



**GEORGIAN
YOUNG
LAWYERS'
ASSOCIATION**



THE LEGAL STATUS OF OLDER PERSONS IN GEORGIA

Georgian Young Lawyers' Association

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INTRODUCTION

The number of persons aged 60 and over is increasing day by day in the world. In 2019, the number of people aged 60 and over exceeded 1 billion. By 2030, this number will amount to 1.4 billion, and by 2050, there will be 2.1 billion older people.¹ Thus, the share of elderly citizens is growing at an unprecedented rate and will accelerate even further in the upcoming decades, especially in developing countries.² In Georgia, according to the data of 2022, the proportion of the population aged 65 and above makes up 15.5% of the total population.³

According to the United Nations, older persons constantly face a number of challenges in the enjoyment of their rights, including in the areas of prevention of violence, neglect, social protection, food and shelter, the right to work and access to the labour markets, equality, access to justice, education, health support, and long-term palliative care.⁴ At the same time, demographic dynamics has an increasing impact on the socio-economic development of the country and society (including the healthcare and social sectors) and in the long term creates risks to public finances.⁵ Therefore, it becomes important to develop/implement policies adapted to the special needs of the elderly. It is necessary that the elderly population be provided with equal opportunities to participate in the country's economic, political, and social processes. In addition, in a social, legal, and democratic state, where respect for human dignity and its inviolability is a basic constitutional principle, the state has a positive obligation to take all necessary measures to ensure that elderly persons feel like full-fledged, dignified members of society.

From September 2021 to September 2022, the Georgian Young Lawyers' Association (hereinafter the GYLA), with the financial support of the "Open Society Georgia Foundation", carried out the project "Protection and Promotion of the Rights of Older Persons" within which more than 1200 persons over 60 years of age were provided with legal assistance. The project has identified a number of problems and pressing issues related to the rights of the elderly.

This report reviews both international and domestic legal mechanisms for protecting the rights of the elderly, analyses the problems of older persons identified by the project, and offers recommendations to the relevant state authorities based on the main trends.

¹ Information from the World Health Organization, available at: https://www.who.int/health-topics/ageing#tab=tab_1, updated: 04.08.2022.

² Ibid.

³ Data from the National Statistics Office of Georgia, available at: <https://www.geostat.ge/ka/modules>, updated: 04.08.2022.

⁴ Human Rights Council, Human rights of older person, resolution 48/3 of 7 October 2021, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/287/79/PDF/G2128779.pdf>, updated: 04.08.2022.

⁵ The introduction of the "State Policy Concept on Ageing Issue in Georgia" approved by the Parliament of Georgia on 27 May 2016 under the Resolution 5146-IIIb "On Approval of the State Policy Concept on Ageing Issue in Georgia".

THE LEGAL FRAMEWORK REGULATING THE RIGHTS OF OLDER PERSONS

1.1. International mechanisms for protecting the rights of the elderly

The protection of the human rights of older people has been the subject of international debates over the past decades, nevertheless within the framework of the United Nations, states have not managed yet to reach an agreement on the adoption of a binding international act.⁶ However, it is reasonable to expect that as a result of the generalization of the needs and problems of elderly people just like other persons in need of special protection (including women, children, ethnic minorities, disabled persons), a binding international document will be adopted.

With regard to protecting the rights of the elderly, of particular importance is the Madrid International Plan of Action on Ageing Issues adopted in April 2002, which is the first strategic document on ageing.⁷ Several months after the adoption of the action plan, the United Nations Economic Commission for Europe (UNECE) met in Berlin to develop a regional strategy for the implementation of the plan (RIS), focusing on issues in the region. The Madrid International Plan of Action on Ageing and the Regional Implementation Strategy (MIPAA/RIS) set 10 obligations, which in turn incorporate specific actions and policy principles. These obligations are as follows: 1. Mainstreaming ageing of the population in all policy directions; 2. Ensuring the full integration and involvement of the elderly in society; 3. Facilitating equal and sustainable economic growth in response to population ageing; 4. Regulating social protection systems; 5. Enabling labour markets to respond to the economic and social consequences of ageing; 6. Promoting lifelong learning and adapting to educational systems; 7. Promoting quality of life and independent living (including health and well-being) at all ages; 8. Making the main emphasis on gender equality in ageing societies; 9. Fostering intergenerational solidarity among families and their members caring for the elderly; 10. Facilitating the introduction of the regional strategy for the implementation of the plan and its further actions in the context of regional cooperation.⁸

Ageing is also a part of the 2030 Agenda for Sustainable Development Goals, which was adopted by all UN countries in 2015.⁹ The Sustainable Development Goals emphasize the fact that older persons, whose number is increasing, have a significant effect on the

⁶ The Special Report of the Public Defender of Georgia "The legal status of older persons in Georgia", the website of the Public Defender of Georgia, 2020, 5, available at: <https://www.ombudsman.ge/res/docs>, updated: 04.08.2022.

⁷ The Second World Assembly, "Political Declaration and Madrid International Plan of Action on Ageing", 8-12 April 2002, 9, available at: <https://www.un.org/esa/socdev/documents/ageing/MIPAA/political-declaration-en.pdf>, updated: 04.08.2022.

⁸ The introduction of the "State Policy Concept on Ageing Issue in Georgia" approved by the Parliament of Georgia on 27 May 2016 under the Resolution 5146-III "On the Approval of the State Policy Concept on Ageing Issue in Georgia".

⁹ United Nations, Transforming our world: the 2030 agenda for sustainable development, 2015, available at: <https://sdgs.un.org/2030agenda>, updated: 04.08.2022.

social and political development of a country. Truly realistic, inclusive, and sustainable development outcomes cannot be achieved without the active participation of the elderly.¹⁰ In 2021, the UN Human Rights Council adopted its latest resolution on the rights of older people, focusing on age discrimination and the international community's obligation to act to protect the rights of older persons.¹¹

The Global Strategy and Action Plan on Ageing and Health, adopted by the World Health Organization in 2017, also aims to improve the legal situation of older people and includes five strategic goals: 1. Commitment to action on healthy ageing in all countries; 2. Developing age-friendly environments; 3. Adjusting health systems to the needs of older population; 4. Developing sustainable and equitable systems for ensuring long-term care; 5. Improving measurement, monitoring, and research of healthy ageing.¹²

It should be noted that the legislation of the European Union does not contain any special legal act directly related to the rights of older citizens, yet according to Article 25 of the Charter of Fundamental Rights of the European Union, the Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. It is noteworthy that an important mechanism protecting the rights of older persons is the Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Court of Human Rights, which ensure that member states fulfill their obligations assumed under the Convention and its protocols. Although the Convention does not regulate the rights of older persons separately, according to judicial practice and taking into account the special needs of individuals, the rights and freedoms ensured by the Convention apply to them in different ways and impose certain obligations on the state.¹³

1.2. Domestic legal acts on the rights of older persons

Georgia does not have any special legislation that would directly define the rights of older people, their protection, and the scope of positive obligations of the state. However, in various legislative acts and by-laws, we can still find a number of provisions related to the elderly, which fragmentarily regulate certain issues related to the rights of older persons.

¹⁰ United Nations Development Programme, Ageing, Older Persons and the 2030 Agenda for Sustainable Development, available at: <https://www.un.org/development/desa/ageing/wp-content/uploads>, updated: 04.08.2022.

¹¹ Human Rights Council, Human rights of older person, resolution 48/3 of 7 October 2021, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/287/79/PDF/G2128779.pdf?OpenElement>, updated: 04.08.2022.

¹² World Health Organization, Global Strategy and Action Plan on Ageing and Health, 2017, Available at: <https://www.who.int/publications/i/item/9789241513500>, updated: 04.08.2022.

¹³ See, for example, the decision of the European Court of Human Rights of 20 August 2014 on the case of McDonald v. The United Kingdom: The complainant complained about the reduction of night care hours, which as he believed violated his right to private and family life. The complainant was no longer able to use the toilet safely on his own, so he enjoyed night care services for 70 hours a week. Later, the local authorities decided to reduce the weekly care. The Court discussed the reduction of night care hours within the framework of Article 8 (the right to security of private and family life) and considered the reduction of night care as a violation of this right.

An important document concerning the rights of the elderly was the resolution of the Parliament of Georgia adopted on 27 May 2016 "On the approval of the state policy concept on ageing issue in Georgia". By this resolution, the Government of Georgia was instructed to develop a national action plan 2016-2018 for the implementation of the "State Policy Concept on Ageing Issue in Georgia" by 1 August 2016,¹⁴ and the Ministry of Labour, Health and Social Protection of Georgia was tasked to coordinate the implementation of the National Action Plan 2016-2018 and from time to time submit a relevant report to the Healthcare and Social Issues Committee of the Parliament of Georgia.¹⁵ In accordance with the Resolution №5146-IIIb of the Parliament of Georgia dated 27 May 2016 "On the Approval of the State Policy Concept on Ageing Issue in Georgia", the Government of Georgia, on 2 November 2017, approved the National Action Plan 2017-2018 for the State Policy Concept on Ageing Issue in Georgia.¹⁶ The validity period of the document expired at the end of 2018 and the Georgian authorities have not approved a new action plan yet. In the action plan itself, the period for carrying out an interim review of the implementation of the plan was stipulated – it was 2018.¹⁷ The results of the inspection were supposed to be reflected in the following two-year plan,¹⁸ which has not been done so far. The Public Defender has been talking for several years about the lack of a mechanism ensuring the implementation of the main policy document for older persons - "The State Policy Concept on Ageing Issue in Georgia" because the action plan for the implementation of the concept has not been developed since 2018. Accordingly, the country does not have any instrument that could assess the enjoyment of all human rights by elderly persons, while the concept remains an unenforceable document.¹⁹

We can find certain regulations relating to older persons in various provisions of the legislation. In order to assess the legal status of the elderly in the country, we consider it important to review the following provisions:

- **The Constitution of Georgia** - The Constitution of Georgia enshrines the principle of democratic public order, social and legal state.²⁰ At the same time, the Constitution of Georgia emphasizes that the State shall care about strengthening the principles of social justice, social equality and social solidarity within

¹⁴ Article 2 of the Resolution 5146-IIIb of the Parliament of Georgia dated 27 May 2016 "On the Approval of the State Policy Concept on Ageing Issue in Georgia".

¹⁵ Article 3 of the Resolution 5146-IIIb of the Parliament of Georgia dated 27 May 2016 "On the Approval of the State Policy Concept on Ageing Issue in Georgia".

¹⁶ Resolution №490 dated 2 November 2017 adopted by the Government of Georgia "On the approval of the National Action Plan 2017-2018 for the State Policy Concept on Ageing Issue in Georgia".

¹⁷ The Public Defender speaks extensively about the non-fulfillment of the obligations stipulated by the Action Plan in her report "On the Situation of Protection of Human Rights and Freedoms in Georgia", the website of the Public Defender of Georgia, 2017, 311, available at: <https://bit.ly/2OleRiP>, updated: 04.08.2022.

¹⁸ "The National Action Plan 2017-2018 for the State Policy Concept on Ageing Issue in Georgia" approved by the Resolution №490 of 2 November 2017 of the Government of Georgia "On the approval of the 2017-2018 National Action Plan for the Concept of the State Policy on Ageing Issue in Georgia".

¹⁹ The Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, the website of the Public Defender of Georgia, 2021, 298, available at: <https://www.ombudsman.ge/res>, updated: 04.08.2022.

²⁰ See the Preamble of the Constitution of Georgia, as well as Articles 3-5.

society.²¹ The State shall take care of human health and social protection, providing the subsistence minimum and decent housing, and protecting the welfare of the family.²² In addition, the Constitution of Georgia strengthens universal human rights and freedoms. When exercising authority, the people and the state are limited by these rights and freedoms as directly applicable law.²³ In relation to older persons, the inviolability of human dignity,²⁴ as established by the Constitution of Georgia, is particularly relevant, as well as the right to equality,²⁵ which states that it is inadmissible to differentiate people on the basis of age without appropriate justification. Thus, the primary legal document for the protection of the human rights of older people is the Constitution of Georgia, and the fundamental rights and freedoms enshrined therein are fully applicable to the elderly.

- **The Law of Georgia "On Elimination of All Forms of Discrimination"** - The aim of the law is to eliminate every form of discrimination and ensure that all physical and legal persons equally enjoy the rights established by the legislation of Georgia irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or rank, religion or belief, national, ethnic or social affiliation, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or any other characteristics.²⁶ This law, together with the Constitution of Georgia, is an important document protecting older persons from discrimination based on their age.
- **The Criminal Code of Georgia** - The Code contains prohibition, according to which life imprisonment cannot be imposed on those who have reached the age of sixty at the moment of sentencing.²⁷ In addition, the court has the right to release a person who has reached the age of seniority (females - from 65 years of age, males - from 70 years of age) from further serving the sentence if he/she has not been imprisoned for life and has served at least half of the sentence.²⁸
- **The Imprisonment Code** - According to this Code, the elderly (females - from 60, males - from 65) must have living conditions adapted to their specific needs.²⁹ In addition, older persons (females - from 60, males - from 65) must be provided with nutritional conditions appropriate to their status.³⁰ The Code also provides for the release of a convicted person from prison due to the old age, in the cases provided for in the legislation of Georgia.³¹
- **The Law of Georgia "On violence against women and/or elimination of domestic violence, protection and support for victims of violence"** – Within the

²¹ Ibid. Article 5, Paragraph 2.

²² Ibid. Article 5, Paragraph 4.

²³ Ibid. Article 4, Paragraph 2.

²⁴ Ibid. Article 9.

²⁵ Ibid. Article 11, Paragraph 1.

²⁶ Article 1 of the Law of Georgia "On Elimination of All Forms of Discrimination".

²⁷ Article 51, Paragraph 2 of the Criminal Code of Georgia.

²⁸ Article 74, Paragraph 4 of the Criminal Code of Georgia.

²⁹ Article 15, Paragraph 5 of the Prison Code.

³⁰ Article 23, Paragraph 4 of the Prison Code.

³¹ Article 37, Paragraph 1, subparagraph "f" of the Prison Code.

concept of a family member, the law envisages older persons as well (for the purposes of this law, mother, father, grandfather, grandmother...). Older persons may be particularly vulnerable to violence due to their financial dependence as well as decreased labour capabilities. The law obliges the State, through its authorized bodies, to support and ensure the introduction and implementation of mechanisms for the prevention of domestic violence.³²

- **The Local Self-Government Code** - The Code envisages the development of appropriate infrastructure for the elderly in facilities of local importance, including proper adaptation and equipment of public gathering places and municipal transport.³³
- **The Civil Code of Georgia** - The Code regulates issues concerning private legal relations. Among other important points, the norms defining the rights of grandparents in relation to minor grandchildren deserve special attention with respect to the elderly. In particular, "a grandfather and a grandmother have the right to communicate with their minor grandchildren, even when they are not directly involved in the upbringing of their grandchildren. If the parents or guardian/caregiver refuse to allow the grandfather and grandmother to have contact with their grandchildren, the court may order the parents or guardian/caregiver to allow the grandfather and grandmother to interact with their grandchildren in a manner prescribed by the court, if the court decides that this will not interfere with the normal upbringing of the children and will not have an adverse effect on them."³⁴ Moreover, the Code stipulates the obligation of adult able-bodied children to protect disabled parents who need support.³⁵ In addition, grandchildren who have sufficient funds shall be obliged to support their incapacitated grandmother and grandfather who need assistance if they are unable to receive maintenance from their children or each other.³⁶

The above legal provisions contain certain specific norms concerning older persons, affirming the well-known fact that ageing affects a person's labour capabilities³⁷ and, in some cases, it becomes necessary for the State to introduce special regulations to protect the rights of the elderly.

The legal acts that provide certain social assistance for the elderly are discussed in the next subsection.

1.3. Social protection provided for older persons by the Georgian legislation

Social protection and the provision of decent living conditions for the elderly are one of the main obligations of the state. With the view to fulfilling this commitment, the

³² Article 6, Paragraph 2 of the Law of Georgia "On violence against women and/or elimination of domestic violence, protection and support of victims of violence".

³³ Article 16, Paragraph 2, subparagraph "t" of the Local Self-Government Code.

³⁴ Article 1203 of the Civil Code of Georgia.

³⁵ Article 1218, Paragraph 2 of the Civil Code of Georgia.

³⁶ Article 1224 of the Civil Code of Georgia.

³⁷ Decision №2/2/863 of the Constitutional Court of Georgia dated 22 February 2018 on the case "Citizens of Georgia - Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 plaintiffs in total) v. the Parliament of Georgia", II-22.

legislation provides for certain social assistance. The types of social benefits can be conventionally divided into two categories: pecuniary and non-pecuniary assistance. Below each of them is reviewed separately.

1.3.1. Cash benefits for the elderly

The financial assistance provided for older persons, in turn, includes the following cash payments:

- **State pension** - The right to a state pension derives upon the attainment of the retirement age of 65. The right to a pension for women arises at the age of 60.³⁸ The size of a state pension is different for persons under and over 70 years of age, as well as for pensioners living in mountainous villages, which actually depends on the rate of economic growth or inflation.³⁹
- **State compensation** - For citizens of Georgia residing in the territory of Georgia who have carried out special services for the state, the law provides social assistance once they reach a certain age (65 years).⁴⁰ However, it should be noted that if a person simultaneously becomes entitled to the right provided by the Law of Georgia "On State Compensation and State Academic Stipends" and the Law of Georgia "On State Pension", the person, at his/her own choice, can receive a benefit provided for by only one law.⁴¹
- **Living allowance for the elderly living in poverty** – The living subsistence is monetary social assistance intended to improve the socio and economic conditions of low-income families identified through the evaluation system.⁴² The size of living allowance is determined based on the number of household members, and its amount depends on the rating score of a family.⁴³
- **Household subsidy** - The right to receive a household subsidy is granted to persons belonging to different categories determined by the applicable legislation, among which can be older individuals as well, for example, participants of the Second World War are granted a monthly household subsidy in the amount of 100 GEL.⁴⁴
- **Social benefits for older persons living in mountainous settlements** - The state provides the following social benefits for the mountainous settlements: persons who have reached the retirement age and permanently live in highland

³⁸ Article 5, Paragraph 1 of the Law of Georgia "On State Pensions".

³⁹ Article 7, Paragraph 2 of the Law of Georgia "On State Pensions".

⁴⁰ Articles 9-15³ of the Law of Georgia "On State Compensation and State Academic Stipends".

⁴¹ Articles 6, Paragraph 5 of the Law of Georgia "On State Compensation and State Academic Stipends".

⁴² Article 7, Paragraph 2 of the Law of Georgia "On Social Assistance".

⁴³ Article 6 of the "Basic principles of the implementation of the social assistance programme, the amount of the reintegration allowance, the amount of compensation for foster care, the amount of compensation for family care for adults, the calculation of an amount of social assistance, financing and settlement of events, as well as the rule of financing of the monthly allowance for persons displaced from the occupied territories – IDPs, refugees and persons with humanitarian status" approved by the Resolution №145 of the Government of Georgia "On Social Assistance" on 28 July 2006.

⁴⁴ Article 4 of the "Amount of household subsidy, rules and principles of its appointment and issuance" approved by the Resolution №4 of the Government of Georgia on 11 January 2007 "On Monetization of Social Benefits".

settlements and who receive a monthly state pension as a form of social assistance, taking into account the amount of the state pension, shall receive a monthly bonus - not less than 20 percent of the state pension. The permanent residents of high mountainous settlements who are the recipients of the social assistance determined by the Government of Georgia shall receive a monthly bonus in the amount of 20 percent of the social assistance provided to them, during the winter period (from 15 October of the relevant year to 15 April of the following year) in order to carry out appropriate actions for the provision of heating for permanent residents of highland settlements; also, the compensation in the amount of 50 percent of a monthly fee for electricity consumed by a customer residing in a mountainous settlement, but not more than the charge for 100 kWh of electricity consumed.⁴⁵

- **Social protection for veterans of war and defence forces** - Social protection of veterans and their family members is guaranteed by legislation. For example, the social protection for participants of the Second World War, participants of combat operations on the territory of other states, and participants of the military operations for Georgia's territorial integrity, freedom, and independence provides, among other things, the inadmissibility to evict these persons from occupied service residences without offering a replacement; also, the exemption from fees relating to state utility services - water, collection of household and other waste, gas, electricity, telephone, as well as city transport (excluding taxi) in urban areas, suburban and intercity transport in rural areas in accordance with the legislation of Georgia.⁴⁶

1.3.2. Non-cash assistance for the elderly

In addition to financial benefits, certain non-cash assistance is also provided for older persons. These aids, in turn, include the following efforts:

- **Specialized accommodation for the elderly (community organisations, boarding houses for older people)** – The government of Georgia has introduced at the central level a sub-programme providing community services for the elderly. The measures under the community service component include the following: a) providing accommodation with daily services and three-course meals, one of which should be a three-component dinner; b) if necessary, providing first aid, organizing outpatient and inpatient medical services, providing information on health care programs (including reproductive health and screening programs for various diseases offered by the state) and, if required, facilitating the involvement of older persons therein, providing pill dispensers; c) developing and implementing an individual service plan for beneficiaries in order to increase the degree of their independence; d) developing professional skills, based on the individual abilities and wishes of beneficiaries – selecting crafts, teaching and facilitating their use in practice, assisting the acquisition of skills and experience

⁴⁵ Article 4, Paragraph 2, subparagraphs "a", "c" and "d" of the Law of Georgia "On the Development of Mountainous Regions".

⁴⁶ Article 15 of the Law of Georgia "On Veterans of War and Defence Forces".

necessary for independent life and employment; e) providing clothes based on a beneficiary's wishes, age, gender and season, and necessary items for personal hygiene; f) carrying out activities facilitating their integration within society.⁴⁷ For the purposes of the sub-programme, women are considered elderly - from the age of 60, men - from the age of 65.⁴⁸ However, both the budget and the range of beneficiaries of this programme are limited. A maximum of 180 elderly persons can have an opportunity to benefit from the sub-programme.⁴⁹

- **State healthcare programs** – Every year the government of Georgia approves state healthcare programmes. Within the programmes approved in 2022,⁵⁰ older adults may receive certain services (e.g., breast cancer screening for women aged 40 to 70, cervical cancer screening for women aged 25 to 60, colorectal cancer screening for both sexes aged 50 to 70, vaccination in certain cases, tuberculosis management, etc.) for free.
- **Provision of assistive devices** - Within the sub-programme providing assistive devices, elderly persons with respective needs (women - from 60 years of age, men - from 65 years of age) are provided with hearing aids, crutches, walking sticks, walking frames.⁵¹
- **The sub-programme for providing the rehabilitation of war participants** -Elderly war participants (women - from 60, men - from 65) have an opportunity to benefit from this sub-programme. Within the individual treatment-prophylactic and rehabilitation course, the sub-programme provides the following: a) consultations with doctor-specialist(s); b) physiotherapeutic and laboratory-instrumental examinations; c) balneological procedures; d) physical therapy and manual therapy procedures.⁵²

Apart from the above-mentioned measures of social assistance for the elderly, certain municipalities approve specific programmes at the local level, with the view to strengthening older adults (for example, the Tkibuli municipality offers home care services).⁵³

⁴⁷ Article 3, paragraph 1 of the "Social Rehabilitation state sub-programme 2022 for providing services in community organizations (Annex 1.4)" approved by Resolution №634 of the Government of Georgia on 31 December 2021 "On the Approval of the 2022 State Program of Social Rehabilitation and Child Care".

⁴⁸ Ibid., Article 4, paragraph 1, subparagraph "b".

⁴⁹ Ibid., Article 4, paragraph 5.

⁵⁰ Resolution №4 of the Government of Georgia dated 12 January 2022 "On the approval of the 2022 state healthcare programmes".

⁵¹ "The sub-programme of the State Programme 2022 of Social Rehabilitation: the programme for providing assistive aids" approved under the Resolution №634 of the Government of Georgia "On the Approval of the 2022 State Programme of Social Rehabilitation and Child Care" on 31 December 2021.

⁵² "The sub-programme of the State Programme 2022 of Social Rehabilitation: the programme for providing the rehabilitation of war veterans" approved under the Resolution №634 of the Government of Georgia "On the Approval of the 2022 State Programme of Social Rehabilitation and Child Care" on 31 December 2021.

⁵³ See the Resolution №9 of 30 April 2019 by the Tkibuli Municipality Council "On the approval of the rules for selecting persons for the home care programme in the territory of Tkibuli Municipality".

GENERAL OVERVIEW OF LEGAL CONSULTATIONS PROVIDED BY GYLA WITHIN THE PROJECT

During the reporting period, within the project "Protection and Promotion of the Rights of Older Persons", the GYLA provided a number of legal consultations to older individuals.

The older adults approached the GYLA with respect to various matters. Their questions concerned, inter alia, issues arising from neighbourhood law (*tolerance to neighbouring nuisances, obligation to mark a boundary line*), disputes related to contracts (*annulment of transactions concluded by fraud or error, termination of gift agreements and withdrawal of the donated items, conclusion of agreements on permanent subsistence and the rights and obligations of the parties arising from the said agreements, loan and bank credit agreements, guarantee agreements*), issues arising from the family law (*the division of joint property between spouses in the event of divorce, reciprocal support obligations of spouses, determining the place of residence of a minor, the rights of grandparents to minor grandchildren*), issues arising from inheritance law (*the procedure for drawing up a will, division of inherited property, receiving an inheritance*), issues arising from the civil procedure law (*legal consequences of not filing a counter claim, the procedure for appealing a judgment in absentia, issues related to securing a claim, the procedure for appealing a court judgment, and the consequences of expiration of the appeal period*), issues related to construction law (*the procedure for obtaining a construction permit, acceptance of the finished units for operation, possible response activities in cases of illegal construction*), social assistance (*the prerequisites and procedure for obtaining social assistance, the procedure for granting social assistance due to one's disabilities, the grounds for suspending and terminating the payment of a pension, social benefits for persons living in mountainous areas, assistance to veterans of war and defence forces*), the issues relating to the recognition as a recipient of support (*the procedure for providing a supporter, the scope and term of office of a supporter, as well as drawing up a relevant application to request the extension of the support period*). Legal advice was also provided concerning the procedures of registering real property in the public registry.

ISSUES IDENTIFIED BY GYLA DURING THE PROJECT IMPLEMENTATION

In the process of providing legal assistance to older people, in addition to general legal problems, the GYLA identified specific issues that hinder older individuals, prevent their integration within society, and make them victims of discrimination or stigmatization. The following subsection is devoted to the analysis of the identified problems.

3.1. Social protection measures provided for older persons

Some of the older adults who contacted the GYLA for assistance pointed out the lack of social protection measures. They requested information from the GYLA on the social protection measures provided for in the legislation, and in several cases, on the restoration of suspended social benefits or preparation of legal documents in order to receive them. In every single case, older persons emphasized the severity of the problems and the vital importance of social protection actions for them.

Generally speaking, attaining the age of seniority is associated with decreased labour capabilities, as elderly people are no longer able to earn independent income compared to other individuals and are at a higher risk of poverty than the rest of the population. The socio-economic situation of the elderly is particularly disturbing in developing countries. Therefore, the state must take all possible actions to adequately respond to the challenges that older persons are facing. Given the economic situation in Georgia, the majority of older people do not have savings to satisfy their needs and desires once they reach a specific age. That is why, due to the above reasons, they mainly become dependent on other people or social allowances provided by the state.

The main source of income for the elderly is the state pension. However, the pension, in its very sense, is a type of social assistance that should ensure the satisfaction of merely the basic needs of older persons, since the size of the pension is almost equal to the subsistence minimum.⁵⁴ Accordingly, the purpose of the age-based pension is to protect the elderly from extreme poverty rather than to ensure a dignified life for them. The amount of the pension cannot guarantee that the problems associated with the health of the elderly, medications, or food products will be solved.⁵⁵ Against this background, all social programmes introduced by the state, which are focused on addressing the problems of older people, are of particular importance.

As mentioned above, the elderly are the target group of certain sub-programmes within the services offered by the state for social rehabilitation and child care in the country (support for the rehabilitation of war veterans, provision of assistive devices, and community organizations). Despite this, due to the waiting lists of service seekers, older

⁵⁴ According to the data provided by the National Statistics Office of Georgia for the month of June 2022, the subsistence minimum for a male of working age is 255.3 GEL, available at: <https://www.geostat.ge/ka>, updated: 04.08.2022.

⁵⁵ Special report of the Public Defender of Georgia, "The legal status of older persons in Georgia", the website of the Public Defender of Georgia, 2020, 19, available at: shorturl.at/pqw19, updated: 04.08.2022.

persons either are not involved in the programmes or receive the services in a delayed manner.⁵⁶ Thus, the state must expand the range of target beneficiaries of the programmes and improve their accessibility for older persons with all relevant disabilities.

Furthermore, the problem is the lack of adequate guarantees for the social protection of older people at the local self-government level. The Public Defender constantly notes that municipalities fail to carry out social activities within their territories, which includes, among other things, the active identification of older people, the determination and evaluation of their needs, focusing on their problems, the introduction and further implementation of appropriate programmes. Most of the services the municipalities finance from the budget are aimed at one-time assistance for elderly persons and not at developing a long-term plan on how to solve the challenges the elderly face.⁵⁷

3.2. Rights of older persons in special institutions

Several cases of systematic violation of the rights of elderly people placed in specialized institutions have been identified. The Public Defender of Georgia pays special attention to the difficult conditions in which the elderly are living in specialized facilities.

This year, on 17 June 2022, the Office of the Public Defender of Georgia conducted monitoring in one of the community institutions.⁵⁸ The monitoring revealed that the situation in the facility is alarming, as the elderly persons are living in humiliating conditions. Besides, since the aforementioned home for the elderly is a community organization, the state is obligated to inspect the living conditions offered to older persons, as well as to ensure that the service provider offers appropriate conditions for them.

The inadequate conditions created in specialized institutions affect the dignity of elderly persons.⁵⁹ Therefore, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, as well as the Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking, must promptly respond to the violations and immediately provide decent conditions for the older persons living in the institution.

⁵⁶ Report of the Public Defender of Georgia “On the Situation of protection of human rights and freedoms in Georgia,” the website of the Public Defender of Georgia, 2017, 312, available at: <https://drive.google.com/file/d/1gcWDvqloj-PTKW5FWBczRKSLdQrKkoO9/view>, updated: 04.08.2022.

⁵⁷ Resolution №490 "On the approval of the 2017-2018 national action plan for the state policy concept on ageing issue in Georgia" approved by the Government of Georgia on 2 November 2017.

⁵⁸ Report of the Public Defender of Georgia “On the Situation of protection of human rights and freedoms in Georgia,” the website of the Public Defender of Georgia, 2017, 299, available at: <https://www.ombudsman.ge/res/docs/2022040413242699860.pdf>, updated: 04.08.2022.

⁵⁹ N(N)LP "Kindzmarauli Beteli Home" of Tsnori Old People's Shelter located in Sighnaghi district, Kakheti.

⁵⁹ See the Public Defender's statement regarding the degrading conditions for older people living in "Kindzmarauli Beteli Home", the website of the Public Defender of Georgia, 22 June 2022, available at: <https://www.ombudsman.ge/geo/190510074540siakhleebi/sakhalkho-damtsvelis-gantskhadeba-khandazmulta-savane-betelshi-mtskhovrebi-khandazmulebis-ghirsebis-shemlakhav-pirobebshi-qofnastan-dakavshirebit>, updated: 04.08.2022.

3.3. Violence against older persons

During the project, GYLA was approached by several persons who sought advice concerning domestic violence and, consequently, the procedures for issuing protective and restraining orders.

Domestic violence is the violation of the constitutional rights and freedoms of one family member by another member of the family through neglect and/or physical, psychological, economic, sexual violence, or coercion.⁶⁰ Based on the available data, in 2021, according to the restraining orders issued on domestic violence cases, 361 elderly men and 873 elderly women were reportedly identified as victims of violence.⁶¹ For many years, the problems of an invariable and systemic nature have been associated with such important issues as the perception of the fact of violence by victims themselves, the low rate of reporting violence to relevant bodies by the victims, the lack of psychosocial and economic rehabilitation programmes for victims of violence. According to the Public Defender, protecting older people from violence for a long time and providing assistance services is still a problem.⁶²

In light of the increase in the number of domestic violence cases, it is very important to study the situation of the elderly living in Georgia in this regard in order to detect and respond to cases of violence in a timely manner, as well as to provide older persons with detailed information on how to act in case of violence against them.⁶³

⁶⁰ Article 3 of the Law of Georgia "On violence against women and/or elimination of domestic violence, protection and assistance to victims of violence".

⁶¹ Report of the Public Defender of Georgia "On the situation of human rights and freedoms in Georgia," the website of the Public Defender of Georgia, 2021, 301, available at: shorturl.at/hOU38, updated: 04.08.2022.

⁶² Report of the Public Defender of Georgia "On the situation of human rights and freedoms in Georgia," the website of the Public Defender of Georgia, 2021, 401, available at: shorturl.at/dhoRX, updated: 04.08.2022.

⁶³ United Nations Population Fund, "General situation of retired older persons living alone under the poverty line during the period of COVID-19" Study Report, 2020, 9, available at: shorturl.at/dOQWY, updated: 04.08.2022.

CASES OF OLDER PERSONS HANDLED BY GYLA DURING THE REPORTING PERIOD

4.1. Age discrimination by an insurer and/or insurance intermediary in a travel insurance contract

A senior citizen contacted the GYLA concerning a discriminatory clause provided by an insurance company in a contract. In particular, according to the circumstances of the case, the travel insurance contract was signed between the citizen and the insurance company on 03 August 2021, the validity period of which was set from 04 August 2021 to 27 August 2021, with the insurance limit EUR 50,000. The insured was a person over 70 years old. The insured assumed that the travel insurance would cover the cost of medical treatment in the event of any health problems during his/her stay abroad, which was, in fact, covered for any other contracting party by the standard terms of the policy.

On 16 August 2021, while in Switzerland, due to the deterioration in health caused by an acute infection, the insured applied to the Geneva University Clinic and received appropriate medical services. The insured expected that the insurance company would cover the cost of the medical treatment. However, the insurance company did not reimburse the treatment expenses, referring to Article 2.1.2 of the standard terms of the contract as an argument. The named clause could be read as follows: for persons whose age at the end of the insurance period is 70 or more, under the terms of the travel insurance policy, only the expenses related to the death of the insured, including repatriation expenses shall be reimbursed in the event of the death of the insured, as well as the costs of transportation of the body or ashes of the insured to Georgia in the event of the insured's death, and also, the costs incurred for his/her on-site burial in the event of the death of the insured. Accordingly, persons aged 70 years or older are not entitled to compensation for medical expenses under the travel insurance agreement.

According to GYLA, the formulaic inclusion of this condition in a travel insurance product, which is significantly different from other consumers, is a discriminatory attitude towards elderly persons. The policy does not take into account individual information about the health status of the customer and is based only on general conclusions and stereotypes, which limit the possibility for older persons to fully integrate into society. Assumptions and conclusions about the elderly are often misleading and fail to reflect the individual diversity of people. Thus, singling out a specific group of persons and creating unfavourable conditions for them in comparison with other individuals, without proper justification, is discrimination.

In addition, in the given case, we are dealing with a travel insurance contract, which is a necessary document when crossing the border. A refusal to enter into this agreement and/or conclude it on different terms may create an obstacle for a person to cross the border. Consequently, this poses a threat to the freedom of movement of elderly

persons, which is enshrined in the Constitution.⁶⁴ Therefore, it is necessary to prevent discrimination based on the client's age in travel insurance contracts by insurers and/or insurance intermediaries.

It is also noteworthy that the above-mentioned citizen, with respect to the contractual terms, applied to the Public Defender of Georgia as well, who has established the fact of age discrimination in the case. The Public Defender held that setting an age limit by the insurance company, beyond which a person is automatically considered to have a specific health condition, is unacceptable. This approach excludes the individual assessment of a person's condition. Accordingly, in order to eliminate discrimination on the ground of age, the Public Defender called on the insurance company to revise the terms of the travel insurance policy, in particular, to evaluate the insurance policy individually and make a reasoned decision regarding the reimbursement of the incurred medical expenses. In addition, the Public Defender points out in her recommendation that the company must not allow discriminatory treatment based on age or any other grounds in the future, operate in compliance with the principle of equality, and promptly ensure that the internal organizational regulations and policies are consistent with the right to equality.⁶⁵

The given case is noteworthy to the extent that it is not the first occasion when the insurer has discriminated against a person who has attained the age of 70. As already mentioned, the discriminatory clause is a standard term embedded in travel insurance contracts offered by the insurer. In addition, despite the recommendation of the Public Defender, the insurance company does not recognize the discriminatory treatment in the given case and refuses to compensate the person for the treatment expenses. The affected person, with the help of the GYLA, has filed a complaint with the insurance company, requesting the reimbursement of the treatment costs, and is currently waiting for their response.

4.2. The issue of granting the social assistance package for a veteran of the Defence Forces, who, along with Georgian citizenship, also holds the citizenship of another country

The GYLA is handling a case that concerns the refusal to grant a social assistance package for a veteran of the Defence Forces. In particular, a person who had dual citizenship - he was a citizen of both Georgia and the Russian Federation and was receiving the state pension from the latter - applied to the GYLA. The citizen also had the status of a veteran. It is on this very basis that on 25 January 2022, he applied to the Tbilisi Social Service Centre of the LEPL "Social Service Agency" with a request to provide him with social assistance. In particular, pursuant to the law, veterans of the Defence Forces are entitled

⁶⁴ Article 14 of the Constitution of Georgia.

⁶⁵ Recommendation №13-2/2134 of the Public Defender of Georgia dated 22 February 2022.

to receive a social assistance package in the amount of 100 GEL upon reaching the retirement age.⁶⁶

Despite the existence of legal grounds for granting the social assistance package for the veteran of the Defence Forces, the Tbilisi Social Service Centre of the LEPL "Social Service Agency" did not allocate social assistance for the citizen.⁶⁷ After that, on 24 February 2022, the said person filed an administrative complaint with the LEPL "Social Service Agency" and requested to invalidate the individual administrative act issued by the Tbilisi Social Service Centre of the LEPL "Social Service Agency" and to issue a new act in order to provide him with the social assistance (100 GEL) in compliance with the law. The LEPL "Social Service Agency" dismissed the applicant's claim on the same grounds.⁶⁸

Both Tbilisi Social Service Centre of the LEPL "Social Service Agency" and the LEPL "Social Service Agency," when refusing the social assistance package to the veteran of the Defence Forces referred to the provision according to which the application requesting the determination of the social assistance should be accompanied by "in the case of a citizen of a foreign country who has been granted Georgian citizenship - a certificate confirming that he/she does not receive a pension from another country of which he/she is a citizen".⁶⁹ By citing the norm, the administrative bodies explained to the citizen that since he was receiving the pension from the Russian Federation, he could not obtain the entitlement to a social assistance package in Georgia.

With the GYLA's assistance, the said person challenged in court the decision of Tbilisi Social Service Centre of the LEPL "Social Service Agency," as well as the decision of the LEPL "Social Service Agency" refusing him social assistance. GYLA believes that the State unlawfully refused to provide social assistance for the veteran of the Defence Forces. In particular, in the lawsuit, the GYLA referred to the provision of Resolution №279, according to which, as an exception, veterans of the Defence Forces shall be awarded a state pension (a pension package) or state compensation along with the social assistance.⁷⁰ Therefore, according to the law, veterans of the Defence Forces are entitled to receive a social assistance package along with the state pension.

It is noteworthy that after the start of the litigation, an amendment was introduced to the legislation and the norm based on which the administrative body refused to provide social assistance to the citizen was cancelled (the amendment entered into force on 13 May 2022).⁷¹ After the abolition of the norm, the veteran again applied to the

⁶⁶ Article 5, Paragraph 1, sub-paragraphs "g and h" of the "Rules and Conditions for Issuing a Social Assistance Package" approved under the Resolution №279 "On determining a social assistance package" by the Government of Georgia on 23 July 2012.

⁶⁷ Decision №04-00/2203 of 11 February 2022 of the Tbilisi Social Service Centre of the LEPL "Social Services Agency."

⁶⁸ Decision №04/4415 of LEPL "Social Services Agency" approved on 29 April 2022.

⁶⁹ Article 7, Paragraph 2, subparagraph "e" of the "Rules and Conditions for Issuing a Social Assistance Package", approved under the Resolution №279 "On the determination of a social assistance package" by the Government of Georgia on 23 July 2012.

⁷⁰ Article 6, Paragraph 1, subparagraph "b" of the "Rules and Conditions for Issuing a Social Assistance Package", approved under the Resolution №279 "On the determination of a social assistance package" by the Government of Georgia on 23 July 2012.

⁷¹ Based on Article 1, Paragraph 2 of the Resolution №237 of the Government of Georgia of 11 May 2022 "On Amendments to the Resolution №279 of 23 July 2012 of the Government of Georgia "On Determination of a

administrative body and requested the social assistance, after which his request was granted and he has been receiving social assistance since July 2022. However, the dispute in the court is still relevant in terms of the compensation payable for the past period.

4.3. Withholding the state pension of elderly persons

A pensioner, who reached the retirement age in January 2022, applied to the GYLA for legal assistance. Having obtained the right to the pension, he/she applied to one of the branches of JSC "Liberty Bank" to receive the pension. The bank representative informed the applicant that he/she could not receive the pension because he/she had a loan obligation undertaken years ago payable to the bank. The pensioner applied to the institution with a request to receive the pension due to the expiration of the contractual limitation period; however, the bank offered him/her a new loan to cover the previous one, which would eventually significantly worsen the pensioner's situation. In addition, the bank refused to provide the pensioner with copies of the contract.

With the view to studying the matter, the GYLA applied to the bank with a complaint (a claim application), in which the organization requested to issue the withheld pension to the pensioner without a court decision and to provide a written explanation about the grounds of the pension withholding. In the application, GYLA cited relevant norms governing pension withholding rules, on the basis of which the GYLA believed that the withholding of the pension in that particular case was unlawful. Specifically, in accordance with the law, the basis for withholding a pension may be a court decision or a decision of the relevant authority. If the pension is withheld based on a court decision, no more than 50% of the pension can be deducted.⁷² In the given case, the ground for withholding the pension was an agreement signed with the bank. In particular, the loan agreement contained a condition according to which, "in the event that on the day of repayment of the loan and all related funds, the borrower does not deposit a sufficient amount on the credit servicing account to cover the indebtedness, the borrower declares his/her prior consent to fully authorize the bank to fully and/or partially block the funds on the borrower's bank account at its own discretion; and/or deduct all funds payable from the borrower's bank accounts without acceptance and refer such funds to cover/reduce the existing cash liability". GYLA believes that the bank is obliged, regardless of the terms of the contract, to take into account the restrictions provided for in the law of Georgia "On State Pension". It is important that all pensioners, irrespective of their credit history, be allowed to take full advantage of the pension provided by the state.

The bank accepted the legal argumentation specified in the complaint and, as a result, the pensioner was allowed to take his/her pension. The GYLA has been approached recently by other citizens regarding a similar problem. Therefore, we believe that the practice established concerning the given case may be useful for other pensioners as well.

Social Assistance Package", Article 7, Paragraph 2 of the "Rules and Conditions for Issuing a Social Assistance Package" approved by the Resolution №279 of the Government of Georgia on 23 July 2012 "On the determination of a social assistance package" was removed.

⁷² Article 19 of the Law of Georgia "On State Pensions".

In connection with the above issue, the Public Defender of Georgia in the Parliamentary Report 2019 assessed the situation around banking institutions withholding more than 50% of the monthly pension of older persons. The Public Defender's report indicates that for a large portion of persons receiving an old-age pension, the state pension is the only source of income. In addition, most of such beneficiaries have a loan in the pension issuing bank (JSC "Liberty Bank"). Every month, the amount of money to be deducted from the pension is determined by the terms of the contract signed between the banking institution and a pensioner, the client of the bank. The amount stipulated in the contract is deducted from the pensioner's pension account in the amount that usually exceeds 50% of their pension. Against the background of the fact that the state pension is the only source of income for pensioners, the amount received after the withholding is much less than the subsistence minimum, which further aggravates even the difficult socio-economic condition of pensioners. That is why the Public Defender sent a recommendation to the Social Services Agency to start negotiations with JSC "Liberty Bank" on amending the concluded agreements in order to include the conditions adapted to the interests of beneficiaries.⁷³

⁷³ Report of the Public Defender of Georgia "On the situation of human rights and freedoms in Georgia," the website of the Public Defender of Georgia, 2019, 373-374, 376. Available: shorturl.at/kIMTU, updated: 04.08.2022.

GYLA'S LAWSUIT TO THE CONSTITUTIONAL COURT OF GEORGIA ON AGE DISCRIMINATION

With the view to improving the legal status of the elderly, the GYLA filed a lawsuit with the Constitutional Court.⁷⁴ The norms challenged in the constitutional claim establish the retirement age in state higher education institutions for academic staff that have attained the age of 65. In particular, the GYLA appealed against the provision of the Law of Georgia "On Higher Education", according to which "a person who has reached the age of 65 cannot be elected to an academic position at a higher education institution established by the state, and a person holding an academic position, who has attained the age of 65, shall be removed from the academic position after the expiry of the term of his/her office,"⁷⁵ as well as the norms that in LEPL Batumi Shota Rustaveli State University⁷⁶ and LEPL Ivane Javakhishvili Tbilisi State University⁷⁷ provide for a possibility of electing a person who has reached the age of 65 to an academic position only in exceptional cases under a decision of the university's academic board.

The GYLA believes that the disputed provisions are discriminatory and at the same time represent a practice contrary to the standards established by the decision №2/2/863 of the Constitutional Court of Georgia⁷⁸ dated 22 February 2018, which is why the disputed norms should be declared unconstitutional without a merits hearing of the case in relation to the right to equality⁷⁹ before the law.⁸⁰ In particular, in the decision №2/2/863 of 22 February 2018, the Constitutional Court deemed unconstitutional the norms that stipulated that a person over the age of 70 may not be elected to an administrative position in the Academy, in particular, to the positions of the President and Vice President of the Academy.⁸¹ In the above decision, the Court held that for a position that requires mental activity, advancing age does not deprive an individual of

⁷⁴ See the Constitutional lawsuit №1691.

⁷⁵ Article 36, Paragraph 2 of the Law of Georgia "On Higher Education".

⁷⁶ Article 59, Paragraph 2 of the Statute of the Legal Entity of Public Law - Batumi Shota Rustaveli State University approved by Decree №1106 of the Minister of Education and Science of Georgia on 14 November 2007 "On the Approval of the Statute of the Legal Entity of Public Law - Batumi Shota Rustaveli State University".

⁷⁷ Article 1, paragraphs 1 and 2 of "The rules and conditions for the selection and dismissal from an academic position, awarding emeritus academic title and remuneration of a person of 65 years of age or more in the LEPL Ivane Javakhishvili Tbilisi State University" approved under the Resolution (Annex №1) №36/2012 by the Academic Council on 28 May 2012 "On the approval of rules and conditions for the selection and dismissal from an academic position, awarding emeritus academic title and remuneration of a person of 65 years of age or more in the LEPL Ivane Javakhishvili Tbilisi State University".

⁷⁸ Decision №2/2/863 of the Constitutional Court of Georgia dated 22 February 2018 on the case "Citizens of Georgia - Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 plaintiffs in total) v. the Parliament of Georgia".

⁷⁹ Article 11, paragraph 1 of the Constitution of Georgia.

⁸⁰ In accordance with Article 25, Paragraph 4¹ of the Organic Law of Georgia "On the Constitutional Court of Georgia", "If the Constitutional Court determines at its executive session that a disputed normative act or its part contains the same standards that have already been declared unconstitutional by the Constitutional Court, ... and if there are no grounds provided under Article 21¹, Paragraph 1 of this Code, the Court shall issue a ruling on the inadmissibility of the case for consideration and declaring the contested act or its part invalid".

⁸¹ Article 5, Paragraph 4 of the Law of Georgia "On the Academy of Sciences of Georgia".

the opportunity to perform the duties assigned to him/her. Moreover, the Constitutional Court pointed out that "the functions to be performed by the President or Vice-President of the National Academy of Sciences and the perfect implementation of these activities require a person who has a relevant institutional memory and extensive expertise in the field. These skills are not diminished by age but are even more strengthened by years of experience accumulated in a specific and largely scientific knowledge-based field, such as the National Academy of Sciences."⁸²

According to GYLA's position, in the given case, the challenged norms establish a discriminatory retirement age for persons who have reached the age of 65. An academic position is associated with mental work and does not require physical energy. Thus, the prohibition of holding an academic position for persons who have attained the age of 65 is discriminatory and should be declared unconstitutional.

⁸² Decision №2/2/863 of the Constitutional Court of Georgia dated 22 February 2018 on the case "Citizens of Georgia - Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 plaintiffs in total) v. the Parliament of Georgia", II-29.

GYLA'S APPEAL TO THE PARLIAMENT OF GEORGIA ON THE ELIMINATION OF AGE DISCRIMINATION IN PUBLIC POSITIONS AND STATE-BASED INSTITUTIONS

The effective implementation of the standards established by the decision of the Constitutional Court of Georgia is extremely important for the strengthening of constitutional legality. According to the Constitution of Georgia, a decision of the Constitutional Court is final. A decision of the Constitutional Court of Georgia is mandatory for any branch of the government. An act or any part of it known as unconstitutional becomes invalid from the moment of promulgation of the relevant decision of the Constitutional Court.⁸³ Any decision of the Constitutional Court of Georgia recognizing a normative act as unconstitutional has a self-enforcing power, which means that the norm loses its effect from the moment of publication of the Court's decision and does not require other state authorities to carry out further actions. In addition, for ensuring the supremacy of the Constitution, it is important to guarantee that not only a specific norm declared unconstitutional by the Constitutional Court of Georgia loses its binding legal force, but also the problem identified by the decision of the Constitutional Court of Georgia is eliminated in the entire legal system. In view of the foregoing, for the full implementation of the constitutional standards established by the decision of the Constitutional Court, the state authorities should carry out specific actions in individual cases, and implement systemic and structural changes.⁸⁴

During the reporting period, GYLA addressed the Parliament of Georgia and called on the body to bring into compliance with the Constitution the legal norms that are contrary to the standards established by the Constitutional Court regarding the dismissals on the ground of age.

In particular, in accordance with the practice of the Constitutional Court of Georgia, "the fact that in general the accompanying result of ageing is the diminishment of physical endurance of a person and the decline of certain skills cannot by itself become a sufficient ground for imposing any age-related blank restrictions. This approach would leave an unjustifiably wide scope for differentiating people on the grounds of age, which, in some cases, may not be based on rational and objective needs and, as a result, cause targeted discrimination of people who have reached a certain age. Accordingly, the legislator should regulate the mentioned relations to maintain a reasonable balance between the rights of elderly officials and the public interests determined by the characteristics of a specific position".⁸⁵

⁸³ Article 60, Paragraph 5 of the Constitution of Georgia.

⁸⁴ Information on constitutional legality in Georgia, Constitutional Court of Georgia, the website of the Constitutional Court of Georgia, 2019, 89, available at: https://constcourt.ge/files/4/2019_Report.pdf, updated: 04.08.2022.

⁸⁵ Decision №2/2/863 of the Constitutional Court of Georgia dated 22 February 2018 on the case "Citizens of Georgia - Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 plaintiffs in total) v. the Parliament of Georgia", II-23.

According to the Constitutional Court, in order to deem as rational any age-related blank restrictions imposed on holding a position and/or performing duties, the legislator is obliged to substantiate the following:

1. Based on the nature of a specific activity, as a rule, a vast majority of persons who have reached a certain age cannot perform the assigned duty. It is necessary to substantiate that reaching the age established by the law, as a rule, in most cases, leads to a decline and decrease in the skills of a person that are necessary for performing specific activities. At the same time, the weakening or decline in these skills should not be assessed generally but in relation to the type of activity, the implementation of which is restricted after reaching the certain age established by the law.
2. If the legislator substantiates that the vast majority of persons of a certain age cannot properly carry out certain activities, he must also offer strong arguments about the impossibility and/or unreasonableness of an individual assessment of a person's abilities and making a decision on holding a position based on such assessment.⁸⁶

Despite the above decision of the Constitutional Court, the legislation still contains the norms that formally determine the age limit, after the attainment of which a person shall be automatically dismissed from the position held. For example, the following legal provisions can be considered as the confirmation of the above: a) Article 11, paragraph 3 of the Law of Georgia "On Notary" provides the maximum age for holding the position of a notary (70 years of age); b) Article 35 of the Law of Georgia "On Military Duty and Military Service" establishes the minimum age for service members performing military services (for privates, corporals and sergeants (warrant officers) in contracted (professional) military service - 50 years of age; for junior officers in contracted (professional) military service - 45; for senior officers on regular military service: up to colonel - 50 and for colonel - 55; for top officers in regular military service - 60); c) The third sentence of Article 32¹, Paragraph 2 of the Organic Law of Georgia "On the Constitutional Court of Georgia" establishes the age limit for a bailiff of the Constitutional Court (50); d) Article 10¹, Paragraph 2 of the Law of Georgia "On the Special State Protection Service" lists down the age limit for employees of the Special State Protection Service (for persons with "State Protection" special junior and middle ranks – age 45; for persons with "State Protection" special senior ranks up to "State Protection" Colonel – age 50; for "State Protection" Colonel – age 55; for persons with "State Protection" special highest ranks – age 60); e) Article 10³, Paragraph 2 of the Law of Georgia "On Science, Technology and Their Development" establishes the age for holding the position of the director of the institution (a person who meets the requirements for the chief scientific employee of this institution and whose age does not exceed 65 can be elected as the director of the institution) and Article 11, Paragraph 2 of the same law, provides for the age of holding an administrative position of the institution (a person who is over 65 cannot be elected or appointed to an administrative position in the institution).

⁸⁶ Decision №2/2/863 of the Constitutional Court of Georgia dated 22 February 2018 on the case "Citizens of Georgia - Gucha Kvaratskhelia, Givi Tsintsadze, Giorgi Tavadze, Elizbar Javelidze and others (17 plaintiffs in total) v. the Parliament of Georgia", II-24, 25.

The GYLA believes that the Parliament of Georgia must revise the legal provisions that limit the possibility to hold official positions due to the age restrictions. Based on the fact that the age limit for holding positions in public and state institutions differs depending on the specifics of duty, the Parliament of Georgia, based on the case-law of the Constitutional Court, should develop guidelines, according to which the need to leave unchanged or change each age limitation will be substantiated.

CONCLUSIONS/RECOMMENDATIONS

Within the project "Protection and promotion of the rights of older persons," GYLA has identified a number of issues, the solution of which can significantly improve the legal status of older persons and facilitate their dignified and equal coexistence with other citizens in the country. This report reviews the cases identified by the GYLA during the reporting period (from September 2021 to September 2022) and offers recommendations primarily related to them. Therefore, the report does not claim to be universal and does not contain an exhaustive analysis of the legal issues that the elderly may have.

Based on the identified problems/needs, the GYLA has prepared the following recommendations:

For Parliament of Georgia:

- Revise the age limit established for holding/performing certain duties and bring them in compliance with the constitutional standard established by the Constitutional Court of Georgia with respect to the restriction of access to official positions based on age.

For the Government of Georgia:

- Based on the analysis of the results of the implementation of the "National Action Plan 2017-2018 of the State Policy Concept on Ageing Issue in Georgia", the government should develop and approve a new national action plan on the issue of ageing, focusing on effective protection of the human rights of elderly persons.
- Increase the number of beneficiaries of separate sub-programmes of the State Program for Social Rehabilitation and Child Care, which are intended for the elderly (facilitation of the rehabilitation of war participants, provision of assistive aids, community organizations) and ensure that all elderly people with relevant needs have timely access to them.

For the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia and LEPL - Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking:

- Study the situation of older adults placed in specialized institutions, respond effectively to violations, and immediately create decent conditions for the older persons living in the institutions.

For local self-government authorities:

- Based on the study of the needs of older persons living in the territory of municipalities, develop and implement targeted programmes, allocate sufficient funds in the budget of the local self-government, and if necessary, increase the budget or find additional funds.

For insurers and/or insurance intermediaries:

- Review the terms of travel insurance agreements and eliminate any contractual terms that lead to age discrimination.

For the bank issuing pensions:

Without a relevant decision of the court, refrain from withholding a state pension of pensioners merely on the basis that a pensioner has a binding contractual obligation to fulfill before the bank.