positive cooperation between school and the parents of students with special education needs is also very important.

Implementation of the Convention based approaches in practice is prevented with other impediments as well. Parents of children with disabilities do not have enough support, in most cases they are not informed about their children's needs. In addition, influence of the stereotyped attitudes is still very strong.⁶⁷ All these factors, in the circumstances, when children's involvement in educational process takes place based on the will of

66 Civil Development Institute,, Inclusive Education Practice in Georgia “, Alternative report of 2016.

67 See relevant chapter in the parliamentary report (2016) elaborated by the Equality Department of the Office of Public Defender of Georgia.

their legitimate representatives, increases risks to leave more children beyond education system. Full and effective involvement of children with disabilities in general education system is prevented by the failure of the society to perceive that children with disabilities are fully fledged members of the society. Alienation from the public society, in turn causes stigmatized attitude toward them.

In 2015 the program on the “Educational Opportunities for children left out learning process” started a pilot service, offering education to the adults in crisis and transit centers. However, there are some children beyond state services; their numbers are unknown since they are invisible to the system. It should be noted that the current state policy with respect to children who stays out of education system is counterproductive and does not ensure their integration into the system. At the same time, there are no statistical data regarding how many children are left (including children with disabilities) beyond the formal education.

It is necessary to establish an effective referral mechanism, which allows children’s proactive involvement in the education system by the state and provides accessible services, as well as efficient transition process.

VOCATIONAL EDUCATION

The law of Georgia on “Vocational Education”⁶⁸ in contrast with the Law of Georgia on “General Education”,⁶⁹ is not focused on introduction of the individual approach in terms of persons with disabilities. The law does not recognize such a target group and does not provide specific approach methods in relation with them. Article 31 of the law, which refers to the equal treatment to the students, is not characterized by a complex approach, and distinguishes only one factor of “physical ability”.⁷⁰

Since 2013 vocational inclusive education system began collecting statistical data. However, at this stage the ministry does not own any differentiated data and only references is made, on the general number of persons with special educational needs.⁷¹

On vocational education level, space adaptation is a challenge as well. Out of 21 state vocational training schools, in 2015, only five state vocational training centers’ physical environment adaptation process has started according to the “universal design” principle.⁷² Despite the fact that at this point, all authorized vocational college has ramps (which are included in the requirements of authorization), the environment still should be adapted for various needs in different ways (training rooms, bathrooms, workshops, etc.), movement in the building and access to teaching materials is still problematic.⁷³

68 The Law of Georgia on Vocational Education and Training.

69 The Law of Georgia on General Education

70 Article 31 (1),“B “ of the Law of Georgia on Vocational Education and Training.

71 Correspondence MES 4 16 00570628.

72 Tbilisi: Societal College “ Merani” „Spektr.“ Kutaisi: Societal College „Iberia“. Akhaltsikhe: Vocational College „Opizari“. Gurjaani: Vocational College „Aisi“.

73 „Accessibility of Vocational Education and Training for Vulnerable Groups in Georgia“ 2015. Research implemented within the frameworks of the Initiative of the Ministry of Education and Science of Georgia Concerning “Introduction of Inclusive Education in the Vocational Educational and Training Process”.

Functioning of the Advisory group on inclusive education, ensuring monitoring, evaluation and assurance of relevant recommendation on inclusive vocational education initiatives, should be assessed positively. The group meets once per 6 months.

VIOLENCE AGAINST CHILDREN WITH DISABILITIES

During the reporting period, case analysis⁷⁴ shows that the main challenge in terms of the protection of children with disabilities from violence is problem of identification of violence committed against them. Herewith, following issues are problematic with this regard: protection of minors from violence, the implementation of rehabilitation program in practice, lack of social service professionals, psychologists, as well as insufficient cooperation between the relevant agencies.

Georgian legislation still does not separately regulate the notion of domestic violence of persons with disabilities (including children) and it is integrated in the regulations on domestic violence general policy, regulated by the law of Georgia on the “Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence”.⁷⁵ The interests of particularly vulnerable group and specific approach to them are not taken into consideration even within the framework of the public bodies’ internal guidelines and methodologies.

Recording the number of domestic violence cases and data collection concerning the issue is still a challenge. There are no differentiated statistics on domestic violence against children with disabilities with regards the physical, psychological, economic, sexual and other forms of domestic violence. It should be noted, that only data about domestic violence is based on the available recorded number of issued restraining orders, which do not reflect the real extent of the problem. Mentioned problem, along with number of other factors, is caused by the lack awareness, fear of retaliation and stigmatization, lack of the trust in law enforcement bodies and shortcomings revealed in the process of providing protection and assistance services. The main threat is that violence against children with disabilities are often “invisible” and is not responded adequately, which, to some extent, is due to both - the public and the law enforcement agencies’ low awareness, and stereotypical attitude towards the issue.

Effective supervision of the enforcement of protective measures remains as a challenge. It is necessary to introduce a monitoring mechanism, which would enable the relevant bodies to observe families where children with disabilities abuse cases have been identified and at the same time, set up the database that allows better planning of preventive measures.

74 N9597/16; N8817/16; N13888/16.

75 The Law of Georgia on “Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence”.

Coordination and information exchange between the institutions responsible for the elimination of domestic violence is still a problem. Case-studies often reveal flaws, in the evaluations carried out by both the law enforcement agency, and the Social Service Agency. In some cases, information provided to the Ombudsman's Office by the mentioned agencies contradicts each other. In some cases, despite the confirmation of violent incidents by a social worker, it is difficult for law enforcement bodies to identify abuse and they fail to adequately react on it. The issue is particularly acute in cases of psychological violence. The situation is aggravated by the fact that the policemen do not have specific communication skills while working with persons / children with disabilities.

In practice, the aspects of appropriate qualification of the personnel working in residential institutions for children with disabilities is problematic, in terms of beneficiaries' difficult behavior management and conflict resolution.

M.M. CASE- ALLEGED ABUSE OF CHILD WITH DISABILITIES

In 2016, the Public Defender's Office studied the case, ⁷⁶concerning the beneficiary of Kodjori boarding house for children with disabilities, the case was about alleged human rights violations against M.M. In particular, on July 26, 2016, the M.M. -broke a glass, which is why the tutor verbally and physically abused (raised his ear) the child. Due to the incident, the head of the institution verbally assaulted the beneficiary and as a punishment measure refused to take the child for a walk with other beneficiaries.

Based on the official letter of the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking ⁷⁷ facts of physical or psychological abuse of the child are absolutely denied. The law enforcement officers have not been informed about the incident. The case file shows that the punishment of the beneficiary was carried out based on the assessment of the psychosomatic condition of the child, however there is no argumentation about what kind of educational impact this punishment can have. In addition, there is no information assessing the beneficiary's general situation. Clearly, the incident escalation was caused by the conflict between M.M. and other beneficiaries, M.K. The staff failed to manage the conflict situations neutralize the difficult behavior of the beneficiaries and de-escalate the situation. Such practice cannot obviously ensure the safety of the beneficiaries and their protection from violence or abuse.

According to the National standards, ⁷⁸ all beneficiaries of persons / children with disabilities daily-specialized institutions should be protected from any kind of violence or abuse. The service provider should be familiar with and guided by the current legislation. ⁷⁹ According to the regulations of Kodjori boarding house for children with disabilities, the branch should provide adequate facilities for the beneficiaries, a safe and secure environ-

76 N9597/16.

77 №07/1018-11.08.2016.

78 The Order N01-54/N of the Ministry of Labour, Health and Social Affairs on the " Approval of Minimum Standards of the Service Delivery in Specialized Daily Care Institutions for Persons with Disabilities and Older Persons", dated back July 23, 2014. Annex, Article 10.

79 Among them Law of Georgia on the Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence".

ment and should promote the quality of service, and most importantly, the beneficiary has right to be protected from all forms of violence. The administration of the institution should provide adequate measures for psychosocial assistance of the beneficiaries.

WOMEN WITH DISABILITIES

State policy in the field of health and social protection is not sensitive towards the needs and interests of women and girls with disabilities. Despite the fact that mentioned groups based on the Convention approach are with different needs, state policy documents in the area of human rights, as well as state programs, do not imply them as an independent target groups. Their needs are not considered during creation of state program development and budgeting. This applies to health care, social rehabilitation, education, employment and other programs.

It is known that in the current state medical insurance system has recently included persons with disabilities; however, women with disabilities are still not able to use health services based on their specific needs. Explicitly should be noted, the issue of access to reproductive and sexual health services. The necessary medicines are not provided properly. Most beneficiaries are financially dependent only on the state social package, which does not allow purchasing sufficient medicines.

Services to women with disabilities in the state care institutions are being delivered with flaws.. The order of the Ministry of Labor, Health and Social Affairs on the “Approval of Minimal Standards of Specialized Daily Care Institutions for Persons with Disabilities and Elderly People”,⁸⁰ issued on July 23, 214 2014, does not reflect needs of the mentioned target group.

One of the main challenges, of law enforcement agencies is to reveal violence against women with disabilities. Especially, in case if an alleged abuse victim has a mental health problem.

As a result of the research conducted by non-governmental organization “Partnership for Human Rights” on “Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends”⁸¹ it was concluded, that general regulations in legislation, which do not consider individual needs of the women with mental health problems, often result in violence against women with psycho-social needs. Existing legislation is General, and is absolutely not sensitive to gender or disability issues.⁸²

80 The Order N01–54/N of the Ministry of Labour, Health and Social Affairs on the “ Approval of Minimum Standards of the Service Delivery in Specialized Daily Care Institutions for Persons with Disabilities and Older Persons”, dated back July 23, 2014. Annex, Article 10.

81 „Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends “, Nana Gochiashvili, Tbilisi, 2015, NGO “Partnersho for Human Rights”.

82 „Violence Against Women with Psycho-Social Needs in Georgia - The Main Trends “, Nana Gochiashvili, Tbilisi, 2015, NGO “Partnersho for Human Rights”. Page.12 (Georgian Version).

Vulnerability of women with psycho-social needs is confirmed by the applications submit to the Ombudsman’s Office, which are mainly related to women’s mental health rights violations.

Majority of applicants claimed that they were taken and placed in mental health Institutions either by force and / or threat and intimidation on behalf of the police.⁸³

E. A. CASE

Woman with disabilities E.A (Case N11467) addressed the Public Defender with application claiming, that she was tricked to sign consent form for voluntarily psychiatric care and hospital administration refused to allow her leave the facility. Case study by the Public Defender revealed⁸⁴ that E.A. was placed in the mental health hospital accompanied by emergency service and the police. However, according to the information submitted by mental health establishment, the patient was voluntary placed to psychiatric assistance facility.

The similar situation is in other cases.⁸⁵ The patient was forced to sign some unidentified for them documentations when placed in the facility. In this case again, the institution confirms, that the person was taken to the medical center by disaster brigade and police accompaniment.⁸⁶

Special Report of the Public Defender’s Office on the Monitoring of Mental Health Institutions in the report refers to the issue of informed consent during hospitalization, according to which in the person’s dignity and personal integrity based mental health system, the patient’s informed consent should be a prerequisite for the providence of the psychiatric aid. The consent to the treatment can be called free and informed only if it is based on the patient’s acknowledgment of condition and offered treatment through accurate and detailed information delivered to them.

On the basis of appeals to the Public Defender’s Office, it can be concluded, that the level of awareness of persons receiving psychiatric care – both voluntary and involuntary - about the nature and duration of treatment, as well as about their rights and medicines to be taken, is extremely low.⁸⁷ In some cases,⁸⁸ the patients get information about the nature of psychiatric treatment (voluntary / involuntary) only afterwards, when the treatment is over and the patient has left the hospital via the Public Defender’s Office.

Alleged acts of violence against persons with psycho social needs in Mental Health stationary and ineffective investigation of such acts should be discussed separately.

83 Case N8977of Public Defender of Georgia ; Case N11746/16; Case N12771/16; Case N11467/16; N6827/16.

84 Correspondence N2552/3 of September 14, 2016 of the LTD O. Gudushauri National Medical Center.

85 The case of the Public Defender’s office of Georgia N6827/16; N8977/16.

86 Correspondence N154 of the LTD Tbilisi Mental Health Center.

87 The case of the Public Defender’s office of Georgia N12771/16; N9373/16; N11567/16; N6827/16.

88 The case of the Public Defender’s office of Georgia N9373; N6827/16.

CASE OF M.SH.

Public Defender's Office case (N2296 / 16) is related to the alleged physical abuse of the woman patient by the hospital's staff, which occurred in February 2016. According to the case materials, M.Sh appealed to the prosecutor's office on March 15, 2016. According to the Chief Prosecutor's Office, citizen's application was sent to Tbilisi Police Department's district inspector division (3rd department).

It should be noted that in this case the investigation process was delayed. At last, the fact of physical abuse, namely beating of M.Sh. was not confirmed and on December 23, 2016, according to the criminal code of Georgia, the investigation was terminated due to the absence of a criminal actions.⁸⁹

VIOLENCE AGAINST WOMEN WITH DISABILITIES IN INSTITUTIONS

In terms of protection of women's rights under institutional care their placement in the Mental Health Institutions is one of the main challenges.

During 2016, Case study by the Public Defender's Office had confirmed that during the conflict situation between the beneficiaries at the representatives of boarding house beneficiaries' transfer to the Mental Health hospitals is a common practice.⁹⁰

M.KH'S CASE⁹¹

Public Defender's Office got information that on September 25, 2016, the beneficiary of Dusheti boarding house for persons with disabilities, M.KH, was taken to the mental health institution in Tbilisi by the police, against beneficiary's will.

According to the information submitted to the Public Defender's Office, M.KH was placed into the Mental Hospital based on boarding house psychiatrist's recommendation and the beneficiary was receiving psychiatric treatment voluntarily. The medical facility noted that the patient would be returned back to Dusheti boarding house for persons with disabilities as soon as the other beneficiary, person in wheelchair, who was the main reason to cause aggressive behavior of M.Kh would be taken to another facility.⁹²

89 The Ministry of Internal Affairs' Police Department district inspectors' letter MIA 8 17 00325203 (09.02.2017).

90 See. The Public Defender's special report on the Legal Situation of Persons with Disabilities in the State Care Institutions, October 21, 2016. <<http://www.ombudsman.ge/en/reports/specialuri-angarishebi/legal-situation-of-persons-with-disabilities-in-the-state-care-institutions.page>>.

91 Case N12771/16 of the Public Defender of Georgia.

92 Correspondence N281 of the LTD Tbilisi Mental Health Center.

After the additional appeal from the Public Defender’s Office, the institution denied the fact that the patient’s stay in the mental health institution was artificially prolonged and claimed, that M.Kh had stayed there only for the period necessary for examination and treatment of the patient.⁹³

This fact was also denied by the State Fund for Protection and Assistance of (Statutory) Victims Of Human Trafficking. According to their information,⁹⁴ administration of boarding houses for persons with disabilities manages the conflict situation according to the order N07-201 / O on “the Internal Regulations of the territorial units (branches) of the State Fund for Protection and Assistance of (Statutory) Victims Of Human Trafficking” of the Director of the Fund issued on December 3, 2014. At the same time, the Fund urges, that use of the practice of placement beneficiaries in Mental Health Institutions in order to solve conflict situations between the beneficiaries by the head of the branches of the Fund, has not been confirmed.

RIGHT TO HEALTH OF PERSONS WITH DISABILITIES

During the reporting period, there had been no proper tangible changes implemented in order to guarantee the right to health of persons with disabilities. Existing state health care programs do not meet specific and different needs of these individuals. Their involvement in screening programs, as well as to sexual and reproductive health services remains a challenge.

Health Care Infrastructure accessibility problems significantly hinders persons with disabilities opportunity to have access to the full scope of the health care system. Communication with Medical staff and gain of necessary information remains a problem for persons with hearing and talking problems, as well as persons with visual impairments and blind persons.

Training and awareness rising of Doctors and other specialist on the right of the persons with disabilities doesn’t have systemic character. The latter is crucial for the proper and effective communication with persons with disabilities and for the improvement of the service delivery process.

93 Correspondence N290 of the LTD Tbilisi Mental Health Center.

94 Correspondence of the State Fund for Protection and Assistance Of (Statutory) Victims Of Human Trafficking N07/1378 (10.11.2016).

MENTAL HEALTH AND EXISTING PROBLEMS

Mental health Care is one of the most significant challenges before the state in the process of realization right to Health by Persons with Disabilities.

In 2017, changes in mental health funding methodology made through the approval of the state health care programs by the Government of Georgia,⁹⁵ was followed by the sharp criticism on behalf of the persons working in the field and from the civil sector. According to the information spread, within the current funding model part of the service providers, in particular, multi profile clinics, refused to participate in the state program and provide psychiatric services, which, in turn, worsens the conditions of persons with mental health problems.

The above-mentioned changes may significantly slow down the process of deinstitutionalization, which according to the State concept on mental health is one of the most important obligations of the state.

During the reporting period, the Public Defender's Office carried out the monitoring of the implementation of the mental health development State Action Plan for 2015-2020. Monitoring of the document revealed that the actions to be fulfilled by current period, is not completed yet and some part of the strategy implementation work has only just begun.⁹⁶

For 2016, hospital sector funding of the mental health (72%) is still considerably higher than outpatient services (23%) funding. Funding of Community based mental health services remains disturbingly low (1.5%).

During 2015-2016 years, the number of beneficiaries who received community-based mobile team services reached 40 persons per year on average.⁹⁷ Mentioned indicator, taking into account its geographical coverage and the lack of the budget cannot be considered sufficient for the elimination of the deficit of community service.⁹⁸ It should be noted that the above mentioned service is provided only in Tbilisi.

According to existing information, rate of re-hospitalization in the mental health care system is still high, as well as the number of patients hospitalized for more than 6 months.⁹⁹ Providence of further outpatient services after hospitalization for the purposes of insurance of continuity of service is an issue.¹⁰⁰

95 Ordinance of the Government of Georgia №638 of December 30, 2016 on the approval of 2017 state health-care programs.

96 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), letter from the Ministry of Education and Science MES 9 17 00033835 (17.01.2017), the letter of the Ministry of Corrections MOC 3 17 00060376.

97 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), p.9 (Georgian version).

98 Annex 12, article 8 of the Ordinance of the Government of Georgia №638 (of December 30, 2016) on the approval of 2017 state healthcare programs.

99 The letter of the Ministry of Labour, Health and Social Affairs N01/5664 (31.01.2017).

100 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), 83.10.

In 2016, the number of psycho-social rehabilitation centers was not increased. Mental health deinstitutionalization strategy document has not been developed so far. According to the information from the Ministry of Labor, Health and Social Affairs, its development is planned in 2017.¹⁰¹

Georgian mental health field is experiencing a severe shortage of human resources, which is expressed in at least 250 psychiatric specialist deficiencies in the country. In 2016, the growth rate of medical personnel in the specific field is not registered.

Raising the qualification of people working in mental health care field remains a challenge. 120 primary health care doctors were trained in 2016 on the issue of managing the mental health patients at the outpatient level. Among the activities planned for the future are the Council of Europe funded, six cycle of nationwide training program for mental health institutions, physicians, nurses and social workers, on the topic of human rights, ethics and patient care.

The Ombudsman believes that planned measures and measures taken in 2016 cannot be deemed as effective for advancing qualification of personnel working in mental health care field.

Changing community attitude to mental health problems and reducing stigma about persons with mental health problems, strengthening their families and organizations remains as a problem, as well as the mass media representatives awareness raising on key issues of state mental health policy.

Infrastructure of psychiatric institutions is an important challenge as well. The measure taken in this regard are: selling of the state-owned company "Acad. B. Naneishvili National Mental Health Center" 95% of shares in the form of direct purchase items to "B & N". As well as the signed minute of the meeting with the trade and economic advisor in the office of the Republic of China Embassy to Georgia for the study of construction of the technical and economic base of Georgian psychiatric hospitals. The latter includes equipment and construction of mental health hospitals in the cities, Telavi and Senaki.¹⁰²

It should be noted that besides the fact that the state does not take enough measures for the rehabilitation of mental health institutions, the above-mentioned cases are related to the strengthening of the large residential institutions, which is not in line with the strategy defined by the state on deinstitutionalization process.

Suicide prevention program of the persons with psycho-social needs has not been developed during 2016. According to the current information, working on the strategy is planned in 2017. By the technical support of the Council of Europe the project of internal inspection and monitoring mechanism of the psychiatric institutions was created, however the process is not yet completed. The Ombudsman considers that timely implementation of this mechanism is crucial for the proper protection of the right to mental health.

One of the main challenges for the state is to development mental health services in the

101 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), 33.13.

102 The letter of the Ministry of Labour, Health and Social Affairs N01/2518 (16.01.2017), 33.2.

penitentiary system. According to the information provided by the Ministry of Corrections',¹⁰³ the management of emergency / crisis intervention, suicide risk management, mild mental disorders and behavioral treatment, stationary treatment, management of side effects of the psychotropic medication are evaluable in system. In 2016, the Ministry approved suicide prevention program for the accused /prisoners.¹⁰⁴

For the success of the mental health action plan, it is important to continuously implement set of measures that will make it possible for people with disabilities to effectively realize their rights.

RECOMMENDATIONS

TO THE PARLIAMENT OF GEORGIA:

- To ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities as soon as possible
- To fully harmonize national legislation with the UN Convention on the Rights of Persons with Disabilities principles

TO THE LOCAL SELF-GOVERNANCE BODIES:

- To ensure that the persons with disabilities and/or representative organizations take part in the process of creation and work of regional and local councils on disability issues
- To take needs of children with disabilities into account while accumulating municipal budgets; strengthen existing services and their coverage

TO THE GOVERNMENT OF GEORGIA:

- To ensure creation of effective implementation and coordination mechanism of the United Nations Convention on “the Rights of Persons with Disabilities “
- To set obligation for to the collection of appropriate statistical information about persons with disabilities
- To accumulate sufficient funds for the social security budget to fully satisfy the needs of children with disabilities and make effective implementation of existing programs possible

103 The letter of the Ministry of Corrections of Georgia MOC 3 17 00060376 (25.01.2017).

104 More detailed information regarding the topic is available in the annual parliamentary report prepared by the national prevention mechanism of the Office of Public Defender of Georgia.

- To make national policy, strategy and action plans focus on the needs and requirements of women and girls with disabilities
- To ensure timely and effective implementation of activities determined by 2015-2020 National Action Plan on the Development of Mental Health Care by responsible State Agencies

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

- To develop and implement social model based on which disability status will be granted to the person
- To ensure re-assessment of the methodology for evaluation of socio-economic conditions of the vulnerable families (households) and its formation in a way that makes it possible to provide families with children with disabilities with relevant state allowance To strengthen identification of the problems in early age for children with disabilities, timely intervention and involvement in relevant services / programs
- To increase number, coverage and geographical availability of the services for each and every child with relevant need, provided by the State program on Social Rehabilitation and Child Care.
- To promote the process of deinstitutionalization, and considering the best interest of a child, their reintegration in the biological families, through strengthening their families and supporting service implementation
- To ensure reasonable placement of children with disabilities in foster care, considering the best interests of a child, as well as to conduct systematic and regular trainings for foster families in order to raise their awareness on children's rights and requirements
- To inform parents of children with disabilities about the programs and services in the accessible form
- To ensure the continuity of services, , by offering relevant supportive services oriented on the needs of persons reaching 18 and leaving the state care
- To ensure effective identification of children with disabilities who are the victims of violence and their psycho-social rehabilitation
- to ensure Improvement of the health insurance system in such a way that women and girls with disabilities have possibility to benefit from health care services based on their needs, including reproductive health services
- To provide and strengthen community-based rehabilitation service, including increasing number of the community-based mobile teams and expand their coverage areas
- To implement a mental health service provider institutions' monitoring and control system mechanism

- To provide timely implementation of activities developed regarding mental health within the framework of national action plan of 2015-2020 on the Development of mental Health Care

TO THE STATE FUND FOR PROTECTION AND ASSISTANCE OF (STATUTORY) VICTIMS OF HUMAN TRAFFICKING:

- To prohibit the transfer and / or threat to transfer of beneficiaries of the state care institutions to the Mental Health Institutions as a method of punishment
- To ensure the establishment of a mediation and take measures for conflict de-escalation, including the using the services of other organizations' psychological intervention
- For the prevention of violence on beneficiaries , ensure a timely identification / registration of acts of violence and provide victims with legal, social, medical and psycho-social rehabilitation
- To ensure elaboration of complex behavior management guidelines and protocols at children's daily specialized institutions, where non-verbal and verbal aggression management procedures will be envisaged in detail, in accordance with the law of Georgia and international standards. These issues should be reflected in the internal regulations
- To implement professional and support staff training in institutions for children with disabilities for specific needs of the psychiatric / behavioral problems / violence management related issues

TO THE CENTRAL ELECTION COMMISSION:

- To implement full adaptation of polling stations and ensure promotion of participation and involvement of persons with disabilities in election administration activities

TO THE MINISTRY OF EDUCATION AND SCIENCE OF GEORGIA:

- To conduct needs based study for children with disabilities enrolled in pre-school, secondary, vocational institutions and to develop differentiated database concerning students with disabilities
- To ensure awareness raising about the needs of children with disabilities for the educational staff, including organizing trainings for the spec. Teachers on preparation of individual learning plans
- To ensure adaptation of the physical environment, infrastructure, training and teaching materials of the educational institutions in a very limited period, adoption of appropriate communication mechanisms, as well as transportation matters for educational needs

- To replace recommendation character of defining the number of special teachers and psychologists with the normative mandatory one and revise required numbers of spec. Teachers and psychologists in educational institutions
- To implement specific needs-based funding model for students with special educational needs
- To support parents of children with disabilities to have access to the appropriate level of information, for purposes of their children integration in the education process
- To implement effective referral mechanism, in close cooperation with the social service agency, that provides finding the children with disabilities outside education system and involving them in the educational process, herewith, the effective implementation of transition process
- To promote the involvement of persons with disabilities in vocational education and training growth of thematic programs, at the same time to review the professional education legislation gaps for further improvement
- The specialized school education should be discussed as the last resort and a temporary opportunity for persons with disabilities to ensure the right to education, developed and introduce plan students' inclusion in the mainstream education

TO THE MINISTRY OF INTERNAL AFFAIRS:

- To implement effective measures for identification and insurance of adequate response to address acts of violence against children with disabilities, including the development and implementation of the guidelines
- To ensure effective coordination with the social services in order to respond adequately to the alleged acts of violence against children with disabilities
- To conduct differentiated statistics of children with disabilities as victims of domestic violence
- To take the appropriate preventive measures and conduct monitoring of children with disabilities to eliminate violence against them, including measures to raise awareness
- To ensure training of the law enforcement agency representatives about the rights and specific needs of the persons with disabilities, especially when it comes to domestic violence and the follow up response

TO THE MINISTRY OF CORRECTIONS OF GEORGIA

- To take all necessary measures for the development of mental health within the framework of 2015-2020 National Action Plan, in the competences of the Ministry, for their timely and effective implementation.