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**Input on Good Practices to Ensure Effective Access to Justice for Persons with Disabilities**

**Info Submission**

**to Special Rapporteur on the Rights of Persons with Disabilities**

**Submitted by:**

**The National Human Rights Institution – Public Defender
(Ombudsman) of Georgia**

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**Questionnaire on "good practices to ensure effective access to justice for persons with disabilities"**

*Information for Special Rapporteur on the Rights of Persons with Disabilities*

**Background**

The Public Defender (Ombudsman) of Georgia is a **constitutional institution** **(NHRI with “A” Status)**, which oversees the observance of human rights and freedoms within its jurisdiction on the territory of Georgia. It advises the government on human rights issues and scrutinizes the state’s laws, policies and practices, in compliance with international standards, and provides relevant recommendations. **It identifies human rights violations and contributes to the restoration of the violated rights and freedoms**. *The Constitution of Georgia*, *the Organic Law of Georgia “On Public Defender of Georgia”* and other legislative acts regulate the Public Defender’s status and competencies.

The Public Defender of Georgia studies the facts of human rights violations both on the basis of received applications and on its own initiative. The Public Defender studies the cases relating to:

* Decisions of public institutions;
* Violations of human rights and freedoms during the court proceedings;
* Violations of the rights of detainees, prisoners or individuals whose liberty had been otherwise restricted;
* Compliance of normative acts with the Second Chapter of the Constitution of Georgia (Fundamental Human Rights);
* Constitutionality of the norms regulating the referendums and elections, as well as the elections (referendum) held or to be held on the basis of these norms.

Besides, the Public Defender is authorized to examine the cases of human rights violations guaranteed by the Georgian legislation and international treaties and agreements, to which Georgia is a party.

In order to ensure the protection of human rights and freedoms, the Public Defender of Georgia:

* Submits proposals, comments and recommendations concerning the Georgian legislation and draft laws to the Parliament of Georgia or other relevant bodies;
* Addresses the state agencies, local self-government bodies, public institutions and public officials with proposals and recommendations concerning the restoration of the violated human rights and freedoms;
* Addresses relevant investigative authorities with proposals to launch investigation and/or criminal persecution;
* Addresses relevant agencies with proposals concerning disciplinary or administrative responsibilities of the individuals, whose actions caused violations of human rights and freedoms;
* Performs the *amicus curiae* function at Common Courts and the Constitutional Court of Georgia;
* Submits constitutional claims to the Constitutional Court;
* Appeals to the President and Prime Minister in writing, if s/he considers that the means in disposal of the Public Defender are not sufficient;
* In special cases, appeals to the Parliament of Georgia to set up a temporary investigative commission and consider a specific issue.

**The Public Defender of Georgia performs function of the National Preventive Mechanism** under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this capacity, the Public Defender regularly checks the situation and treatment of the detainees, prisoners or individuals whose liberty had been otherwise restricted, convicts, as well as the inmates of psychiatric institutions, houses for older persons and orphanages.

Moreover, on 27 October 2014, the Public Defender of Georgia was named as the **structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities.**

Additionally, together with the *Organic Law of Georgia “On Public Defender of Georgia”*, the *Law of Georgia “On Gender Equality”* (Article 14(1)) **empowers the Public Defender to protect gender equality**, monitor the given field and respond to the violations of gender equality within the framework of its competencies. The Public Defender contributes to the elimination of gender inequality through effective and accountable management of cases and monitors the compliance of government and public institutions with national and international obligations on human rights and gender equality. Activities of the Public Defender in the field of gender equality cover both, internal institutional development, as well as contribution to the process of achieving gender equality. **Public Defender is also a Femicide Monitoring Watch in the country.**

The mandate of the Public Defender was further strengthened by the adoption of *the Law of Georgia “On Elimination of All Forms of Discrimination”* by the Parliament of Georgia on 2 May 2014 (hereinafter the “Anti-Discrimination Law”), which authorizes the Public Defender to supervise the implementation of the Anti-Discrimination Law and eliminate all forms of discrimination and ensure equality (Article 6). It also determined the Public Defender and courts of general jurisdiction as legal remedies for the right to equality. It is noteworthy that following recent legislative amendments the Public Defender is entitled to refer to the national courts and **demand the** **enforcement of the recommendations addressed to both - public authorities/institutions and legal persons of private law**, in cases where the perpetrator fails to take into consideration and fulfil the recommendation of the Public Defender in discrimination cases.

**Questionnaire on good practices to ensure effective access to justice for persons with disabilities**

**Questions for National Human Rights Institutions**

1. *Please provide information on any existing good practices in legislation, policies and/or institutional measures taken in your country to ensure effective access to justice for persons with disabilities on an equal basis with others, as required by article 13 of the Convention of the Rights of Persons with Disabilities.*
* According to Article 9(1) of the Criminal Procedure Code of Georgia, a criminal procedure is exercised on the basis of **equality of parties** and **adversarial principle**. Article 25 of the same Code refers to equality of the parties and adversary proceeding at the court. According to this Article, a court is obliged to provide the parties with equal opportunities in the protection of their lawful rights and interests, so that neither party would enjoy privileges;
* Therefore, The Criminal Procedure Code of Georgia maintains that equality of the parties and adversarial shall be ensured throughout the whole proceedings – from the commencement of the criminal prosecution until its completion, including court proceedings, investigation phase and newly discovered circumstances during the proceedings. In accordance with Article 45(c) an accused, who, due to physical and mental disability, is unable to protect his/her rights, shall be assigned on a mandatory basis, a defence counsel.
1. *Please provide information on any existing good practices in place in your country, including strategies and guidelines, to facilitate the direct or indirect participation of persons with disabilities in judicial and other legal proceedings (e.g., as concerned parties, witnesses, jurors, judges, lawyers, experts.) including in the areas of:*

**Recognition of the right to standing (*locus standi*)**

* In accordance with Article 45(c) of the Criminal Procedure Code of Georgia, *it shall be mandatory for the accused to have a defence counsel, if the accused has physical or mental disabilities that prevent him/her from defending himself/herself*. Within the framework of mandatory defense and in cases determined by the legislation, a person without a defense counsel, shall be assigned a lawyer at public expenses, ensured by the LEPL Legal Aid Service, which is independent body and is accountable only to the Parliament of Georgia;
* In accordance with Article 117(1) of the Criminal Procedure Code of Georgia, *a deaf-mute shall be interviewed/examined with the participation of an interpreter having appropriate skills*. In case a person subject to questioning/inquiring has hearing or speech impairments, he/she may answer the questions in writing. Tbilisi City Hall is currently implementing a project according to which, persons with hearing disabilities shall enjoy the services of sign language interpreter during the court proceedings;
* A court considers the application for declaring person as *Beneficiary of Support* with the mandatory presence of a person concerned and representative of the agency of guardianship and custody. If a person, whose declaration as a beneficiary of support is under review, cannot attend the hearing due to the health condition, his/her participation shall be ensured by using an electronic or other means of communication to enable the judge to directly contact this person, which would ensure direct contact of the person with a judge. In such a case, it is mandatory to record the court hearing as a video file. The court shall indicate in the minutes of the proceedings that the person participated in court proceedings through electronic communication or other means. According to Article 36319 of the Civil Procedure Code of Georgia, a person whose declaration as a beneficiary of support is under review shall have a lawyer. Additionally, according to the Civil Procedure Code of Georgia, persons, who before April 1, 2015, were recognized as legally incapable are not limited in applying to the court.

**Accessibility and access to information**

* Since March 27, 2015, LEPL 112 activated text messaging and video call service designated for persons with hearing and visual impairments. Messages coming from persons with hearing and visual impairments are received by operators trained in sign language. It is worth noting that in 2013, the Public Defender of Georgia addressed the Ministry of Internal Affairs of Georgia with the request to develop such a service. The request underscored the importance of ensuring exchange of information for persons with hearing and visual impairments when calling emergency services, by applying text messaging or other relevant means of communication;
* LEPL of the Ministry of Justice of Georgia – the Public Service Development Agency made it available for persons with disabilities to receive distance public services. Since the introduction of the service, persons with disabilities are able to obtain consultations on public services from 9:00 to 21:00. They are served by two specialists working in distance services division, trained in sign language;
* Furthermore, a citizen of Georgia with disabilities, living abroad, can receive documents through distance service. Since the introduction of the service, persons with disabilities are able to receive various distances services/document without leaving his/her accommodation. LEPL Public Service Development Agency is currently updating its web-page to meet the needs of people with visual impairments.

**Procedural, gender- and age-appropriate accommodations**

* Article 2118 of the Administrative Procedure Code of Georgia stipulates that the consideration of a case and issuing an order regarding hospitalisation of a person for involuntary psychiatric treatment shall be attended by patient and his/her attorney, along with other authorized persons. If a patient cannot afford to hire an attorney, the court is obliged to assign an attorney for him/her at the expense of the state;
* The Code of Georgia on Juvenile Justice provides for additional guarantees for the protection of best interests and right of juvenile being in conflict with law, a witness and a victim, increase of powers of the judge in the course of juvenile justice process, wide range of discretion and other issues.

**Provision of legal aid**

* According to the Civil Procedure Code of Georgia, *an application for declaring a person as a beneficiary of support may be filed with the court by this person, his/her family member, his/her legal representative, or a guardianship and custodianship authority, or a psychiatric or a specialised facility*, based on the place of residence of the person; if the person is in a medical facility – based on the address of the medical facility. The application on the recognition of a person as a recipient of support shall indicate the area within which a person needs support. Moreover, an applicant shall submit to the court conclusions of a psychiatrist, psychologist and social expert on the person’s mental condition and social adaption, if applicable;
* According to Article 36320 of the Civil Procedure Code of Georgia, upon admitting an application, the court shall order an expert examination according to the Law of Georgia “On Conducting Expert Examinations Based on Psychosocial Needs”.In special cases, when a person whose declaration as a beneficiary of support is under review evidently avoids an expert examination, the court may, at its hearing with the mandatory participation of the representative of a guardianship and custodianship authority and of this person’s lawyer, deliver a ruling on compulsory sending of the person to have an expert examination based on the psychosocial need.
1. *Please provide information on any existing good practices in jurisprudence in your country related to the effective access to justice for persons with disabilities.*
* In accordance with Article 31 of the Constitution of Georgia, everyone has the right to apply to a court to defend his/her rights. Furthermore, everyone shall be tried only by a court under jurisdiction of which his/her case is. Based on the same Article, the right to defense shall be guaranteed. Article 31 of the Constitution recognizes presumption of innocence, in particular, an individual shall be presumed innocent until proved guilty, in accordance with the procedures established by law and the court’s judgment of conviction that has entered into legal force.
1. *Please provide information on any existing good practices in your country to promote access to effective remedies and reparations in cases where the rights of persons with disabilities have been breached.*
* According to the Decision of the Constitutional Court of Georgia of October 8, 2014 (case: *Irakli Kemoklidze and David Kharadze against the Parliament of Georgia*), existing legislative regulations, which limit legal capacity of a person with disabilities for the reason of mental illness, were found unconstitutional. Following the Decision of the Constitutional Court, by April 1, 2015, the Parliament of Georgia changed the legislative norms related to Articles 14, 16, 18, 36 and 42 of the Constitution of Georgia (previous version) and made relevant amendments to the Civil Code of Georgia and 67 respective laws (hereinafter referred to as legal capacity system reform). Within the reform amendments have been made to over 200 statutory laws. Besides, implementation of the decision of the Constitutional Court, these amendments ensured systemic legal capacity system reform and its compatibility with the principles of Article 12 of the Convention.
1. *Please provide information on any innovative initiatives that have been taken in your country to promote and ensure effective access to justice for persons with disabilities.*
* Rights of persons with disabilities have been improved with the legislative amendments, according to which, since April 15, 2015, based on Article 231 of the Law of Georgia “On Legal Aid”, free legal services became available not only with respect to criminal, but for civil and administrative law cases. This Article applies to the Law of Georgia “On Social Protection of Persons with Disabilities” and normative acts related to it. In terms of accessibility of justice, it should be noted that Article 5 of the Law of Georgia “On State Fees” exempts all persons with disabilities, organizations of persons with disabilities, their institutions, educational-entrepreneurial organizations and unions from all state fees;
* Since April 1, 2015, in accordance with the amendments made to the Law “On Legal Aid” and the Civil Procedure Code of Georgia, legal aid has been established for persons with psychosocial needs, whose recognition as the "beneficiary of support" is made by the court. In the course of examination of these cases, it is obligatory that the person with psychosocial needs has an attorney.