



საქართველოს სახალხო დამცველი
PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA

Input on Access to Justice in the Context of Older Persons

Submission

To the UN Open-ended Working Group on Ageing

Submitted by

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

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The national legislation of Georgia guarantees the right of every person, including older persons, to have unhindered access to a court for the protection of their rights.¹ Along with the judicial mechanism for the protection of human rights, non-judicial mechanisms, such as mediation, arbitration, and Public Defender's service, are available for everyone, including older persons. In addition, administrative appeals are yet another non-judicial tool, which allows older persons to exercise their rights through the administrative quasi-judiciary proceedings.

It should be noted that since 2005, based on institutional reforms in the judiciary, magistrate judges were appointed within the city court system. They are assigned to resolve less complex disputes solely, quickly and easily. Currently, these 26 magistrate judges are working throughout the country, located in all regions of Georgia, and their services are available for older persons as well. In order to make justice more accessible, the number of judges is planned to be increased within the framework of the court administration strategy. As for the functioning of non-judicial mechanisms, the services of mediation and arbitration are available throughout the country. Furthermore, the Public Defender's Office has regional offices across the country, which collect information about human rights violations on the basis of applications received and/or proactively, the substantive study of which is then centralized. Of course, all of these mechanisms can be used by older persons as well.

With regard to the issue of affordability, the national legislation does not provide benefits explicitly for older persons. Legislation in this direction is general and provides only for the exemption of insolvent plaintiffs from the state duty² or the cases of various categories,³ including the ones concerning social rights. At the same time, the legislation empowers the judge to decide in favor of full or partial exemption of the plaintiff from the judicial costs by considering his/her property.⁴

A free legal aid system is also available in the country, which enables any person to get legal advice on any legal issue.⁵ Drawing up legal documents, as well as representation in the court and administrative bodies on civil and administrative cases is provided for insolvent persons,⁶ while in cases of accused, sentenced or justified person's representation in the court and administrative bodies, the law requires additional assessment of the importance and complexity of the case.⁷ As for the criminal cases, the Criminal Procedure Code of Georgia provides for the mandatory defense⁸ of the defendant only in certain cases, while in other cases, insolvency is a mandatory requirement for benefiting from legal assistance. Thus, the applicable legislation does not consider the old age of a person as a separate precondition for vulnerability in order

¹ Article 31.1 of the Constitution of Georgia and Article 3.1 of the Organic Law of Georgia on Common Courts.

² Article 5.1 (m¹) of the Law of Georgia on State Duty.

³ Article 9.1 of the Administrative Procedure Code of Georgia and Article 46 of the Civil Procedure Code of Georgia.

⁴ Article 47.1 of the Civil Procedure Code of Georgia.

⁵ Article 2 (b) of the Law of Georgia on Legal Aid.

⁶ The relevant person must be registered in the database of socially vulnerable families and must be granted a threshold score according to the socio-economic status assessment methodology approved by the Government of Georgia.

⁷ Article 5.1, 5.2, 5.2¹ of the Law of Georgia on Legal Aid.

⁸ Article 45 of the Criminal Procedure Code of Georgia.

to provide legal aid at the expense of the state (drawing up documents, representation in the court or administrative body).

With regard to accessibility, the State has not identified the needs of older persons, while the policy documents refer to the study of these needs and elimination of the identified problems only in relation to juveniles, persons with disabilities, ethnic minorities, women, children and other groups. As for the non-judicial human rights mechanisms, mediation and arbitration services are not free,⁹ while applying to the Public Defender, as well as conducting administrative proceedings on the basis of administrative complaints, including for older persons, is free of charge.

As mentioned above, the measures under policy documents on equal access to court are intended for various vulnerable groups, but not for older persons. In addition, policy documents or framework legislation do not generally provide for legal safeguards, such as the provision of age-appropriate procedures at all stages of administrative or judicial proceedings, whereas this is necessary to ensure equal access to court for older persons.

Training programs for judges and other judicial staff do not include awareness-raising and/or capacity-building measures in relation to the negative impact of ageism and age discrimination in the judicial system. However, the curriculum provides educational activities on domestic violence and international standards of non-discrimination.

In view of the foregoing, the major problem is the fact that national legislation and state policy documents do not consider the specific needs of older persons in terms of access to justice. In the absence of legal safeguards, the State neglects the legitimate interests of older persons for ensuring equal access to judicial and non-judicial protection mechanisms. In the given situation, the Public Defender considers that the state policy documents on access to justice should prioritize the needs of older persons and the activities and programs tailored to their requirements should be gradually implemented.

⁹ Article 4.1 (a¹), 4.1 (a²), 4.1 (a⁵), 4.1 (a⁶) of the Law of Georgia on State Duty.