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Country brief

Deinstitutionalization for children with disabilities

Georgia

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1. General Policy and legal framework on DI in Georgia

Georgia has declared policy of deinstitutionalization of children and persons with disabilities since 2005. However, there is no formal deinstitutionalization strategy and action plan, with relevant responsible state agencies or timeframes, approved so far. The State's work in the direction of drafting a deinstitutionalization strategy of children and persons with disabilities is in the active phase now, with the engagement of international partners, State experts, representatives of civil society and Office of Public Defender of Georgia. We hope, that this time the process will be successfully completed and deinstitutionalization strategy, which is in line with international standards and best practices, will soon be approved and implemented.

2. General Policy and legal framework on managing the issues of children with disabilities in Georgia

There is quite rich international and national legal framework in terms of managing the issues related to children with disabilities in Georgia, which also sets an obligation for the country to go through the deinstitutionalization process. Existing legal frameworks provide main principles for the protection of the rights of children with Disabilities as well as provide guidance on how the deinstitutionalization process in General and specifically in case of children with disabilities must be performed.

United Nations Convention on the Rights of Persons with Disabilities

Georgia has ratified the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the UNCRPD)[3] in 2014. Since then, the provisions determined by the UNCRPD are obligatory for the state. The UNCRPD apart, from other important issues related to state obligation to provide a decent living environment, obliges state parties to recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and take effective and appropriate measures for their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living

[3] The UN Convention on the Rights of Persons with Disabilities. Available https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [last visited 08.07.2021].

and inclusion in the community, and to prevent isolation or segregation from the community;

c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.[4]

Convention on the Rights of the Child

Apart from international obligations specific to Persons/children with Disabilities, Georgia has undertaken internarial obligation in terms of protection of children's rights long before UNCRPD. Namely, Georgia joined the Convention on the Rights of the Child (hereinafter the CRC) in 1994 and undertook to protect the rights enshrined in the Convention.[5] All the right and guarantees envisaged by the convention apply to children with disabilities as well, but the convention still specifies state party's obligation to ensure, that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Child Right Code of Georgia

Apart from international remedies, Georgia has recently made some steps towards creating guarantees to the rights protection of children with disabilities in line with international standards. Namely, based on the principles of the CRC, Child Rights Code[6] has entered into force in the country in 2019. The Code defines basic rights and freedoms of the child and created legal basis for the functioning of child protection and support system. The Code refers to all the children of Georgia, including children with disabilities and recognizes child's right to live in a family where all the conditions for his/her harmonious development and well-being are created. According to the Law, the state shall provide special support and protection to a child left without temporary or permanent parental care, as well as to a child whose stay in the family is against the best interests of the child. The child has the right to live in a harmless environment where all the conditions for his harmonious development and well-being are created. Apart from the fact that Child's Code of Georgia applies to children with disabilities as well on the equal basis, it is still emphasized and once more stressed in the Code, that a child with a disability has the same right to live in a family as any other child. It is not permissible to separate a child from a parent on the grounds of disability of the child or the parent(s).

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[4] The UN Convention on the Rights of Persons with Disabilities. Article 19. Available https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [last visited 08.07.2021].

[5] Convention on the Rights of the Child available https://www.ohchr.org/en/professionalinterest/pages/crc.aspx [last visited 08.07.2021].

[6] The Child Rights Code. Available only in Georgian https://matsne.gov.ge/ka/document/view/4613854?publication=2 [last visited 08.07.2021].

The Child's Rights Code of Georgia recognizes alternative child care services to be applied only after taking all necessary measures for supporting biological families. Placing a child in an alternative care is a measure of the last resort. There is another legal framework as well, the Law of Georgia on Adoption and Foster Care,[7] which establishes the rules and conditions of adoption and foster care.

According to internal regulations, in case of inability to place a child in a foster care or proceed with her/his adoption, small family-type residential care is in place as a matter of urgency, provided, that it fully meets child care standards, promotes child's development and protects her/his best interests. All children placed in alternative care programs/subprograms, including children with disabilities, must be fully integrated into the unified state systems of education, health and social care. They should have access to justice in the same way as other children.[8]

Hence, Child's Right Code outlines guiding principles for the provision of decent living environment for children in detail and deinstitutionalization strategy must come in line with those principles.

The Law of Georgia on the Rights of Persons with Disabilities

Apart from the legislation regulating the rights of children, the country has another internal legal framework specifically referring to Persons/Children with Disabilities and outlines the main principles of promoting independent living and creating a dignified living environment. In 2020, The Law of Georgia on the Rights of Persons with Disabilities came into force.[9] According to the Law, the state recognizes the right of a person with disabilities to choose their place of residence. It is prohibited to force a person with a disability to live in a place specially for them;[10] apart from this, the Law dedicates a separate article to the Rights of Children with Disabilities, where apart from other guarantees, it is stressed, that the state ensures the right of a child with disabilities to live equally with others in the family. To ensure the smooth exercise of this right, as well as to prevent the disability abandonment, neglect, or segregation of a child with a disability, the State shall take all necessary administrative, social, and educational measures, including providing the child with a disability and his/her family with comprehensive information, assistance, and services. If the family is unable to care for a child with a disability, the state is obliged to take all measures to organize alternative care within a wider family circle, and if it is not possible - to create an environment close to the family environment, taking into account

[7] Law of Georgia on Adoption and Foster Care – available only in Georgian https://matsne.gov.ge/ka/document/view/3665080?publication=6 . [Last visited 08.07.2021].

[8] The Child Rights Code, article 3 (ბ) Available only in Georgian https://matsne.gov.ge/ka/document/view/4613854?publication=2 [last visited 08.07.2021].

[9] The Law of Georgia on the Rights of Persons with Disabilities – available only in Georgian https://matsne.gov.ge/ka/document/view/4923984?publication=1 [last visited 08.07.2021].

[10] The Law of Georgia on the Rights of Persons with Disabilities, article 4 (3) – available only in Georgian https://matsne.gov.ge/ka/document/view/4923984?publication=1 [last visited 08.07.2021].

the child's inheritance, ethnicity, religious and cultural affiliation and native language. The enrolment of a child with a disability into alternative care program must be carried out under the Child's Rights Code of Georgia. [11]

Based on the provisions of internal regulations mentioned above, it is obvious, that internal legislation of Georgia does not recognize large residential institutions, where children with disabilities live together, in segregation, far from family and family environment and sets main principles how deinstitutionalization, including that of the children with disabilities, must take place. \

3. Coordination and monitoring of the DI processes for children with disabilities

It must be noted that some practical steps for deinstitutionalization of children with disabilities have been taken before abovementioned internal legislation was adopted. Namely, in 2005, the Decree №75 of the Government of Georgia on the "Approval of the Government Action Plan on Child Protection and Deinstitutionalization", set the goal of starting deinstitutionalization process. The action plan included specific references to children with disabilities as well. Objectives and activities of the plan included creation of the database and needs assessment of children with disabilities and their families, optimization of large residential institutions, as well as deinstitutionalization of children with disabilities, alongside with strengthening families and introduction of alternative care services and rising awareness of target groups and general public on the rights of children with disabilities.

After the abovementioned Government decree, the State declared deinstitutionalization as a priority again back in 2008, based on the Concept of Social Integration of Persons with Disabilities. Since 2014, various governmental action plans have been providing for the deinstitutionalization of large care facilities for children with disabilities. And finally, as a result of the reorganization carried out in 2015, a practical step forward was made and the Senaki Boarding House for Children with Disabilities was closed. Six beneficiaries were placed in foster care, while eight beneficiaries were placed in another large institution in Kojori. The Public Defender of Georgia positively appraised the closure of Senaki Boarding House due to the serious human rights violations identified by the Office in the facility, but stressed that the above should be considered as a temporary measure and the State should systemically and timely provide alternative services to the beneficiaries of large residential institutions, taking into account the individual needs of children with disabilities and offering them a family-like environment. Unfortunately, up to the date, due to the extremely slow pace of the deinstitutionalization process and absence

[11] The Law of Georgia on the Rights of Persons with Disabilities, article 7 – available only in Georgian https://matsne.gov.ge/ka/document/view/4923984?publication=1 [last visited 08.07.2021].

of relevant strategy, 63 children with disabilities remain in two large state care institutions for children with disabilities.[12]

Since 2014, Based on the number of Government Action Plans for the Protection of Human Rights in Georgia, the implementation of the deinstitutionalization process was mainly the responsibility of the Ministry of Labour, Health and Social Affairs of Georgia (Currently the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia). Representatives of civil society and the Office of Public Defender of Georgia were engaged in the process of drafting those action plans, however, not all remarks made by Ombudsman or civil society were reflected in the final document. In addition to this, monitoring of Action plans carried out by the Public Defender of Georgia and some organizations revealed that since Government Action Plans did not clearly outline responsible agencies and relevant budget allocations, activities envisaged for the implementation of the objectives of government plans, including deinstitutionalization, and objectives of the Government action plans, which repeated from year to year, remained unfulfilled.

It should be mentioned, that, generally, state care for persons/children with disabilities is coordinated only by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, namely by the Legal Entity of Public Law (LEPL) – Agency for State Care and Assistance For the (Statutory) Victims of Human trafficking. The role of Municipalities or coordination with other state agencies, in the development of care and services for persons with disabilities, is extremely poor. Accordingly, the quality of target services, as well as monitoring of alternative care services needs improvement. The engagement of persons with disabilities in the monitoring system is essential and required.

In terms of monitoring, it is noteworthy, that since 2014, the Public Defender of Georgia has been designated by the Government as a monitoring mechanism of the implementation of the UNCRPD by and has been assigned the responsibility to systemically oversee fulfillment of the Convention commitments by responsible agencies. However, the Public Defender, within the scope of his/her mandate authorized by the organic Law of Georgia on Public Defender, had been active in terms of monitoring the protection of the rights of persons with disabilities, including within the framework of the National Preventive Mechanism, even before the ratification of the UNCRPD and before its assignment as UNCRPD monitoring mechanism.

Evidence-based information obtained as a result of the monitoring, which has been reflected in the Public Defender's monitoring reports, referred to serious problems with regard to large institutions promoting the acceleration of the launch of the

[12] According to official data, as of July 2021, 19 children with disabilities in Kojori boarding House and 44 children/infants with disabilities in Tbilisi infant house.

deinstitutionalization process, as well as its effective and timely conduct. Office of Public Defender of Georgia was conducting monitoring of the implementation of activities envisaged by action plans for different periods including in terms of deinstitutionalization. Monitoring carried out by the Public Defender of Georgia revealed, that deinstitutionalization has started quite a long ago and is being progressed slowly and with flaws.

As mentioned above, within the framework of deinstitutionalization, determined by national and international legislation, children with disabilities, in case of impossibility to reintegrate them with their families (or giving for adoption), should be placed in alternative care services, such as the foster care and as a last resort - small family-type homes. A number of children with disabilities are already enrolled in these mainstream programs operating in the country for years. The Public Defender's Office continuously evaluates these alternative care services to inspect children's Rights protection there and addresses state with relevant recommendations in order to ensure that each child, including children with disabilities, can live in a dignified environment oriented to his/her needs and best interests.

However, the Public Defender considers that there are many challenges in existing alternative care services as well. In particular, although foster care is one of the priority areas of the childcare system, there is no proper system for training/strengthening foster caregivers, which is especially problematic in the case of specialized foster care services. Particular problems are faced by biological families, as well as service-provider families and small family-type homes, where children with behavioral and mental health problems are placed. As there is no psycho-social rehabilitation service for children with mental health problems in the country, none of the mentioned circles can manage the condition of those children properly. As a result, after receiving inpatient psychiatric services and moving from one care service to another, children with behavioral and mental health problems are eventually placed back in large residential facilities. It is also problematic for small family-type homes and foster caregivers to provide appropriate services to children with severe health conditions. Therefore, the State needs to take all appropriate measures to prevent the placement or return of children with disabilities from modern, human rights-based services to large institutions by identifying gaps and improving human rights-based care services.

Deinstitutionalization in religion establishments

When talking about deinstitutionalization, large institutions operating in the country which are subordinated to religious confessions must be mentioned. Those institutions deliver services to children with no shelter or proper care in biological families. State supervision is weak in mentioned religious boarding houses and the Public Defender's Office is sometimes not allowed to monitor the facilities. Communication with the State and results of the monitoring carried out in some of the facilities make it clear that the beneficiaries

of such facilities include children with disabilities as well. For example, in Ninotsminda, in one of the religious boarding houses subordinated to the Patriarchate, there were eight children with disabilities. Representatives of the Public Defender of Georgia faced problems in entering and monitoring the facility. In order to protect the interests of children with disabilities placed there, the court, taking into account all the circumstances, including the information officially requested by the Public Defender and the findings of the monitoring carried out in 2018, ordered the State to immediately remove all children with disabilities from Ninotsminda boarding house, as the environment there failed to meet children's individual needs or to protect their rights. The court, in its judgment, assesses the general situation in the boarding house as dangerous, and therefore, it is necessary to remove each child from the facility.

The Batumi boarding house, which is also subordinated to the Patriarchate and houses 101 children, has two children with disabilities and overall, eight children with various special educational needs. Along with all other challenges, including those related to an extremely high number of beneficiaries, the administration and staff of the boarding house have not been trained on the rights or needs of persons with disabilities or the management of complex behavior.

The state must not leave behind children with disabilities placed in boarding houses under religious institutions. These children must be engaged in the process of deinstitutionalization, and the state must provide a decent living environment for all children in need.

4. The specific cases of the given country, 'best practices' or 'unique DI system traits"

Despite all the challenges and delays listed above, it can be considered positive that the development of the deinstitutionalization strategy and action plan for children and persons with disabilities is in an active phase now. For this purpose, a representative of the Office of Public Defender of Georgia is involved in the relevant working group. The public Defender is engaged in the process of representing some remarks and comments to the draft strategy as well. It is important, that relevant remarks of the Public Defender and other stakeholders were taken into account by decision-makers and to proceed with deinstitutionalization strategy, which is in line with internal and international standards and obligations taken by the state.

It is also of utmost importance, that according to the Child Rights Code of Georgia, a child shall not be separated from his/her parents against his/her will, except when it is necessary to separate them in the best interests of the child. The decision to separate a child from the parent is made by a social worker, who submits the motion to the district (city) court judge for further consideration. The judge will consider the motion of the social worker individually and will decide within 24 hours on whether to separate the child from the parent or to refuse separation.[13] Engagement of the court in the process is very

[13] The Child Rights Code, article 26. Available only in Georgian https://matsne.gov.ge/ka/document/view/4613854?publication=2 [last visited 08.07.2021].

important as the separation of the child from the family is not up to one social worker or one–state care system and independent and unbiased – the court is engaged in the process. But, after this, it is very important to consider where a child with disabilities is placed – does alternative care service provide quality service for specific needs of a child with disabilities, is he/she protected from segregation, or are there effective family empowerment services in place? These are crucial issues to be solved to consider legislative guarantees effective and as a good remedy, since in the end, it is the child whose right must be protected, it is a child who must benefit from any system the state introduces.

5. **What could have been worked better in the given formats?**

There has been enough experience gathered around the world on how the deinstitutionalization process of children with disabilities works better. Based on the monitoring results, challenges outlined by the Office of Public Defender of Georgia, and civil society organizations, makes it possible to think about recommendations and what has to be done to make the process more efficient.

From the core of the UNCRPD, it is clear that segregation will never be a good outcome for children with disabilities. Engagement in mainstream programs, strengthening existing alternative care services, making children with disabilities part of the community is the goal the deinstitutionalization process must serve, and it requires simultaneous and continuous work of implementing state agencies and public society.

There are some points that must be taken into consideration in order to make the deinstitutionalization process better in Georgia. Namely: measures taken without a clear deinstitutionalization strategy and well-prescribed plan may harm the complex process of deinstitutionalization; family support system must be strengthened in order to give more children opportunity stay with families; alternative care service quality in terms of services provided to children with disabilities, relating to specific needs of such children, must be improved; foster care services and small family-type homes must be prepared for providing service to children with different disabilities, especially those with Mental Health problems and severe health conditions; proper training and awareness rising must be available for service providers' personnel prior and in the deinstitutionalization process; social service and social workers' role needs to be strengthened, especially in terms of monitoring of care services. There are also challenges with regard to external rehabilitation services to be provided to children living in alternative care, including and especially psycho-social rehabilitation services for children with behavioral or mental health problems. Deinstitutionalization must consider the preparation of the general public, public schools, preparation of children with disabilities themselves to live in the community, to feel themselves as equal members of the society. The state must take all those measures simultaneously, in close cooperation and coordination with different state agencies. Public Defender considers it important to give preference to mainstream foster care services, where children with disabilities are engaged as part of the family based on good preparation and awareness rising of service providers, of course after the family-strengthening empowerment.

6. Conclusion

After a thorough overview of the deinstitutionalization of children with disabilities in the country, it is a fact that the process is delayed and large institutions are still functioning, where children with disabilities are placed separately, in a segregated manner. It is also a fact that services focusing on the empowerment of families, needs to be strengthened. In addition, there are many challenges with regard to the implementation of existing alternative care services. There are also challenges with regard to external psycho-social and other services to be provided to children living in alternative care, including psych-social rehabilitation services for children with behavioral or mental health problems.

At this stage, we hope that the deinstitutionalization strategy and action plan will be fully based on human rights-based approaches and will provide a decent living environment for children with disabilities. It should also be noted once again and unequivocally that according to international standards, deinstitutionalization does not only mean reducing the number of persons placed together. Deinstitutionalization, based on human rights principles, implies provision of a family environment and full support to beneficiaries, their preparation for independent living, and, most importantly, creation of conditions for full integration of persons with disabilities into society. International obligations and internal legislation on place obliges the state to act so!

Mainstream family-type care services are worldwide recognized to be the best services for children with disabilities, where, in case of correct management, they are not segregated and are considered as part of the family. Accordingly, the state has to strengthen monitoring of mainstream alternative care services and engage children with disabilities there, rather than placing children with disabilities in the family-type homes created exclusively for children with Disabilities. Since the draft of the Strategy is ongoing in Georgia now, the State needs to take into consideration the world's best practices and not introduce services, modification of which will be required after a while.

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