

**COMPLIANCE OF SOCIAL
AND HEALTH CARE PROGRAMS
OF LOCAL SELF-GOVERNMENTS
WITH THE PRINCIPLE
OF EQUALITY**

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Table of Contents

Introduction	4
Terms and criteria inciting discrimination	5
Discriminatory programs on the ground of sex	7
Programs tailored to the needs of persons with disabilities	8
Accessibility for persons with permission of permanent residence	12
Age discriminatory regulations	14
Marriage status/registration request	15
Duration of registration/residence at the municipality	16
Place of birth	18
Detailed characteristics of the program	18
Conclusion	19
Recommendations	21

Introduction

The Public Defender repeatedly referred in its recommendations¹ and reports² the importance of implementation of the principle of equality in social and health care programs and the challenges existing in the country in this regard. The Ombudsman on the one hand, focused on the problematic issues of programs at the central level and, on the other hand, stressed the existence of discriminatory criteria while identifying target groups in social and health care programs developed by local governments.

The practice of the Public Defender has shown that often, the health and social programs proposed by municipalities contain discriminatory criteria on various grounds. These programs have a special impact on the health and quality of life of vulnerable groups, as they are considered to be the main beneficiaries.

First of all, the Public Defender considers it important to highlight the good practice of cooperation with local municipalities and positive experiences in the fight against discrimination. It should be noted that based on numerous trainings and information meetings organized by the Public Defender's representatives in local municipalities, as well as based on the individual applications submitted to the Public Defender's Office, it was necessary to study and evaluate social and health care programs in the perspective of the Georgian Law on Elimination of All Forms of Discrimination.

Pursuant to Article 6 of the Law of Georgia on the Elimination of All Forms of Discrimination, the Public Defender of Georgia supervises the elimination of discrimination and ensuring of equality, it examines specific facts of discrimination and issues recommendations or prepares general proposals on the issues on avoiding of discrimination and on struggling against it and sends those proposals to the all-appropriate agencies and persons.

Pursuant to Article 3 of the Law on the Elimination of All Forms of Discrimination, the requirements of this law apply to the actions of public institutions, organizations, individuals and legal entities in all areas, only if these actions are not regulated by another legal act.

The state has a wide discretion in planning social and health care programs, however, it is obliged to follow the constitutional principle of non-discrimination while regulating social issues.³ This implies that any social and health care program while determining beneficiaries, should not treat unfavorably other persons in a similar situation, based on any of the grounds.

Therefore, in this special report, the Public Defender reviews the issue of compliance of social and health care programs implemented by local self-government bodies in 2020 with the anti-discrimination law. There will be

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- 1 General proposal of the Public Defender on the issue of preventing and fighting discrimination. Available at: <https://bit.ly/3gbNjog>;
Also: General Proposal of the Public Defender of Georgia for 2018 on the issues of preventing and fighting discrimination against persons receiving long-term psychiatric inpatient services. Available at: <https://bit.ly/39w3Zxy>
Also: Recommendation on establishing the fact of discrimination on the grounds of disability; Available at: <https://bit.ly/3f6S4Yc>
Also: Recommendation of the Ministry of Labor, Health and Social Affairs of Georgia on establishing direct discrimination on the grounds of citizenship. Available at: <https://bit.ly/30T6MNC>
Also: Recommendation to the Government of Georgia and the Ministry of Labor, Health and Social Affairs of Georgia on direct discrimination on the grounds of citizenship; Available at: <https://bit.ly/304CrV>
Also: Recommendation to the Minister of Labor, Health and Social Affairs of Georgia on discrimination against citizens on the grounds of citizenship; Available at: <https://bit.ly/3g0jINn>
Also: Recommendation on establishing direct discrimination on the grounds of restriction; Available at: <https://bit.ly/2D7c3ZE>
 - 2 For example: Special Report of the Public Defender of Georgia of 2019 on the fight against discrimination, its prevention and the state of equality; P. 28-32. Available at: <https://bit.ly/3f4XWBp>
 - 3 Decision of Constitutional Court of Georgia, of June 11, 2013 case N 1/3/534 "Georgian citizen Tristan Mamagulashvili vs. The Georgian Parliament"

reviewed such problematic issues, as: The practice of using discriminatory incentive criteria and terms; existence of discriminatory criteria on the grounds of sex; age; unequal regulations on marriage status / registration requirements; the practice of unjustified registration / duration of residence in the municipality, which may have a discriminatory effect on beneficiaries; the document also reviews the place of birth as a prerequisite for receiving social and health benefits; the problems related to the detailed nature of the programs; gaps in programs tailored to the needs of people with disabilities; the issue of access to social and health care programs for individuals with permanent residence permits will also be reviewed.

At the same time, in addition to highlighted problematic issues, the Public Defender considers it important to note that the social programs developed in some municipalities should be evaluated positively, for example, the program on support for victims of violence and newcomers from penitentiary institutions, left without support of the family in Tetrtskaro municipality⁴. In this case, it should be emphasized that the amount of assistance will not significantly improve the situation of these individuals, although it is important to note that the local government sees the needs of this particular group. Also, based on the same argument, the Program of Social Assistance of Sagarejo Municipality⁵ should be mentioned, the program provides assistance to individuals who recently left the state care system; beneficiaries of the program are registered in the municipality, and are excluded from the state care system, in particular from foster care and small family homes, because of adulthood, in the age of 18-24. It is also important to mention the Gender Equality Promotion Program in Tkibuli Municipality⁶, aiming to ensure non-discrimination in all areas of public life, create appropriate conditions for the realization of equal rights, freedoms and opportunities for women and men. The Ombudsman considers that it is important for social and health care programs to identify real needs of people living in the area and that various vulnerable groups have access to the provided assistance.

Terms and criteria inciting to discrimination

According to the Law of Georgia on the Elimination of All Forms of Discrimination, it is prohibited to discriminate as well as to incite to discrimination, or to promote negative stereotypes and stigma. While assessment of health care and social programs implemented by local self-government bodies in 2020 by the Public Defender, the practice of using criteria / terms that incite to discrimination was revealed in some legal acts.

- ***Some legal acts governing social and health care programs contain incentive terminology for discrimination;***

For example, people without eyesight in the Tsageri Municipality⁷ Social Assistance Program are referred to as blind disabled people; Social programs in Tetrtskaro⁸ and Akhalkalaki⁹ municipalities refer youth with autism spectrum

4 Ruling of the Tetrtskaro Municipality council, N292 of December 27, 2019 on approving of healthcare and social insurance program for Tetrtskaro municipality population in 2020; Article 20, within the program assistance will be issued to the persons who are registered in the municipality, have status of victim of violence and also to the persons who were released from penitentiary organizations and were left without the support of the family. The assistance will be issued once a year, in the amount not exceeding 200 GEL

5 Ruling of the Sagarejo Municipality Council #19, of December 27, 2019. On approving of social support for Sagarejo Municipality population in 2020.

6 Resolution N18 of Tkibuli Municipality Council on approving the 2020 program budget of Tkibuli Municipality.

7 Approval of the rules for issuing and receiving social assistance from the 2020 budget of Tsageri Municipality; Article 8

8 Resolution of Tetrtskaro Municipality Sakrebulo № 292 December 27, 2019 Tetrtskaro on the approval of the municipal program of health and social security of the population of Tetrtskaro municipality in 2020; Article 26

9 Resolution of Akhalkalaki Municipality Sakrebulo on approving the rule of issuing social assistance from the 2020 budget of Akhalkalaki Municipality №29 December 17, 2019. Article 12. Available on the website: <https://matsne.gov.ge/ka/document/view/4737195?publication=0>

as ill; children with Down Syndrome are mentioned as ill in the social program of Samtredia,¹⁰ Gardabani¹¹ and Tianeti¹² Municipalities; The program of Kareli Municipality¹³ mentions people with disabilities as disabled ones. The Gardabani Municipality¹⁴ Sub-Program for protection of people with disabilities mentions people bind to wheelchairs, among beneficiaries.

The Public Defender emphasizes that it is important that the situation of people with disabilities to be terminologically correct so that attitude towards them is not driven by compassion, but they are perceived as full-fledged members of society. The term “disabled” is unacceptable, it means invalid, unused, useless and it is inadmissible to use this word towards people with disabilities. Similarly, Down syndrome and / or autism spectrum disorder is a condition and not a disease. The ombudsman notes that the problem is not the disability itself, but an environment that is not tailored to the needs of each individual. This is why it is unjustifiable to focus on a person’s ability.

However, it should be noted that the legislative framework has crucial importance in state/local governance and public relations. This framework is a living organism and should be constantly updated striving to establish the principle of equality between individuals and the formation of a society free from stereotypes.

- ***Existing health care programs at the municipal level often explicitly exclude specific groups from the benefits, facilitating their segregation from the community.***

For example, the Akhalkalaki¹⁵ municipality does not fund drug-induced medical services; similar approach has been developed in other municipalities, for example, Vani Municipality¹⁶ does not reimburse medical assistance programs which include treatment of sexually transmitted diseases;¹⁷ same rule is provided by the Adigeni Municipality¹⁸ Medical Assistance Program. In addition, for example, the medical program of Baghdad Municipality excludes reimbursement for medical services caused by venereal diseases.

According to the Public Defender, a health care program should be focused on the source of the disease, it should be based on the state of human health and individual needs. For example, covering of the treatment for drug-related illnesses may be vital for people who are, at the same time, on an equal position with other beneficiaries of the program. However, this rule incited to discrimination and reinforces negative stereotypical attitudes in society towards drug users and people with sexually transmitted diseases.

10 On the approval of the 2020 targeted social program of the Health and Social Protection Service of Samtredia Municipality. 23/12/2019; Article 16

11 Resolution of Gardabani Municipality Council №20 December 25, 2019 on approving the sub-programs of the social program envisaged by the 2020 budget of Gardabani Municipality; Available at: <https://matsne.gov.ge/ka/document/view/4748139?publication=3>

12 Resolution of Tianeti Municipality Council №50 August 24, 2018; On the approval of the rule of providing social assistance to the population living in the territory of Tianeti Municipality; Article 6

13 Resolution of Kareli Municipality Sakrebulo №14 November 29, 2019; On the approval of the 2020 budget of Kareli Municipality.

14 Resolution of Gardabani Municipality Council №20 December 25, 2019 on approving the sub-programs of the social program provided by the 2020 budget of Gardabani Municipality; Available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

15 Resolution of Akhalkalaki Municipality Council on approving the rule of issuing social assistance from the 2020 budget of Akhalkalaki Municipality №29; December 17, 2019; Article 5
Available at: <https://matsne.gov.ge/ka/document/view/4737195?publication=0>

16 Resolution of Vani Municipality Council №30 - On approval of social programs of Vani Municipality for 2020; December 25, 2019; Article 10

17 The same rule applies to the resolution of the Abasha Municipality Council - N26, December 30, 2019. Abasha Municipality on the approval of the rules for the provision of social programs and assistance in the 2020 budget of the municipality of Abasha. Article 6;

18 Resolution N19 of Adigeni Municipality Council; May 7, 2019; Social program of medical services for the population registered in the territory of Adigeni municipality; Article 2

Discriminatory programs by on the ground of sex

Gender equality in Georgia remains challenging in both within and outside the family. The basis for this is gender-based stereotypes, misconceptions on gender roles and the stigma surrounding them in public life.

- ***According to some programs, regulations in the process of receiving social benefits are discriminatory on the basis of gender;***

For example, a socially vulnerable person / family registered in Ambrolauri Municipality¹⁹ will receive firewood if there is not a man able to work in the family and the family has not financial means to buy firewood.

In this case, linking the benefit with the existence of able-body man in the family, is discriminatory on the basis of sex; as a man able to work may live in the family, but his needs might be the same as in other families that benefit from the program. In a context where the state and society are struggling to overcome discrimination against women, the establishment of criteria containing stereotypes is an obstacle to this process. However, the used criteria oppose to the principle of equality and a priori implies the dominance of one of the individuals in terms of economic well-being of the family.

- ***Some social and health care programs, exclude one of the parents from receiving benefits and develop a discriminatory approach on the grounds of sex, without any justification.***

For example, in order to use the one-time assistance sub-program for families of newborn children in Telavi Municipality²⁰, the father of the child must be registered in the territory of Telavi Municipality; In Tsalenjikha Municipality,²¹ the program provides one-time financial assistance to the first and second live births of a biological mother; In Tsalka municipality,²² the multi-children family assistance program is used by mothers with many children and nothing is said about fathers with many children; In Akhaltsikhe municipality,²³ social assistance for single mothers living in poverty, the program leaves single fathers beyond attention.

The Public Defender notes that the main characteristic of the family as the most important social cell of the society is equality and equal participation of individuals in household activities. Fathers with many children and mothers with many children are essentially equal, and the different treatment imposed by social programs is unjustified. Because they face the same needs in the process of raising a child and while receiving assistance, both parents should have equal rights. The deprivation of access to assistance to the registration place of a child's father puts parents in an unequal position and goes against anti-discrimination legislation. This regulation is based on the stereotypical perceptions about women in society that she is not able to create as much wealth as a man in the family, which in turn encourages negative stereotypes based on gender.

19 Resolution of Ambrolauri Municipality Council №32 December 25, 2019; The Bill "On Approval of the Social Protection Program for Citizens Registered and Permanently Residing in Ambrolauri Municipality and the Rules for Issuing Benefits"; Article 14; Available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

20 Resolution of the Telavi Municipality Council N71, December 2018 28. On the approval of the health and social issues program to be implemented in Telavi Municipality.

21 Resolution of Tsalenjikha Municipality Council №27 December 26, 2019 Tsalenjikha on the approval of the 2020 budget of Tsalenjikha Municipality; Available at: <https://matsne.gov.ge/ka/document/view/4750231?publication=2>

22 Resolution N11 of Tsalka Municipality Council, February 6, 2020; Approval of the Municipal Social Security Program for the Population of Tsalka Municipality in 2020.

23 Resolution of Akhaltsikhe Municipality Council №22 December 26, 2019; On the approval of the rule of issuing social assistance from the 2020 budget of Akhaltsikhe Municipality

Programs tailored to the needs of persons with disabilities

The UN Convention on the Rights of Persons with Disabilities promotes the transition from an outdated medical model of disability, which treats functional limitations as a consequence of disability, to a social model. Under the Convention, disability is seen as an interaction between persons with disabilities and barriers that are widespread in society.²⁴ The social model of disability, combined with the UN Convention on the Rights of Persons with Disabilities and its human rights-based approach, ensures that persons with disabilities are treated as “human beings entitled to equal enjoyment of all human rights and fundamental freedoms on an equal basis with others. Which includes the provision of material support when needed”²⁵ Under part 2 of the Article 28 of the Convention, the State recognizes the right of persons with disabilities to social protection.

Reference is also made to Article 3 (b) of the Law of Georgia on Medical and Social Expertise, according to which a person with a disability is defined as “... a person with a solid physical, mental, intellectual or sensory disorder, for whom interaction with different obstacles might prevent full and effective participation in public life in equal conditions with others”. Therefore, in determining disability, it is crucial not only the existence of physical, mental, intellectual or sensory disorders, but also their interaction with various obstacles in society, on the basis of which the relevant social needs of persons with disabilities should be identified and provided with adequate conditions. Such an approach is consistent with the social model of disability assessment, according to which **disability is not so much a medical but a social challenge that must be addressed through appropriate social policies and some kind of positive actions.**²⁶

- ***Some social / health care programs do not identify the needs of people with disabilities on an individual basis. In many cases, the beneficiaries of social and health care programs are only those with severe disorders.***

For example, in Akhalkalaki municipality,²⁷ a person with severe disability registered in the territory of Akhalkalaki municipality and at the same time actually living within the territory of municipality is able to receive one-time social assistance, this provision leaves other persons with disabilities beyond attention;

Subsidizing utility bills in Batumi²⁸ and paying telephone-subscription fees are provided for people with severe disabilities and children with disabilities. Similarly, in Chiatura²⁹ and Telavi municipalities,³⁰ utility bills are covered for people with severe disabilities and people with disabilities under the age of 18.

The goal of social assistance program for the blind people of first category registered in Terjola Municipality is to

24 According to the Convention on the Rights of Persons with Disabilities, States: e) Recognize that disability is a dynamic concept and is the result of the interaction of persons with health disorders with attitudes and environmental barriers that prevent them from participating equally, fully and effectively in public life;

25 Andrea Broderick, 'Reasonable Adaptation to the UN Convention on the Rights of Persons with Disabilities: The Reality of Georgia', 2017; P.16.

26 Towards a Common Language for Functioning, Disability and Health ICF. World Health Organization. Geneva 2002. P.9.

27 Resolution of Akhalkalaki Municipality Council on approving the rule of issuing social assistance from the 2020 budget of Akhalkalaki Municipality №29 December 17, 2019. Article 12. Available on the website: <https://matsne.gov.ge/ka/document/view/4737195?publication=0>

28 Resolution of the Batumi City Council № 35 on the approval of the 2020 budget of the Batumi Municipality. December 25, 2019; (Program Code 06 02 01), Article 6.2.1. Available at: <https://matsne.gov.ge/ka/document/view/4749146?publication=1>

29 Resolution of Chiatura Municipality Council №18 January 26, 2018 on approving the rules for issuing and receiving social assistance from the budget of Chiatura Municipality.

30 Resolution of the Telavi Municipality Council N71, December 2018 28. On the approval of the health and social issues program to be implemented in Telavi Municipality.

cover utility bills for the them. The municipality cannot offer similar assistance to other persons with disabilities. In Lagodekhi municipality,³¹ only one-time support for students with severe disabilities is provided and leaves other people with disabilities beyond attention.

Assistance to people with disabilities in Kaspi Municipality.³² One-time assistance is provided to people with the disabilities of first group, including minors with visual impairment, under the age of 18. There is also a separate assistance with wheelchairs, that means that 50% of the cost of the wheelchair is covered.

The state is obliged to provide quality, adequate, acceptable and adapted social protection programs for people with disabilities. These programs should be tailored to their needs and should provide adequate number and duration of benefits so that they can enjoy a proper standard of living.³³ Equal treatment should be guaranteed for different groups of vulnerable categories.³⁴ Discrimination occurs if the state fails to take timely and effective steps to make the rights and privileges of a vulnerable group accessible to all.³⁵ The progressively realized nature of economic and social rights does not mean that certain groups are permanently excluded from exercising these rights effectively, thus, the state has an obligation to protect socio-economic rights, regardless of financial status.³⁶ The Public Defender clarifies that, in general, dividing of persons with disabilities into categories contradicts the social model provided in the UN Convention on the Rights of Persons with Disabilities, as existing social programs do not define the needs of persons with disabilities on an individual basis. On the one hand, the Public Defender positively assesses the provision of assistance to the needy categories, however, it is important to focus social and health care programs implemented by local governments on the social models.

- ***In many cases, beneficiaries of social and health care programs are only individuals with specific disabilities.***

For example, in Gori Municipality,³⁷ only one-time financial assistance is provided for persons with severe and significant disabilities (blindness) and hear impairments (deaf-mute ICD H-90.6; H-91.9).

In Samtredia Municipality, providing of one-time financial assistance is foreseen to blind, hear-impaired citizens with severe disabilities; One-time financial assistance is also foreseen for people with severe disabilities, as well as for people with psychiatric and schizophrenia diseases, children with disabilities under the age of 18, adults with leukemia, cerebral palsy and people with Down syndrome.³⁸

Social assistance is foreseen for following categories of persons with disabilities registered in the territory of Akhaltsikhe Municipality³⁹: a) persons with severe disabilities; B) persons with severe disabilities related to eyesight;

31 Resolution of Lagodekhi Municipality Council № 26 December 27, 2019; On the approval of the 2020 Health and Social Care Program of Lagodekhi Municipality and its budget. Available at: <https://www.matsne.gov.ge/ka/document/view/4755635?publication=0>

32 Resolution N26 of Kaspi Municipality Council; December 20, 2019; On the approval of the rule of issuing social assistance from the local budget of Kaspi municipality for 2020. Article 18

33 Committee on the Rights of Persons with Disabilities, Inquiry concerning the UK carried out by the Committee under article 6 of the Optional Protocol of the Convention, CRPD/C/15/R.2/Rev.1, 6/10/2016, §33

34 ECSC, European Social Charter; Conclusions 2015, 83,57, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680593904>

35 ECSC, ERRC v. Bulgaria, no. 31/2005, 18/10/2006, §40; Centre on Housing Rights and Evictions (COHRE) v. Italy, no. 58/2009, 6/07/2010, §35

36 Bantekas, Ilias & Oette, Lutz. International human rights law and practice, 2nd ed, Cambridge University Press 2016, p. 409

37 Resolution of the Gori Municipality Council on approving the rule of issuing social assistance from the local budget of Gori Municipality for 2020 №51; December 13, 2019. Article 18. Available at: <https://matsne.gov.ge/ka/document/view/4734943?publication=1>

38 On the approval of the 2020 targeted social program of the Health and Social Protection Service of Samtredia Municipality. 23/12/2019 Article 16.

39 Resolution of Akhaltsikhe Municipality Council №22 December 26, 2019; On approving the rule of issuing social assistance from the

In Khoni Municipality,⁴⁰ there is a one-time assistance program for people with severe and significant mental retardation, cerebral palsy, and people with Down Syndrome over the age of 18 registered in the municipality. As well as financing / co-financing program for hearing aid parts (cord, power supply and drying tablet) for persons under the age of 18 registered in Khoni Municipality; However, social and health care programs leave other people with disabilities beyond attention.

Poti Municipality⁴¹ has a sub-program of material assistance to the blind and deaf people that foresees covering of utility bills. There is also a separate sub-program to purchase devices for measuring blood pressure for the blind people and a program on assistance for people with disabilities under the age of 18, thus people with disabilities over the age of 18 are in an unequal situation.

For example, the social program of Zugdidi Municipality⁴² assists children with disabilities and severe chronic diseases, under the age of 18; One-time financial support or rehabilitation treatment for people with severe disabilities at a rehabilitation center in the municipality; One-time financial assistance for the people with hearing and sight impairments or ability to use the White Cane program, as well as for citizens with severe oncological disease who require a course of chemotherapy, radiation, target, radio or other expensive therapy. However, it leaves other people with disabilities beyond attention.⁴³

Tbilisi Municipality⁴⁴ has sub-programs "Assistance to Socially Vulnerable Persons with Disabilities under 18" and "Assistance to Socially Vulnerable People with Severe Disabilities". However, other socially vulnerable people under the age of 18 are left beyond attention.

Dividing of persons with disabilities to the target groups of recipients of social assistance will not be considered discriminatory in objective circumstances, however, in the present case separating of a priority group among persons of equal status, who have more or less same needs, could not be justified with the lack of budget of the municipality. While selecting target groups beneficiaries should be carefully selected and the impact of the decision made on the group that remains outside the program should be assessed. This requires that beneficiary selection methods be objective, transparent and do not lead to the segregation of a particular vulnerable group / group.⁴⁵

Therefore, according to the Public Defender, the lack of financial resources cannot justify the prioritization and differential approach to members of vulnerable who are in the same conditions. \The need for certain benefits based on medical or social programs should be determined on a case-by-case basis. The use of a specific type of disability as an indicator cannot be justified, as the state must provide social benefits to all persons who have the same status and needs as the priority category.

2020 budget of Akhaltsikhe Municipality; Article 19

40 Resolution N29 / 31 of Poti Municipality Council; December 25, 2019; On the approval of the 2020 budget of Poti Municipality.

41 Resolution N29 / 31 of Poti Municipality Council; December 25, 2019; On the approval of the 2020 budget of Poti Municipality.

42 Resolution of Zugdidi Municipality Council №4 January 24, 2020 Zugdidi on approving the rules for the implementation of social programs of persons registered (local and IDP) on the territory of Zugdidi Municipality determined by the budget of Zugdidi Municipality; Article 6

43 Resolution of Zugdidi Municipality Council №4 January 24, 2020 Zugdidi on approving the rules for the implementation of social programs of persons registered (local and IDP) on the territory of Zugdidi Municipality determined by the budget of Zugdidi Municipality; Article 6

44 j. Resolution N52-9 of Tbilisi Municipality Council, January 24, 2020; The Bill "On Approval of the Rules for the Implementation of Social Protection Sub-Programs provided for in the Budget of the Tbilisi Municipality"; Rules for the implementation of the sub-programs "Assistance to Persons with Disabilities under 18" (Code: 06 02 22) and "Assistance to Blind Persons with Severely Vulnerable Disabilities" (Code: 06 02 24);

45 Sepulveda, Magdalena & Nyst, Carly, The Human Rights Approach to Social Protection, 2012, p. 39, available at: <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>

- ***Some social and health care programs include discriminatory regulations based on the age of people with disabilities;***

For example, the existing health care program in Batumi⁴⁶ envisages rehabilitation of children with hearing impairments aged from 2 to 10 years, as well as rehabilitation courses for children with delays in development under the age of 7 and registered in Batumi.

Khoni Municipality⁴⁷ provides a program of co-financing of one-time seasonal spa-rehabilitation services for people with cerebral palsy under the age of 15 (renting an apartment).

According to the Disability Assistance Program in Ozurgeti Municipality,⁴⁸ people with disabilities between the ages of 6 and 18 and whose families have a social rating score from 0 to 150001 have the opportunity to receive assistance (if necessary) in purchasing hygiene items; Also, children with autism spectrum disorder registered in Ozurgeti (7-18 years old, in exceptional cases from 0 to 7 years), who are involved in psycho-social rehabilitation program, are entitled to monthly assistance (if necessary - monthly for a year) covering service fees.

Gurjaani Municipality⁴⁹ co-financing sub-program for Medical-Social Rehabilitation of Children aged from 0 to 7 years with Autistic Spectrum Disorders and Early Developmental Disabilities in. In Sagarejo Municipality,⁵⁰ children under the age of 6, persons with disabilities and socially vulnerable persons under the age of 18, who have been given a rating score of 100,001, will receive funding for speech correction services by the City Hall.

According to the Public Defender, setting an age limit for the availability of such services - termination of funding for rehabilitation and treatment for children of a certain age, may hinder the continuity of treatment and threaten to maintain the results achieved by the program. However, as mentioned, children with autism spectrum disorder registered in Ozurgeti (7-18 years old, in exceptional cases from 0 to 7 years), who are involved in psycho-social rehabilitation program, are entitled to monthly assistance, it is incomprehensible to the Public Defender, why children from 0-7 years are exceptionally beneficiaries of a defined program and not as a general rule?

- ***In some municipalities, the social program unreasonably focuses on the time of origin of disability.***

For example, the goal of the Disability Assistance sub-program in Rustavi⁵¹ is to cover utility bills for people with severe disabilities (blind and severely disabled from birth) living within the administrative boundaries of Rustavi. In Lentekhi municipality⁵², people with disabilities from birth who are disabled from childhood and are unable to move independently and suffer from specific diseases (cerebral palsy, Down syndrome, leukemia, deaf-mute, diabetes of first type) are able to receive monthly assistance.

46 Resolution of the Batumi City Council № 35 on the approval of the 2020 budget of the Batumi Municipality. December 25, 2019; Available at: <https://matsne.gov.ge/ka/document/view/4749146?publication=1>

47 Resolution of Khoni Municipality Council №88 March 7, 2019 Khoni on Health Care and Social Security Program Approval.

48 Resolution of Ozurgeti Municipality Council №1 January 15, 2020; On approving the rules for issuing and receiving social assistance provided by the 2020 budget of Ozurgeti Municipality. Article 8

49 Resolution of Gurjaani Municipality Council №5 January 20, 2020; On approval of the 2020 program of minimum social assistance to the population of Gurjaani Municipality; Article 9

50 Resolution of Sagarejo Municipality Council №19 December 27, 2019. On the approval of the 2020 social assistance program for the population of Sagarejo Municipality; Article 24

51 Resolution №163; 24.12.2019 Rules for the implementation of the sub-program for assistance to persons with disabilities (code: 06 02 10).

52 Resolution NI of Lentekhi Municipality. On the approval of the rule of issuing social assistance from the local budget of Lentekhi municipality for 2020.31 / 01/2020; Article 11

The idea of equality serves to guarantee the same opportunities for self-realization of people in this or that field.⁵³ The prohibition of discrimination requires from the state to ensure that any enacted regulation is in line with the fundamental essence of equality - treating essentially equals equally and vice versa.⁵⁴ According to the Public Defender, in this particular case, it is problematic to provide social assistance not according to the analysis of the individual need itself, but according to the time of origin of this need.

- ***Some social programs provide financial assistance only to people with severe disabilities received from an industrial injury while working in a municipal organization.***

For example, under the Telavi Municipality⁵⁵ industrial injury assistance sub-program, citizens who were injured during industrial work for Telavi-affiliated organization and fall into the category of people with severe disabilities will receive monthly assistance, in an amount of salary foreseen for the particular work. The amount of age-related pension will be deducted from the whole amount of assistance, if the person receives such by the date of assistance.

According to the Constitutional Court of Georgia, the recognition of any right would be meaningless without the guaranteed possibility of equal access to it. It is vital for people to feel that they are being treated fairly.⁵⁶ According to the Public Defender, providing assistance only to persons with severe disabilities is unjustified and puts other persons with disabilities who received industrial trauma in an unequal position. Whereas, for example, persons with significant limitations may not be able to continue their activities due to injuries received due to their profession.

Accessibility for persons with permission of permanent residence

According to Part 1 of Article 33 of the Constitution of Georgia, citizens of other states residing in Georgia and stateless persons have equal rights and obligations as citizens of Georgia, except for the exceptions provided by the Constitution and the law.

According to Article 25, Paragraph 2 of the Law of Georgia on Foreigners and Stateless Persons, all foreigners are equal before the law in Georgia despite their origin, social status and property, race, nationality, sex, education, language, religion, and regardless political and of other views, field of activity and other circumstances. According to Article 31 of the same law, a foreigner permanently residing in Georgia has the same right to assistance, pension and other social security as a citizen of Georgia.

- ***Social and health care programs in some municipalities exclude those with a permanent residence permit from using these programs.***

For example, the document regulating the provision of social assistance from the 2020 budget of Akhalkalaki Municipality⁵⁷ also defines the types of social assistance programs, categories of beneficiaries, the amount of

53 Decision NI / 1/493 of the Constitutional Court of Georgia of December 27, 2010, II, 1

54 Decision NI / 1/493, II, 4 of the Constitutional Court of Georgia of December 27, 2010; Judgment NI / 1/539 of the Constitutional Court of 11 April 2013, II, 4; Decision NI / 3/534 of the Constitutional Court of Georgia of June 11, 2013, II, 5

55 Resolution of the Telavi Municipality Council N71, December 2018 28. On the approval of the health and social issues program to be implemented in Telavi Municipality.

56 Decision N 1/1/539 of the Constitutional Court of Georgia of April 11, 2013, II, 2; Decision NI / 3/534 of the Constitutional Court of Georgia of June 11, 2013, II, 3

57 Resolution of Akhalkalaki Municipality Council on approving the rule of issuing social assistance from the 2020 budget of Akhalkalaki Municipality №29 December 17, 2019; Available at:

assistance to be provided and the documentation required for inclusion in the program. According to Article 2 of the document, the applicant must submit a copy of his / her ID card, that leaves persons holding the residence card unattended.⁵⁸ Also, an identity card must be submitted to receive co-financing of medical services in Akhmeta Municipality.⁵⁹

For example, in Marneuli Municipality⁶⁰, according to the rule aiming to facilitate the integration of persons with disabilities into society, their social protection and involvement in cultural and creative activities, the beneficiaries of such program are persons with disabilities registered in Marneuli Municipality. The beneficiary must submit a copy of the Georgian citizenship and / or ID card to the Marneuli Municipality, which in its turn excludes persons with a permanent residence card from receiving the benefit.

Also, beneficiaries of the sub-program for the promotion of integration into the society of persons with disabilities of the Tbilisi City Mayor⁶¹ are only citizens of Georgia with disabilities, who are at the same time registered in Tbilisi Municipality. Beneficiaries are required to submit a Georgian citizenship and identity card.

Sub-program for epidemiological control of communicable and non-communicable diseases is also in Tbilisi. The beneficiaries of the sub-program are citizens of Georgia, as well as stateless persons. Persons with permanent residence permits⁶² who have the citizenship of another country remain outside this sub-program.

The European Court of Human Rights put the legitimacy of the refusal to persons with a residence permit to use social programs under question and found a violation of the right to equality.⁶³ In the case of *Gaygusuz v. Austria*, Turkish citizen who had lived and worked in Austria for many years was refused emergency financial assistance on the grounds that such assistance was reserved only for Austrian citizens. Speaking of a different approach to the use of social benefits, the European Court of Justice has emphasized the fact that a person with a residence permit pays the taxes prescribed by law equally to citizens and contributes to the welfare of society.⁶⁴ The European Court of Human Rights has stated several times, that justification for discriminatory treatment based on nationality is possible only for very serious reasons.⁶⁵

A similar approach has been developed by the United States Supreme Court. In one case, the U.S. Supreme Court ruled that citizenship-based discrimination requires critical study. The Court noted that the State's interest in retaining and redistributing meager social benefits to its own citizens is not an indisputable argument and sufficient for a citizenship-based distinction. The court found that the differential treatment of foreigners was unjustified, while people with residence permits, like citizens, pay taxes and, unlike short-term visitors to the country, can live in the country for many years, work and contribute to the state's economic growth.⁶⁶

58 Available at: <https://matsne.gov.ge/ka/document/view/4737195?publication=0>

59 Resolution N19 of Adigeni Municipality Council; May 7, 2019; Social program of medical services for the population registered in the territory of Adigeni municipality;

60 Marneuli Municipality Council Resolution №53. December 24, 2019. On the approval of the rule of promoting the integration of persons with disabilities in the society of Marneuli municipality.

61 Resolution N4-14 of Tbilisi Municipality Council; March 2, 2015; j. On the approval of the "Rules for the Implementation of the Sub-Program for the Promotion of Integration in the Society of Persons with Disabilities" of the Tbilisi Municipality;

62 Pursuant to Article 15 (g) of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, a permanent residence permit is issued to a spouse, parent or child of a citizen of Georgia. A permanent residence permit is also issued to an alien who has lived in Georgia on a temporary residence permit for the last 6 years. This period does not include the period of living in Georgia for the purpose of study or treatment and working in diplomatic and equivalent missions;

63 ECtHR, *Koua Poirrez v France*, App. No. 40892/98, 30/09/2003, §§41,49

64 ECtHR, *Gaygusuz v .Austria*, App. no. 17371/90, 16/09/1996, §42.

65 *Fawsie v. Greece*, App. No.: 40080/07, 28.10.2010, § 35; *Gaygusuz v. Austria*, App. No.:17371/90, 16/09/1996, § 42;

66 US Supreme Court, *Graham v Department of Pub. Welfare*, 403 U.S. 365 (1971), II, 334 U.S. at 334 U. S. 420

According to the Public Defender, although the state has a wide range of considerations in setting fiscal policy priorities for the country's social policy and economic stability, the scope narrows when the state's approach unjustifiably differentiates between essentially equal groups, especially those with permanent residency. Georgian citizens have similar tax obligations to the state. Consequently, a budget-funded social or health care program should be equally accessible to these individuals.

Therefore, the requirement for an ID card and / or other documents proving Georgian citizenship for the use of social and health care programs is unjustified, as this rule excludes persons with a permanent residence permit from receiving the benefit. At the same time, offering certain programs to stateless persons with a residence permit puts persons with permanent residence permit who have the citizenship of another country in an unequal situation.

Age discriminatory regulations

Differential treatment on the basis of age may also be based on rational factors and serve social or economic purposes. However, such approach may also be based on generalized conclusions and stereotypes. Youth as well as elderly may become victims to age-related stereotypes.⁶⁷

- **Some social programs exclude the elderly from the list of beneficiaries receiving assistance;**

For example, there is a disease screening sub-program⁶⁸ at Tbilisi⁶⁹ Municipality. According to the sub-program, Georgian citizens, registered in the city of Tbilisi in the database of the LEPL - State Service Development Agency, are the beneficiaries of the prostate cancer screening component, which foresees screening of men aged 50-70 years for prostate cancer antigen in blood (PSA).⁷⁰ According to the explanation provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, state health care programs in Georgia have been developed in coordination with relevant experts and the age and frequency of screening are determined in accordance with international recommendations, guidelines and protocols. According to these, the age range (50-70 years) is determined by the principle that there is the highest risk of developing cancer at this age and also, the treatment is effective with an appropriate outcome. At the same time, early detection of the disease is important, therefore, it is necessary to conduct a primary screening in a timely manner, after which the next examination will be planned by the relevant specialists, taking into account the detection of progressive lesions and the age of the patient.

According to the European Court of Human Rights, the state should create relevant conditions for particularly vulnerable for them to be able to adequately enjoy right to privacy.⁷¹ The state has a wide margin of appreciation in the field of economic and social policy,⁷² however; it must nevertheless ensure a fair balance between conflicting

67 European Commission, age discrimination and European law - Employment & social affairs, Fundamental rights and anti-discrimination; 2005, p.g. 12

68 The sub-program also includes: breast cancer screening in women aged 40-70 years; cervical cancer screening in women aged 25-60 years; colorectal cancer screening for both sexes aged 50-70 years; thyroid cancer management pilot for 25-70 year old women with appropriate risk carried out according to the criteria approved by the implementer;

69 Resolution №52-10 of Tbilisi City Council of January 24, 2020; On approving the rules for the implementation of healthcare sub-programs foreseen by the budget of the Tbilisi Municipality;

70 Determination of specific antigen of the blood-specific prostate cancer (PSA); determination of serum-free PSA and its ratio in case of establishing the indicator of the common prostate cancer-specific antigen in the so called gray area;

71 ECtHR, Winterstein and Others v France, no. 27013/17, 17/10/2013, §148; Chapman v. United Kingdom, no. 27238/95, 18/01/2001, §99

72 ECtHR, James and Others v. United Kingdom, no. 8793/79, 21/02/1986, §46; Mellacher and others v. Austria, nos. 10522/83; 11011/84;

interests⁷³ and its policy must not be clearly unsubstantiated.⁷⁴ In addition, the Court notes that the scope of consideration narrows when a particular right at stake is crucial for an individual to exercise his or her fundamental rights effectively.⁷⁵

According to the Public Defender, despite the explanation provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, according to which the detection and follow-up of the disease is more effective at the age of 50-70, exclusion of persons over 70 with particularly high degree of economic vulnerability and at the same time, with the high risk of having this disease directly affecting their lives and health, from the list of beneficiaries is unjustified.

- ***Material assistance programs of some students are discriminatory on the basis of age;***

For example, the Gardabani⁷⁶ Municipality Student Material Assistance Program determines the conditions and procedures for providing material assistance to orphans under the age of 22 from families with many children and socially vulnerable families, list of documents to be presented at the municipality and the amount of the assistance.

The Public Defender notes that considering the target group, whose assistance is provided by the mentioned subprogram, imposing an age limit for material support for students is unjustified. In the absence of an appropriate legitimate aim, discrimination will take place if the reasons for the differentiation lack explanation and reasonable basis. Thus, the right to equality prohibits arbitrary and unjustified discrimination.⁷⁷

Marriage status/registration request

Part of the social programs existing at the local self-government level contain discriminatory records on the basis of family status.

- ***Partners who are not in a registered marriage but have established families are deprived of the opportunity to benefit from assistance, putting them at a disadvantage compared to those in a registered marriage;***

For example, in order to receive the benefits of a one-time financial assistance program for newly established families in Ambrolauri⁷⁸ Municipality, beneficiaries must submit a copy of their marriage certificate. In the term "marriage" the subprogram implies the commencement of actual cohabitation during the operation of the subprogram; In order to benefit from the assistance program of families with many children in Senaki⁷⁹ and

11070/84, 19/12/1989, B, §45

73 Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 23/07/1968, III, §7, p.40, Rees v. United Kingdom, no. 2/1985/88/135, 25/09/1986, §37

74 ECtHR, Barrow v. United Kingdom, no. 42735/02, 22/11/2006, §35

75 ECtHR, Connors v. United Kingdom, no. 66746/01, 27/05/2004, §82

76 Resolution №20 of Gardabani Municipal Assembly of December 25, 2019 on approving the subprograms of the social program envisaged by the 2020 budget of Gardabani Municipality; (subprogram code 06 02 15) available at: <https://matsne.gov.ge/ka/document/view/4748139?publication=3>

77 2 ECtHR, Winterstein and Others v France, no. 27013/17, 17/10/2013, §148; Chapman v. United Kingdom, no. 27238/95, 18/01/2001, §99

78 Resolution №32 of Ambrolauri Municipal Assembly of December 25, 2019; on approval of the rules of providing Social Protection Program and Benefits for Citizens Registered and Permanently Residing in Ambrolauri Municipality"; Article 17; Available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

79 Senaki Municipality Assistance Program for Families with Many Children (Code 06 02 02)

Tsageri⁸⁰ municipalities, the beneficiary must submit copies of the marriage certificate to the City Hall together with the other documents; Adigeni⁸¹ Municipality makes it obligatory to submit a marriage certificate within the assistance program of families with many children;

According to the Public Defender, starting a family should not be related only to the fact of marriage registration, taking the example of Ambrolauri Municipality, on the one hand. Especially when the subprogram implies the commencement of actual cohabitation, among others, in marriage; the request for an assistance program of families with many children in Adigeni, Senaki and Tsageri municipalities is also unjustified, as such families can be established out of wedlock and they are on an equal footing with registered families with many children.

- ***In some municipalities, in order to receive social assistance, the fact of registration of both spouses in the territory of the municipality is mandatory, which puts the mentioned persons in an unequal position with the families, both spouses of which are registered in this municipality;***

For example, in order to receive assistance under the one-time financial assistance program for newly established families in Ambrolauri⁸² Municipality, both spouses must be registered on the territory of Ambrolauri Municipality, including one of them as a permanent resident; Both parents or single parents must be registered in Dedoplistskaro Municipality to receive assistance for a family with a newborn child in Dedoplistskaro⁸³ Municipality; A similar rule is envisaged, among others, in the case of the birth of the first and second child in Samtredia⁸⁴ Municipality, under the one-time assistance program and by the program of assistance to families of the newborn child in Terjola,⁸⁵ Poti,⁸⁶ Aspindza⁸⁷ municipalities.

According to the Public Defender, it is problematic to connect the fact of registration of both spouses with the provision of assistance, as it is possible for one of the spouses to be registered in another municipality, but in fact a family is established at the residence of the other spouse. In such case, families where a spouse is registered in another municipality are in an unequal position compared to families, where both spouses are registered in the same municipality. This regulation, by imposing a formal criterion, unjustifiably puts essentially equal individuals in an unequal position.

Duration of registration/residence at the municipality

Naturally, the circle of beneficiaries of social programs will not be indefinite, as local self-government bodies are limited by the budgetary funds allocated for this purpose; however, in defining the target groups in the social and health care programs, it is important to avoid discriminatory criteria and to provide equal access to relevant benefits to essentially equal persons.

80 Approval of the rules for issuing and receiving social assistance from the 2020 budget of Tsageri Municipality;

81 Resolution N46 of Adigeni Municipal Assembly. September 2, 2014. On approval of the social assistance program from the local budget for the population permanently residing and registered in the territory of Adigeni municipality.

82 Resolution №32 of Ambrolauri Municipal Assembly of December 25, 2019; on approval of the rules of providing Social Protection Program and Benefits for Citizens Registered and Permanently Residing in Ambrolauri Municipality"; Article 17; Available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

83 Resolution N23 of Dedoplistskaro Municipal Assembly; On the approval of the 2020 program of minimum social assistance to citizens registered on the territory of Dedoplistskaro municipality and its budget.

84 On the approval of the 2020 targeted social program of the Health and Social Protection Service of Samtredia Municipality. 23/12/2019

85 2020 Financial Assistance Program for Families of Newborn Registered in Terjola Municipality; Article 3.

86 Resolution N29 / 31 of Poti Municipal Assembly; December 25, 2019; On the approval of the 2020 budget of Poti Municipality.

87 General rule for spending the targeted budgetary "Citizens' Social and Health Care Program" approved by Aspindza Municipality for 2020; Article 4

- ***In some municipalities, different health care programs impose different requirements for residing and registering at the municipality;***

For example, beneficiaries of transplantation sub-program in Tbilisi⁸⁸ Municipality are those Georgian citizens, who for the purposes of enrolling into the sub-program, have been registered in Tbilisi Municipality uninterrupted during the past year before applying to Tbilisi Municipality and at the same time are registered in Tbilisi Municipality at the moment of enrollment in the subprogram, including those persons, whose registration in Tbilisi Municipality has been terminated and resumed during this one year period, if as a result of such termination the person has not been registered in another municipality.⁸⁹

In addition, beneficiaries of the Breast Cancer Treatment Funding Sub-Program in Tbilisi⁹⁰ are Georgian citizens having localized HER-2 positive breast cancer (Stage I-III) or HER-2 positive breast metastatic cancer who: a) for the last 2 years, before applying to Tbilisi City Hall, had continuously and at the same time was registered at Tbilisi Municipality at the time of enrollment in the sub-program, including persons whose registration at Tbilisi Municipality has been suspended and resumed during these 2 years, if as a result of such termination the person has not been registered in another municipality;⁹¹

Different rules related to the time of registration and residency at the municipality to benefit from various health subprograms is not clear to the Public Defender. If in one case a 1-year period is set to prove sufficient connection with the municipality, setting a higher, two-year period is unreasonable for persons with other health care problems.

- ***It is problematic to demand uninterrupted residency in the territory of the municipality in order to prove sufficient connection with the municipality to receive social and health benefits.***

For example, in Borjomi⁹² municipality, a citizen registered and living continuously for the past year in the municipality benefits from the health care program.

According to the Public Defender, the fact of registration in the territory of the municipality already confirms a sufficient connection with the municipality and it is unjustified to impose additional requirement of continued residency there. Since it is possible for such a beneficiary to be excluded from the list of recipients of the assistance altogether, not only from the social programs of the municipality in which he or she is registered, but also he or she may not be able to benefit from a similar social and health care program, according to the place of residence.

- ***Some social and health care programs unjustifiably require registration in the municipality for a certain period of time;***

For example, a medical care program for the population registered in Ambrolauri⁹³ Municipality determines

88 Resolution №52-10 of Tbilisi City Council of January 24, 2020; On the approval of the Rules for the Implementation of the Health Care Subprograms Provided by the Budget of the Tbilisi Municipality

89 Beneficiaries of this subprogram are persons with the status of IDP too, whose address of registration is Tbilisi according to the document certifying the IDP status.

90 Resolution №52-10 of Tbilisi City Council of January 24, 2020; On the approval of the Rules for the Implementation of the Health Care Subprograms Provided by the Budget of the Tbilisi Municipality

91 Beneficiaries of this subprogram are persons with the status of IDP too, whose address of registration is Tbilisi according to the document certifying the IDP status.

92 Resolution №96 of Borjomi Municipal Assembly of December 27, 2019. On Approval of the 2020 Social Assistance Program for the Population Registered in Borjomi Municipality and Rules for Its Issuance, Article 17

93 Resolution №33 of Ambrolauri Municipal Assembly of December 25, 2019; "On Approval of the Program of Medical Services for

registration in Ambrolauri Municipality for at least 3 months as a prerequisite for assistance.

According to the Public Defender, it is unreasonable to request the fact of 3 months pre-registration period to benefit from the medical service program. In particular, if a person is registered in the said municipality and according to his/her individual history, the health condition requires urgent medical intervention, the requirement of 3 months registration period will be unjustified.⁹⁴

Place of birth

Social and health care programs in some municipalities focus on having a sufficient connection of the beneficiary with the municipality, however, using a number of criteria to achieve these goals is unjustified.

- ***Some social programs link the place of birth to receiving social benefits.***

For example, in Batumi⁹⁵ Municipality, screening examination of the newborns in Batumi is financed by the Program on Prevention and Rehabilitation of the Development Delays in Newborns and Children. The linkage of the healthcare program to the place of birth of the child is not clear to the Public Defender, as it is possible for the child to be born in another municipality, however, the family, and the beneficiary, live and are registered in Batumi municipality.

Detailed characteristics of the program

- ***Based on the analysis of social programs at the municipal level, the detailed nature of these programs is noteworthy, which may, in some cases, leave other individuals with similar needs beyond social or health care programs.***

For example, the beneficiaries of the Gardabani⁹⁶ Municipality subprogram for the protection of persons with disabilities are: beneficiaries under the age of 18 with cerebral palsy, beneficiaries under the age of 18 with autism spectrum, children under the age of 18 with leukemia, children with disabilities under the age of 18, persons using wheelchairs, blind with severe disabilities, persons with speaking and hearing impairments. Similarly, the existing Lentekhi⁹⁷ sub-program provides one-time financial assistance to persons with disabilities, although the sub-program exhaustively lists persons with specific disabilities, leaving out persons with other disabilities.

Naturally, the issue of assistance to the indicated persons is important, however, in addition to the beneficiaries using the listed program, there may be persons with other disabilities or health problems in the municipality who also need assistance. Therefore, the flexibility of social programs is important, so as not to harm the interests of essentially equal groups.

the Population Registered in Ambrolauri Municipality and the Rules for Issuance of Targeted Assistance"; Article 1; Available at: <https://matsne.gov.ge/ka/document/view/4749025?publication=0>

94 The same rule applied according to the Resolution №32 of Ambrolauri Municipal Assembly of December 25, 2019; on approval of the rules of providing Social Protection Program and Benefits for Citizens Registered and Permanently Residing in Ambrolauri Municipality"; available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

95 Resolution № 35 of the Batumi City Council on the approval of the 2020 budget of the Batumi Municipality. December 25, 2019; (Program code 06 01 09); Available at: <https://matsne.gov.ge/ka/document/view/4749146?publication=1>

96 Resolution №20 of Gardabani Municipal Assembly of December 25, 2019 on approving the subprograms of the social program envisaged by the 2020 budget of Gardabani Municipality; available at: <https://matsne.gov.ge/ka/document/view/4749012?publication=0>

97 Resolution N11 of Lentekhi Municipality. On Approval of the Rule of Issuance of Social Assistance from the Local Budget of Lentekhi Municipality for 2020.31/01/2020 "Article 5.

- ***Some programs provide travel expenses for persons with a specific illness, though leaving the persons with the same need, but with other illnesses, behind;***

For example, the social programs of Vani⁹⁸ and Lagodekhi⁹⁹ municipalities provide financial assistance for the travel costs (from the district to a medical facility) and the purchase of medicines necessary for treatment of citizens on the state dialysis program. Also, for example, funding for Avastin injection for patients with ophthalmic diseases is envisaged in Akhalkalaki¹⁰⁰ and Kaspi¹⁰¹ municipalities.

Naturally, this assistance is vital for the target group and the Public Defender welcomes the consideration of their needs in social programs. However, in the same way, other individuals with other illnesses might also need the reimbursement of travel costs and funding of medicines – the failure to provide similar assistance to them unjustifiably puts them in an unequal position compared to individuals essentially equal to them.

Conclusion

Human dignity is protected under Article 9 of the Constitution of Georgia, which is closely linked to adequate standard of living. Ensuring adequate living conditions for vulnerable groups can be provided through material and social assistance, which is an important guarantee for the well-being of an individual.

According to the Public Defender, the social and health care programs developed by local municipalities during 2020 contain a number of shortcomings in terms of compliance with the Law of Georgia on the Elimination of All Forms of Discrimination.

The issues discussed in this document highlight the existence of discriminatory criteria against different groups, as well as the encouraging terminology of discrimination in some legal acts defining social and health care programs; As already mentioned, the language of legal acts should constantly strive to establish the principle of equality between individuals and to establish a society free from stereotypes.

Also, social programs containing discriminatory criteria based on gender were identified, which are based on the stereotypical perceptions of women and men in the society and even encourage them.

Social and health care programs tailored to the needs of persons with disabilities are particularly problematic, with shortcomings in many areas. These programs do not reflect the real needs of persons with disabilities and in many cases are not directed to the social model of protecting their rights. For the most part, they are tailored only to those with severe disabilities, or to the needs of individuals with specific types of disabilities, and essentially equal individuals with same economic needs remain beyond the benefit. Also, social and health care programs for persons with disabilities are sometimes discriminatory in terms of age. Setting an age limit for access to such services - Terminating funding for rehabilitation and treatment for children of a certain age may hinder the continuity of treatment and jeopardize maintaining the program outcomes.

98 Resolution №30 of Vani Municipal Assembly, on the approval of Vani Municipality social programs for 2020; December 25, 2019.

99 Resolution № 26 of Lagodekhi Municipal Assembly, December 27, 2019; On the approval of the Health and Social Care Program of the Population of the Lagodekhi Municipality and its budget for 2020. Available at: <https://www.matsne.gov.ge/ka/document/view/4755635?publication=0>

100 Resolution №29 of Akhalkalaki Municipal Assembly of December 17, 2019 on approving the rule of issuing social assistance from the 2020 budget of Akhalkalaki Municipality. Available at: <https://matsne.gov.ge/ka/document/view/4737195?publication=0>

101 Resolution №26 of Kaspi Municipal Assembly; December 20, 2019; On the approval of the rule of issuing social assistance from the local budget of Kaspi municipality for 2020.

Also, the Public Defender believes that the state unjustifiably excludes persons with permanent residence permits from various state programs, which does not allow this group to be full members of the Georgian society and to enjoy all the services that should be available to them, as they are for the Georgian citizens. It should be noted that adequate social or health care programs significantly determine a person's well-being and enhance the degree of full participation of the individual in society. Therefore, both main and basic health/social programs, as well as state programs designed to control certain complex categories of diseases, should be available to those who contribute to the country's budget growth and are in a similar legal situation as Georgian citizens.

In addition, age discriminatory records according to which, for example, the economic vulnerability of the elderly is not taken into account and they are explicitly excluded from the list of beneficiaries of specific health care programs, were identified as problematic. This in turn has a direct impact on the lives and health of the elderly.

It is also important to highlight the practice of imposing various formal criteria, which often leaves families out of wedlock, with the same needs as married couples, behind the benefits.

Also, in determining the circle of beneficiaries of social and health care programs, frequently used criteria, such as the criteria of registration, birth, continuity of residence in the municipality, lack justification; often different social and health care programs use the same criteria in the same municipality, which is also unsubstantiated.

At the same time, based on the analysis of the mentioned programs, the detailed nature of the mentioned programs was revealed, making them inflexible, due to which, the persons with real needs cannot be included in the list of beneficiaries.

Pursuant to Article 9 of the UN International Covenant on Economic, Social and Cultural Rights the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance. The 19th general comment¹⁰² of the Covenant states that the right to social protection includes two main directions: social insurance and social assistance schemes. The latter implies the redistribution of wealth created through mobilization and collection of taxes as needed to vulnerable and socially disadvantaged groups. Also, according to Article 11 (1) of the Covenant, States recognize that each individual has the right to adequate food, clothing and housing. At the same time, the realization of the right to health implies, that everyone has access to health services,¹⁰³ including economic access.¹⁰⁴ This right includes in itself the right of an individual to have the disease prevented, treated and controlled.¹⁰⁵

102 General Comment No. 19; The right to social security (Art.9 of the Covenant) available at: <http://www.refworld.org/docid/47b17b5b39c.html>

103 Office of High Commissioner for Human Rights (OHCHR), Right to Health, Fact sheet no. 31, p. 5, available at: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

104 Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C. 12/2000/4, 11/08/2000,

105 OHCHR, Right to Health, Fact sheet no. 31, p. 3

Recommendations

The requirements of the Law of Georgia on the Elimination of All Forms of Discrimination should be taken into account when developing social and health care programs;

Not to use discriminatory criteria/terminology when developing social and health care programs;

Eliminate the practice of imposing discriminatory criteria on the grounds of sex in social and health care programs;
Develop quality, adequate, acceptable and adapted social protection programs for persons with disabilities, which will enable the assessment of their needs on an individual basis;

Programs tailored to the needs of persons with disabilities should be directed towards a social model of protection of the rights of these individuals;

Eliminate the practice of age-based discriminatory regulations in social and health care programs in order to maintain and increase the effectiveness of the results already achieved through these programs;

Needs of persons with permanent residence permits shall be taken into account in the social and health care programs and their access to these programs shall be reviewed;

When developing social programs, use the criteria of real empowerment of different vulnerable groups and plan these programs accordingly;

Social and health care programs designed for family well-being should be tailored to the needs of factually established and existing families;

In order to establish a sufficient connection with the municipality, the criteria of birth, registration/residency in the municipality should be substantiated and non-discriminatory practices should not be established on the basis of this formal requirement;

Develop flexible social and health care programs so that persons with real individual needs are not left behind;
Social and health care programs should be developed in each municipality based on research and analysis of the local needs to reflect the real needs of persons living in the municipality and not be of a formal nature.

