



FACULTY OF LAW
Lund University

Diana Davitadze

Building Older Persons' "Resilience" Through Old-Age Pension Schemes in Georgia

JAMM07 Master Thesis

International Human Rights Law
30 higher education credits

Supervisor: Constance Thomas

Term: Spring 2022

Table of Contents

SUMMARY	2
ACKNOWLEDGEMENTS	3
ABBREVIATIONS	4
CHAPTER 1. INTRODUCTION.....	5
1.1. PRESENTATION AND IMPORTANCE OF THE PROBLEM	5
1.2. PURPOSE AND RESEARCH QUESTIONS	8
1.3. LIMITATIONS	8
1.4. THEORY AND METHODOLOGY	9
1.5. STRUCTURE	11
CHAPTER 2. PUTTING OLDER PERSONS’ RIGHTS INTO CONTEXT	12
2.1. OLDER PERSONS AS LEGAL SUBJECTS.....	12
2.2. INVISIBILITY IN HUMAN RIGHTS INSTRUMENTS AND THE NATIONAL LAW	15
2.3. INTERNATIONAL AND NATIONAL POLICY DOCUMENTS ADDRESSING OLDER PERSONS’ RIGHTS.....	21
2.4. IS THERE A NEED FOR A NEW CONVENTION?.....	23
CHAPTER 3. SOCIAL SECURITY AS A FORM OF “RESILIENCE” FOR OLDER PERSONS’ VULNERABILITIES	25
3.1. INTERNATIONAL LEGAL FRAMEWORK FOR THE RIGHT TO SOCIAL SECURITY.....	26
3.1.1. <i>The right to social security in the UN human rights instruments</i>	26
3.1.2. <i>States’ human rights obligations in relation to the right to social security</i>	28
3.1.3. <i>International Labor Organization - the pioneer in the field of social security</i>	32
3.2. REGIONAL INSTRUMENTS IN THE FIELD OF SOCIAL SECURITY – COUNCIL OF EUROPE	36
3.3. PROTECTION OF THE RIGHT TO SOCIAL SECURITY AFFORDED BY THE EUROPEAN CONVENTION ON HUMAN RIGHTS.....	40
3.3.1. <i>European Convention on Human Rights</i>	41
3.3.2. <i>European Court of Human Rights</i>	42
CHAPTER 4. RIGHT TO SOCIAL SECURITY – THE CASE OF GEORGIA.....	44
4.1. TENDENCY TO MARGINALIZE SOCIO-ECONOMIC RIGHTS - THE CONSTITUTION OF GEORGIA	44
4.2. PRINCIPLE OF “SOCIAL STATE” - CASE-LAW OF THE CONSTITUTIONAL COURT OF GEORGIA.....	46
4.3. OLD-AGE PENSION SCHEMES IN GEORGIA	49
4.4. BUILDING “RESILIENCE“ THROUGH OLD-AGE PENSION SCHEMES IN GEORGIA.....	51
4.4.1. <i>Horizontal coverage – the principle of universality based on solidarity</i>	52
4.4.2. <i>Do pension schemes provide equal resilience? – the principle of non-discrimination and equality</i> ..	57
4.4.3. <i>Vertical coverage – the principle of adequacy</i>	62
CHAPTER 5. CONCLUSION – FINDINGS AND RECOMMENDATIONS.....	66
BIBLIOGRAPHY	70

Summary

Older persons' rights are increasingly penetrating the Human Rights discourse in response to the surging aging of the world population. Old-age pension schemes are designed to protect older persons against vulnerabilities once they resign from the job market. In 2018, Georgia adopted a new contributory Accumulated Old-age Pension scheme which operates alongside the existing non-contributory State Pension scheme. This thesis analyses these old-age pension schemes in Georgia in light of the Human Rights framework and contributes to a wider global debate on the urgency to shift the focus from a needs-based approach to older persons' right to social security to a rights-based approach.

To achieve these goals, this thesis uses the Vulnerability Theory developed by professor Martha Albertson Fineman. It links the logic of thinking proposed by this theory to the human rights principles applicable to the right to social security.

The research demonstrates older persons' invisibility in human rights instruments. It underscores the need to rethink and reconceptualize the way we think and talk about older persons and their human rights. It shows the drawbacks of Georgian pension schemes and illustrates existing gaps in terms of coverage through principles of universality and non-discrimination. It underscores the lack of solidarity in a contributory pension scheme which is likely to mirror existing economic inequalities. The thesis further highlights that existing old-age pension schemes in Georgia are unable to ensure a dignified life for older persons, and they barely manage to protect them from extreme poverty.

Keywords: Older Persons, Ageism, Social Security, Human Rights, Vulnerability Theory, Old-age Pensions, Women, Georgia.

Acknowledgements

I would like to express my sincere gratitude to the Swedish Institute for providing me with the scholarship that made my living and studies in Sweden possible. I am also extremely grateful to Lund University for giving me unforgettable academic experience.

I would like to express my appreciation to my supervisor Constance Thomas. Thank you for your continuous encouragement and guidance throughout the process of writing this thesis. The extent of your support went beyond my expectations.

I would also like to thank the Raoul Wallenberg Institute and its Library. I want to mention Lena Olsson, who makes the library home for every student. Thank you for your care and kindness.

Diana

Lund, 2022

Abbreviations

IHRL	International Human Rights Law
UN	United Nations
ILO	International Labour Organization
WHO	World Health Organization
UNECE	United Nations Economic Commission for Europe
OHCHR	The Office of the UN High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRPD	United Nations Convention on the Rights of Persons with Disabilities
OEWGA	Open-Ended Working Group on Ageing
CESCR	Committee of Economic, Social and Cultural Rights
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CoE	Council of Europe
ESC	European Social Charter
RESC	Revised European Social Charter
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
PACE	Parliamentary Assembly of the Council of Europe
ECSR	European Committee of Social Rights
VIPAA	Madrid International Plan of Action on Ageing 2002
VIPAA	Vienna International Plan of Action on Aging
MIPAA/RIS	Madrid International Plan of Action on Ageing and its Regional Implementation Strategy
SPF	Social Protection Floors
GEL	Georgian Currency (Lari)
Geostat	National Statistics Office of Georgia

Chapter 1. Introduction

1.1. Presentation and importance of the problem

The surging ageing of the world population has shed light on the urgency of ensuring the full participation of older persons in all spheres of social life. Social security schemes are designed to protect older persons against vulnerabilities once they resign from the job market; however, these schemes are successful only to a certain extent, varying significantly from country to country. In 2018, Georgia adopted a new accumulated old-age pension scheme that operates alongside the existing non-contributory pension scheme in order to increase income security for older persons. This thesis aims to analyze these old-age pension schemes in Georgia and to contribute to a wider global debate on the urgency to shift the focus from a needs-based approach to social security to a rights-based approach.

To achieve these goals, I use Martha Albertson Fineman's Vulnerability Theory, which provides an effective framework for the analysis of older persons' economic and social rights. On the one hand, this thesis provides a case study of the pension schemes in Georgia; on the other hand, it zooms out and engages in the legal discussion on the human rights framework for the protection of older persons. What adds additional relevance to this thesis is that older persons' rights are increasingly penetrating the human rights discourse globally: Currently, the United Nations Open-Ended Working Group on Ageing (OEWGA) is on the mission to examine the existing international framework of human rights of older persons with the aim to identify gaps and find ways to address them, possibly through adopting a new convention.¹

The right to social security is enshrined in major international human rights instruments,² and old age is acknowledged as one of the main "contingencies" (branches) of social security.³ The International Labour Organization (ILO) and other United Nations (UN) bodies use the terms "social security" and "social protection" interchangeably to refer to the benefits to

¹ United Nations, Resolution adopted by the General Assembly on 21 December 2010, A/RES/65/182 para 28.

² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Articles 22-23, 25; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 9.

³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, para 2; ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) part V.

secure protection in case of social risks and needs.⁴ The UN Social Protection Interagency Cooperation Board defined social protection in 2021 as “a set of policies and programs aimed at preventing or protecting all people against poverty, vulnerability, social exclusion throughout their lifecycles, placing a particular emphasis on vulnerable groups. It can be provided in cash or in-kind; through non-contributory schemes, such as providing universal, categorical, or poverty targeted benefits such as social assistance; contributory schemes (commonly social insurance), and by building human capital, productive assets, and access to jobs.”⁵

Social security remains an unrealized human right for more than half the world’s population.⁶ Social security systems face challenges in developing as well as in developed countries. However, over the past few years, social security has gained predominance and particular political support in the context of development and poverty reduction.⁷ Social security guarantees have also become a question of social and political stability, as well as a vital instrument for promoting sustainable development.⁸ It received explicit attention in the 2030 Agenda for Sustainable Development.⁹ Human-centred Social security policies have been conceptualized as “investment in people” rather than merely a tool to address their basic

⁴ ILO, *World Social Security Report 2010/11. Providing Coverage in Times of Crisis and Beyond* (ILO 2010) 11 <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_146566.pdf> accessed 9 May 2022.

⁵ Social Protection Interagency Cooperation Board (SPIAC-B), ‘A Joint Statement on the Role of Social Protection in Responding to the COVID-19 Pandemic’ <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/genericdocument/wcms_740551.pdf> accessed 9 May 2022.

⁶ ‘ILO: 4 Billion People Worldwide Are Left without Social Protection’ (29 November 2017) <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_601903/lang--en/index.htm> accessed 9 May 2022.

⁷ Magdalena Sepulveda and Carly Nyst, ‘The Human Rights Approach to Social Protection’ (Ministry for Foreign Affairs of Finland 2012) 10 <<https://www.ohchr.org/sites/default/files/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>> accessed 9 May 2022.

⁸ ILO, ‘Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey Concerning the Social Protection Floors Recommendation 2012 (No. 202), Report III (Part B)’ (ILO 2019) 11 <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf> accessed 9 May 2022.

⁹ ‘UN General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, (2015)’ Goal 1 (End poverty in all its forms everywhere), Goal 5 (Achieve gender equality and empower all women and girls), and Goal 10 (Reduce inequality within and among countries). <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>> accessed 12 May 2022.

needs.¹⁰

The need for comprehensive social protection has been further underscored by the Covid-19 pandemic, which highlighted the human co-dependence and the fact that “we are only as safe as the most vulnerable among us, and nowhere is safe until and unless everyone is safe.”¹¹ This encourages engagement in the discussions on social protection from a human rights perspective, to which this thesis aims to contribute.

Georgia is an aging country, ranking as high as 29th on the Global AgeWatch Index 2015.¹² The percentage of the older population in the country is growing every year. In 2022 older persons aged 65+ constitute 15.5% of the population,¹³ and this number is projected to increase to 21.8% by 2050.¹⁴ However, social security policies fail to provide older persons with dignified life despite two pension schemes currently operating in the country. In fact, older persons are one of the most marginalized and vulnerable groups in Georgia. They find themselves at a higher risk of poverty compared to the rest of the population.¹⁵ As of December 2021, 1,020,375 people were registered in the Socially Vulnerable Population Database in Georgia, of which 194,536 are older persons.¹⁶

In June 2021 Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs announced the upcoming reform regarding social security systems in Georgia. The reform is taking place in order to develop Social

¹⁰ ILO, ‘World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future’ (International Labour Organization 2021) ILO Flagship Report 216 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_817572.pdf> accessed 9 May 2022.

¹¹ *ibid* 74.

¹² ‘Country Ageing Data | Data | Global AgeWatch Index 2015’ <<https://www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Georgia&printer=1>> accessed 9 May 2022.

¹³ Geostat, ‘Population - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/41/population>> accessed 11 May 2022.

¹⁴ United Nations Population Fund University College London, ‘Loneliness and Social Isolation Among Older People in the Eastern Europe and Central Asia Region’ (2022) 2 <https://eeca.unfpa.org/sites/default/files/pub-pdf/loneliness_study_english.pdf> accessed 11 May 2022.

¹⁵ Public Defender (Ombudsman) of Georgia, ‘Report On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2020) Annual Report 312–313 <<https://ombudsman.ge/res/docs/2021070814020446986.pdf>>.

¹⁶ Public Defender (Ombudsman) of Georgia, ‘Report On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2021) Annual Report 299 <<https://ombudsman.ge/res/docs/2022040413242699860.pdf>> accessed 9 May 2022.

Security Code.¹⁷ Thus, this thesis will also contribute to the general discussion about the way social security systems should be designed and organized in light of the human rights standards.

1.2. Purpose and research questions

This thesis aims to reconceptualize older persons' rights in the human rights discourse. It scrutinizes the design of old-age pension schemes in Georgia. For this purpose, it examines Georgia's existing legal framework in light of the human rights standards and principles applicable to the right to social security. This research explores how efficiently Georgia implements older persons' right to social security and whether it is in line with the standards guaranteed by the International Human Rights Law (IHRL) instruments. For this analysis, this thesis proposes the following research questions:

- *To what degree do existing old-age pension schemes in Georgia provide “resilience” for older person’s vulnerabilities?*
- *Do these schemes provide equal resilience? If not, what are the consequences?*

In order to answer these questions, first, the research explores the following three subjects:

- *How efficiently does Georgia guarantee the right to social security, and is the implementation in line with the International Human Rights standards?*
- *To what extent is the International Human Rights Law responsive to older persons’ specific disadvantages?*
- *Is the right to social security, as it is developed in the existing Human Rights Law instruments, capable of building resilience for older persons?*

1.3. Limitations

The scope of this thesis is limited as it does not seek to provide a comprehensive exploration of the full range of rights to be enjoyed by older persons, and it only focuses on the right to social security. Besides, out of nine branches covered by the right to social security: (a) health care, (b) sickness, (c) old-age, (d) unemployment, (e) employment injury, (f) family and child

¹⁷ Ministry of Labour, Health and Social Affairs, ‘„სოციალური კოდექსი“ (MOH, 2021) <<https://www.moh.gov.ge/ka/news/6004/%E2%80%9Esocialuri-kodeqsi%E2%80%9C>> accessed 9 May 2022.

support, (g) maternity, (h) disability, and (i) survivors and orphans,¹⁸ this thesis will focus only on old-age pensions.

Secondly, it is limited geographically as it analyzes only Georgian old-age pension schemes. In the analysis, the research is limited to only the following principles: universality based on solidarity, non-discrimination and equality, and adequacy.

This thesis does not engage in a comprehensive analysis of the economic effects of the social security schemes on the State budget. Instead, it covers only the effects of these schemes on their beneficiaries from the human rights perspective.

1.4. Theory and methodology

The thesis builds its argumentation using Martha Albertson Fineman's Vulnerability Theory. It bridges the Vulnerability Theory and principles of IHRL in relation to the right to social security.

Vulnerability Theory is an emerging legal theory that originated in Fineman's seminal article "The Vulnerable Subject: Anchoring Equality in the Human Condition" (2008).¹⁹ The theory claims that "Vulnerability" should be recognized as the primal human condition and describes it as "a universal, inevitable, enduring aspect of the human condition that must be at the heart of social and State responsibility."²⁰ Such a conceptualization of vulnerability led to the realization that social problems need social or collective solutions.²¹ One of the central aspects of the theory is the role that institutions play in mitigating vulnerability. The theory claims that the role of institutions is to build "resilience"²² because "resilience is not something we are born with but is accumulated over the course of our lifetime within social structures and institutions."²³ From this standpoint, the theory argues for more responsive and responsible institutions.²⁴ The theory advocates for substantive equality and claims that the role of institutions is to be a just organizer "so that no

¹⁸ CESCR, General Comment No. 19 paras 12–21.

¹⁹ Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law and Feminism* 1 <<https://heinonline.org/HOL/P?h=hein.journals/yjfem20&i=3>> accessed 9 May 2022.

²⁰ *ibid* 8.

²¹ Martha Albertson Fineman, 'Vulnerability and Inevitable Inequality' (2017) 4 *Oslo Law Review* 133, 141–142 <<https://heinonline.org/HOL/P?h=hein.journals/oslo4&i=134>> accessed 9 May 2022.

²² Fineman, 'The Vulnerable Subject' (n 19) 13.

²³ Fineman, 'Vulnerability and Inevitable Inequality' (n 21) 147.

²⁴ Fineman, 'The Vulnerable Subject' (n 19) 13.

persons or group of persons are unduly privileged while others are disadvantaged.”²⁵

For the purposes of assessing older persons’ right to social security, the thesis uses human rights legal research methodology, which is “to study, define and interpret human rights law and norms, as well as to measure, elaborate, assess, evaluate and implement human rights law and norms and their application.”²⁶ This research examines and analyzes international as well as regional human rights instruments and the Georgian legal framework. It covers binding international instruments (Hard Law) and non-binding instruments (Soft Law). The term ‘Soft Law’ refers to the instruments that are not laws *per se* but have a significant influence on the evolution and establishment of guidelines, which may ultimately be converted into legally binding rules. Often, soft law instruments are described as “more flexible, easier to conclude and easier to adhere to for domestic reasons and they reflect a political will to act in a certain way.”²⁷

In order to apply human rights-based approach to social security, this thesis focuses on General Comment No. 19 of the Committee of Economic, Social and Cultural Rights (CESCR) as it provides a comprehensive understanding of such an approach. For guidance, the thesis extensively uses the work conducted by Magdalena Sepulveda, former UN Special Rapporteur on Extreme Poverty and Human Rights.²⁸

Besides, even though Georgia is not a party to any of the ILO instruments in the field of social security, this thesis uses them for analysis to identify the way the old-age pension schemes should be organized. Thus, the following ILO instruments will be applied: C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102); C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131); R202 - Social Protection Floors Recommendation, 2012 (No. 202).

As for the analysis of the gender perspective on the right to social security, the thesis is also

²⁵ Martha Albertson Fineman, ‘The Vulnerable Subject and the Responsive State’ (2010) 60 Emory Law Journal 251, 256 <<https://heinonline.org/HOL/P?h=hein.journals/emlj60&i=255>> accessed 10 May 2022.

²⁶ Siobhán McInerney-Lankford, ‘Legal Methodologies and Human Rights Research: Challenges and Opportunities’ [2017] Research Methods in Human Rights 38, 38 <<https://www.elgaronline.com/view/edcoll/9781785367786/9781785367786.00010.xml>> accessed 13 May 2022.

²⁷ Malcolm Nathan Shaw, *International Law* (Eighth edition, Cambridge University Press 2017) 87–88.

²⁸ Sepulveda and Nyst (n 7).

guided by the General recommendation No. 27 on Older Women and Protection of Their Human Rights, adopted by the UN Committee on the Elimination of Discrimination Against Women (CEDAW).

Besides, this thesis uses academic literature, case-law, different publications, and reports by international as well as regional and domestic institutions and organizations. The research also uses statistical data for the assessment of Georgian old-age pension schemes.

1.5. Structure

Chapter 2 contextualizes older persons' rights to define who the people behind the term are. It prepares grounds for further discussion about the specific rights of older persons. It demonstrates the invisibility of older persons in IHRL and provides a discussion about the need to adopt an International Convention on the rights of older persons and its possible effect on their lives.

Chapter 3 explores the right to social security and reviews international and regional instruments on the subject. It conceptualizes the right to social security as a form of “resilience” provided by the State. It starts with the discussion about the right to social security in the IHRL and examines UN human rights instruments; it pays particular attention to the ILO instruments in this area. Besides, the chapter reviews the main instruments adopted by the Council of Europe (CoE) that cover the right to social security. It also provides discussion on how the right to social security can fall within the ambit of the European Convention of Human Rights (ECHR).

Chapter 4 starts with the discussion on the Georgian legal framework for the right to social security, starting from the Constitution of Georgia and the case-law of the Constitutional Court of Georgia. After that, it goes through old-age pension schemes and analyses them in light of the principles of universality based on solidarity, non-discrimination and equality, and adequacy. Throughout the analysis, I reflect on the relationship between the vulnerability theory and the human rights-based approach.

The final Chapter 5 summarizes the main findings of each chapter of the thesis. It highlights the main challenges the Georgian old-age pension schemes face and provides recommendations.

Chapter 2. Putting Older Persons' Rights Into Context

In order to contextualize older persons' rights, it is important to define who the people behind the term are. This is an important precondition for analyzing older persons' rights in light of the Vulnerability theory. This chapter demonstrates that the vulnerabilities that older persons face are mostly invisible in human rights instruments. These gaps exist on different levels: international, regional, and domestic. This chapter also provides a discussion about the possibility of adopting an International Convention on the rights of older persons and its possible effect on their lives.

2.1. Older persons as legal subjects

There is no commonly agreed legal definition of "older persons." Generally, "standard retirement" or pension eligibility has become the default indicator of older age. The UN uses age 60 as the threshold to refer to the older population, but it accepts that this may be too high of age in certain circumstances or too low in others.²⁹

Thus, older persons are distinguished from the rest of the population principally by their age.³⁰ "Ageing," however, can be described as part of human existence, a universal, biological process that every living organism experiences and which is neither good nor bad. Age can be a subjective category, reflecting how old an individual perceives he or she is, or objective - reflecting a "chronological age." The latter is "an attempt to objectively and naturally provide a universal yardstick to measure the ageing process using known time units."³¹ The World Health Organization (WHO) defined ageing as the "process of progressive change in the

²⁹ United Nations office of the High Commissioner for Human Rights, 'Update to the 2012 Analytical Outcome Study on the Normative Standards in International Human Rights Law to Older Persons' 12–13 <<https://social.un.org/ageing-working-group/documents/eleventh/OHCHR%20HROP%20working%20paper%202022%20Mar%202021.pdf>> accessed 9 May 2022.

³⁰ Frederic Megret, 'The Human Rights of Older Persons: A Growing Challenge' (2011) 11 Human Rights Law Review 37, 42 <<https://heinonline.org/HOL/P?h=hein.journals/hrlr11&i=39>> accessed 9 May 2022.

³¹ Gerard Quinn and Israel (Issi) Doron, 'Against Ageism and Towards Active Social Citizenship for Older Persons The Current Use and Future Potential of the European Social Charter' 15 <<https://rm.coe.int/against-ageism-and-towards-active-social-citizenship-for-older-persons/1680a3f5da>> accessed 11 May 2022.

biological, psychological and social structures of individuals.”³²

While ageing is a natural phenomenon, “old age” (elderly/older person) is a “social construction.”³³ It is the outcome of a socio-cultural process, which is embedded in time and space, which depends on culture, traditions, political power relations, rules and laws that results in the categorization of a person or group of people as “elderly” or “old.” Being “old” is also a dynamic category, as its essence may change over time, place, and socio-cultural context.³⁴

Because of the relativity of the concept of “old age,” “choosing a specific chronological age is a problematic way to define the start of older age,”³⁵ therefore, there is a tendency to speak of “older persons” rather than of “old persons.”³⁶ At the regional level in Europe, the Committee of Ministers of the CoE asserted that it is “useless to attempt to define exactly when old age begins.”³⁷ The Parliamentary Assembly of the CoE (PACE) has also noted that “a person’s age is no longer an indicator of health, wealth or social status.”³⁸ Nevertheless, CoE Member States are encouraged to identify age markers after which older persons can enjoy specific rights and benefits.³⁹

The understanding of older age as a “social construct” is central for the analysis of the “legal subject” through the lens of the Vulnerability theory. The theory challenges the current understanding and use of “legal subject” and contends that it is in practice synonymous with “liberal legal subject” – “an autonomous, independent and fully-functioning adult, who

³² Claudia Stein, Inka Moritz and WHO Ageing and Health Programme, ‘A Life Course Perspective of Maintaining Independence in Older Age’ (World Health Organization) 4 <<https://apps.who.int/iris/handle/10665/65576>>.

³³ Megret (n 30) 44.

³⁴ Quinn and Doron (n 31) 16–17.

³⁵ Update to the 2012 analytical study (n 28) 11.

³⁶ Megret (n 30) 23.

³⁷ Council of Europe, Recommendation No. R (94)9 of the Committee of Ministers to Member States Concerning Elderly People, 1994, 2.

³⁸ Council of Europe Parliamentary Assembly, Recommendation 1796 (2007) The situation of elderly persons in Europe, para 4.

³⁹ Council of Europe, *Recommendation CM/Rec(2014)2 and Explanatory Memorandum* (Council of Europe 2014) 31–32 <<https://rm.coe.int/1680695bce%20%20%20https://rm.coe.int/1680695bce>>.

inhabits a world defined by the individual, not societal responsibility.”⁴⁰

In Human Rights discourses, older persons are often classified as vulnerable people, more specifically, a group that is more vulnerable compared to others. Here the connotation of the term “vulnerable” is negative because often, older age is synonymous with decline and inactivity in terms of their bodies and their remaining abilities.⁴¹ As a segregated social group, older persons are represented as weak, non-productive, and incapable of contributing to society.⁴² This provides a binary of aged and non-aged as two separate categories of human beings.⁴³ As the PACE has rightly indicated, although after surpassing the retirement age, older persons continue to contribute to society (as citizens, carers, and consumers) because of their stereotypical perception, they are deemed unproductive and dependent.⁴⁴ The lack of recognition of older persons’ contribution to society is especially evident in the case of older women, who are more likely to be burdened with caregiving responsibilities.⁴⁵

Assumptions about the age gave rise to the term “ageism,” first coined by Prof. Robert Butler. Ageism “...allows the younger generation to see older people as different from themselves; thus they subtly cease to identify with their elders as human beings.”⁴⁶

The Vulnerability theory opposes the categorization of certain societal groups as “more vulnerable” than others, contending that such labelling of some individuals stigmatizes them.⁴⁷ However, it does not propose to ignore the vulnerabilities that individuals experience. Quite

⁴⁰ ‘Fineman on Vulnerability and Law – New Legal Realism’ <<https://newlegalrealism.org/2015/11/30/fineman-on-vulnerability-and-law/>> accessed 9 May 2022.

⁴¹ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Claudia Mahler, ‘Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/48/53, 2021’ para 31-36 <<https://www.ohchr.org/en/special-procedures/ie-older-persons/annual-reports>>.

⁴² Marthe Fredvang and Simon Biggs, ‘The Rights of Older Persons: Protection and Gaps under Human Rights Law, Social Policy Working Paper No. 16’ [2012] Brotherhood of St Laurence and University of Melbourne Centre for Public Policy 2012 21, 6 <<https://social.un.org/ageing-working-group/documents/fourth/Rightsolderpersons.pdf>> accessed 10 May 2022.

⁴³ *ibid.*

⁴⁴ Council of Europe, Parliamentary Assembly Resolution 1793 (2011) Promoting active ageing – capitalising on older people’s working potential, para 5.

⁴⁵ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, ‘Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, A/HRC/14/31, 2010’ para 121 <<https://www.ohchr.org/en/special-procedures/sr-poverty/annual-reports-special-rapporteur-extreme-poverty-and-human-rights>> accessed 10 May 2022.

⁴⁶ Quinn and Doron (n 31) 20.

⁴⁷ Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 147.

the contrary: the theory suggests that everyone is vulnerable and that vulnerability is part of the human experience.⁴⁸ It claims that vulnerability should be recognized as the primal human condition and describes it as “a universal, inevitable, enduring aspect of the human condition that must be at the heart of social and State responsibility.”⁴⁹ It says that all human beings are constantly susceptible to change in well-being, be it a negative or positive change.⁵⁰ Thus, as every human being is vulnerable, a legal subject is also “vulnerable.”⁵¹ Notably, analysis carried out around the universality of human vulnerability through the lens of the theory does not intend to equalize everyone’s vulnerabilities but instead normalizes them and tries to avoid any segregation based on how vulnerable an individual is.

Such recognition of vulnerability as a shared condition between human beings brings it into the category of a societal problem. Bearing this in mind, the theory calls for collective solutions to societal problems.⁵² It describes “resilience” as something that is accumulated over the life course within social structures and institutions and not as something that an individual is born with.⁵³ In line with this logic of thinking, as getting older is part of the lifecycle, older people and the vulnerabilities they face should fit into the image of the legal subject without labelling them as “more vulnerable” than others. This suggests that one should not compare individuals based on how vulnerable they are, but instead, the focus should be shifted to how their vulnerabilities are addressed by States and institutions.⁵⁴

2.2. Invisibility in human rights instruments and the national law

Older persons enjoy the protection of their human rights under general and thematic human rights treaties. This derives from the principle of universality enshrined in the Universal Declaration of Human Rights (UDHR), which states that “all human beings are born free and equal in dignity and rights.”⁵⁵ This is a cornerstone of IHRL, and it is stated in main human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), that rights

⁴⁸ Fineman, ‘The Vulnerable Subject’ (n 19) 10.

⁴⁹ *ibid* 8.

⁵⁰ Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 142.

⁵¹ Fineman, ‘The Vulnerable Subject’ (n 19) 10–11.

⁵² Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 141–142.

⁵³ *ibid* 147.

⁵⁴ *ibid* 142–143.

⁵⁵ UDHR Article 1.

contained in the Covenants apply to “everyone.”⁵⁶ The universal nature of human rights has been discussed and elaborated on by various scholars. In the words of Louis Henkin, “our rights are not granted by society, we enjoy them not by the grace of society and not only because it may be a good societal policy to respect them. Rather, we are entitled to them.”⁵⁷

Besides, the principle of non-discrimination constitutes another foundation of IHRL. Covenants guarantee the enjoyment of the rights without discrimination.⁵⁸ However, explicit references to “age” as a ground for discrimination are rare in existing treaties. None of the foundational human rights instruments, be it the UDHR, ICCPR,⁵⁹ or the ICESCR,⁶⁰ explicitly prohibit discrimination on the basis of age. However, non-discrimination provisions in both covenants provide illustrative, not exhaustive lists of grounds for discrimination.

The Committee of Economic Social and Cultural Rights (CESCR) released General Comment No. 6 in 1995 on the Economic, Social and Cultural Rights of Older Persons. CESCR explains that the omission of “age” as an illegal ground for discrimination occurred because when the ICESCR and ICCPR were adopted, “the problem of demographic ageing was not as evident or as pressing as it is now.”⁶¹ Notably, CESCR was criticized for using language mirroring ageist assumptions, including references to demographic aging as a “problem”.⁶² General Comment No. 6 states that prohibition of discrimination on the grounds of “other status” could be interpreted as applying to age as well.⁶³ In General Comment No. 20, CESCR also explained that “age is a prohibited ground of discrimination in several contexts.” The Committee emphasized the need to address discrimination against older persons “in finding work, in

⁵⁶ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Preamble; ICESCR Preamble.

⁵⁷ Louis Henkin, ‘The Universality of the Concept of Human Rights’ (1989) 506 *The Annals of the American Academy of Political and Social Science* 10, 11.

⁵⁸ ICCPR Article 2(1); ICESCR Article 2(2).

⁵⁹ ICCPR Article 26.

⁶⁰ ICESCR Article 2(2).

⁶¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, 8 December 1995, E/1996/22, para 11.

⁶² UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Claudia Mahler (n 41) para 43.

⁶³ CESCR, General Comment No. 6 para 12.

professional training, and against those living in poverty with unequal access to pensions because of their place of residency.”⁶⁴

Notably, in the 2012 Analytical Study of the Office of UN High Commissioner for Human Rights (OHCHR), it is stated that the absence of explicit reference to age comes with consequences. OHCHR Analytical Study referred to a lack of consistency among human rights bodies when interpreting the “other status” on a case by case basis; even if age falls under the meaning of “other status,” it raises the question of the standard of scrutiny employed to decide the claim; it might also be challenging for the use of the “positive measures” to address age-based discrimination.⁶⁵

The term “human rights” refers to “the rights of all human beings anywhere and anytime.”⁶⁶ The enjoyment of human rights at the workplace is as important as their enjoyment in other spheres of life. Or, as the UN Special Rapporteur Maina Kiai put it, “the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights...”.⁶⁷ When it comes to discrimination of older persons in the world of work, fundamental ILO Convention No. 111 does not include age among the listed grounds of discrimination.⁶⁸ However, it provides for a possibility of determining additional grounds of discrimination by the national legislation.⁶⁹ Thus, age can be regarded by the legislation or by other means as an additional prohibited ground for discrimination unless it is an inherent requirement for a particular job.⁷⁰ Under the Convention No. 111, age is considered to be “a physical condition for which there are particular needs and in respect of which special

⁶⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para 29.

⁶⁵ Office of the High Commissioner for Human Rights, ‘Normative Standards in International Human Rights Law in Relation to Older Persons, Analytical Outcome Paper 2012’ 8–9
<<https://www.ohchr.org/en/documents/outcome-documents/analytical-outcome-paper-normative-standards-international-human-rights>> accessed 11 May 2022.

⁶⁶ Henkin (n 57) 11.

⁶⁷ UN. Human Rights Council and UN. Secretary-General, ‘Report of the UN Special Rapporteur on Peaceful Assembly and Freedom of Association, Maina Kiai. UN Doc. A/71/385, 2016’ para 17
<<https://digitallibrary.un.org/record/844481#record-files-collapse-header>>.

⁶⁸ ILO, C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Article 1, (1(a)).

⁶⁹ *ibid* Article 1(1)(b)).

⁷⁰ *ibid* Article 1(2).

measures of protection and assistance may be necessary.”⁷¹ One might argue however that the way age is conceptualised here, reflects ageist assumptions about older persons.

ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) explains that age discrimination relates primarily to “age limits imposed in access to particular occupations, a compulsory retirement age and unjustified restrictions between men and women regarding entitlement to social security benefits.”⁷² Importantly, the ILO Termination of Employment Convention, 1982 (No. 158)⁷³ also did not include “age” among the reasons that are not valid for termination of employment, however, this gap was filled in by its accompanying Recommendation, 1982 (No. 166) which explicitly indicates that age should not constitute a valid reason for termination.⁷⁴

Apart from the non-discrimination provisions, the consequences of ageing societies in the world of work and social protection mechanisms have been addressed by the ILO in the Older Workers Recommendation, 1980 (No. 162). The latter provides that “employment problems of older workers should be dealt with in the context of an overall and well balanced strategy for full employment and, at the level of the undertaking, of an overall and well balanced social policy, due attention being given to all population groups, thereby ensuring that employment problems are not shifted from one group to another.”⁷⁵

At the regional level in Europe, age is also not explicitly listed as a ground for discrimination in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁷⁶ or in the non-discrimination clause (Article E) of the Revised European Social Charter (RESC).⁷⁷ However, the words “other status” has been given a broad meaning, suggesting that no one shall be discriminated against on any other ground. The European Court of Human Rights (ECtHR) has recognized that age constituted “other status” for article

⁷¹ *ibid* Article 5(2); ILO, ‘Giving Globalization a Human Face (General Survey on the Fundamental Conventions), Report III (Part 1B)’ (2012) para 813 <http://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm> accessed 11 May 2022.

⁷² ILO, ‘Giving Globalization a Human Face (General Survey on the Fundamental Conventions)(n 69) para 813.

⁷³ ILO, C158 - Termination of Employment Convention, 1982 (No. 158) Article 5.

⁷⁴ ILO, R166 - Termination of Employment Recommendation, 1982 (No. 166) Article 5 (a).

⁷⁵ ILO, R162 - Older Workers Recommendation, 1980 (No. 162) para 2.

⁷⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5,.

⁷⁷ Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163,.

14 of the Convention,⁷⁸ although the Court has stated that “it has not, to date, suggested that discrimination on grounds of age should be equated with other ‘suspect’ grounds of discrimination.”⁷⁹

Notably, in 2014 CoE adopted a Recommendation on the Promotion of Human Rights of Older Persons, which aims “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all older persons, and to promote respect for their inherent dignity.”⁸⁰ The recommendation recognized the gap in the protection against age discrimination and recommended that Member States make explicit references to age in their national anti-discrimination legislations.⁸¹

Although the non-discrimination provision in Georgian Constitution does not contain “age” as a ground for discrimination, the list of illegal grounds of discrimination is not exhaustive.⁸² However, inclusion in the list of prohibited grounds of discrimination plays a decisive role in the decision about the standard of scrutiny employed by the Constitutional Court of Georgia when assessing alleged violations of the constitutional right. According to the established case-law of the Constitutional Court of Georgia, when examining a case in relation to the alleged violation of the right to equality (Article 11), the Court uses two different tests: “strict scrutiny test” or “rational differentiation test” and the question of which of them the court should be guided by is decided by considering various factors, including the intensity of the interference and the ground of differentiation.⁸³ The “strict scrutiny test” is used “if the ground for differentiation is one of those indicated in Article 11 of the Constitution or if the disputed provision interferes with the right at a high intensity.”⁸⁴ This means that the Court applies the principle of proportionality, and the respondent has to prove that the intervention is

⁷⁸ *Schwizgebel v Switzerland* [2010] ECtHR App. No. 25762/07 para 85.

⁷⁹ *British Gurkha Welfare Society and Others v the United Kingdom* [2016] ECtHR App. no. 44818/11 para 88; European Court of Human Rights 2021, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention’ paras 146-150
<https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf> accessed 13 May 2022.

⁸⁰ Council of Europe, *CoE, Recommendation CM/Rec(2014)2 and Explanatory Memorandum* (n 39).

⁸¹ *ibid* para 6.

⁸² Constitution of Georgia, 1995 Article 11.

⁸³ *Citizens of Georgia - Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v Minister of Labor, Health and Social Affairs of Georgia* [2014] Constitutional Court of Georgia N2/1/536 II, para 27.

⁸⁴ *Public Defender of Georgia v Government of Georgia* [2015] Constitutional Court of Georgia N2/4/603 II, para 8.

“*absolutely necessary*” and that there is an “*overwhelming interest of the state*” [emphasis added].⁸⁵ On the other hand, the “rational differentiation test” requires the disputed norm to be necessary, as realistic as possible, and that there should be a rational connection between the objective cause of differentiation and the result of its action.⁸⁶ Thus, the threshold is lower when applying a rational differentiation test.

On the bright side, the Law of Georgia on the Elimination of All Forms of Discrimination (so-called Anti-discrimination law) contains age as an illegal ground for discrimination.⁸⁷ The Anti-Discrimination law prohibits different forms of discrimination, such as direct and indirect discrimination, multiple discrimination, incitement to discrimination, harassment, sexual harassment, and victimization; it also allows “temporary special measures” to achieve equality for different groups.⁸⁸ Its scope extends to public institutions, organizations, individuals and legal entities in all areas if their actions are not regulated by specific legal acts.⁸⁹ According to the Anti-discrimination law, cases of alleged discrimination can be brought before the Court and the Public Defender (Ombudsman) of Georgia, which is assigned the role of the equality body.⁹⁰

In short, even though older persons enjoy all human rights based on the principles of universality and non-discrimination enshrined in IHRL, the lack of explicit reference to age raises questions about the standard of scrutiny applied to decide the claim. The importance of the inclusion among the grounds of discrimination was again demonstrated at the national level in how the Georgian Constitutional Court decides what standard of scrutiny to apply. As for the protection afforded to older persons in the world of work, the ILO has adopted instruments for setting standards in this field. However, invisibility among the grounds of discrimination and filling existing regulatory gaps through mostly soft law instruments in the form of recommendations should also be emphasized.

⁸⁵ *Political Associations of Citizens - ‘the New Rights’ and ‘the Conservative Party of Georgia’ v the Parliament of Georgia* [2010] Constitutional Court of Georgia N1/1/493 II, para 6.

⁸⁶ *ibid.*

⁸⁷ Law of Georgia on the Elimination of All Forms of Discrimination, 2014.

⁸⁸ *ibid* Article 2.

⁸⁹ *ibid* Article 3.

⁹⁰ *ibid* Article 6.

2.3. International and national policy documents addressing older persons' rights

Older persons' rights have been addressed by a number of important non-binding instruments adopted by the UN. The first UN human rights instrument on older persons, the *Vienna International Plan of Action on Aging* (VIPAA), was developed in 1982. Among 62 recommendations, it included social welfare for maximizing the social functioning of ageing and enabling older persons to lead the independent life.⁹¹ Later on, it was modified into the *Madrid International Plan of Action on Ageing 2002* (MIPAA), which has a strong focus on human rights. Among other things, it encourages the development of appropriate social protection/social security measures for older persons and regards it as a part of a foundation for economic prosperity and social cohesion. It also underscores the importance of gender equality in social security systems and encourages social security systems for persons working in the informal sector.⁹²

Moreover, in 1991 the United Nations Principles for Older Persons was adopted.⁹³ These principles are organized around the following themes: independence, participation, self-fulfilment, dignity, and care. They reflect the need for striking a balance between integrating older people into society and acknowledging their special needs.⁹⁴

Notably, these policy documents are often criticized for mirroring ageist assumptions and referring to older persons as passive recipients of care.⁹⁵ However, it is also true that they provide useful guidance for States' action in setting standards for older persons' rights and linking ageing to the human rights framework.⁹⁶ However, because of the non-binding nature, States often fail to incorporate these standards into their domestic policies.⁹⁷

⁹¹ United Nations, 'Report of the World Assembly on Aging, Vienna' (1982) A/CONF.113/31 69–71 <<https://www.un.org/esa/socdev/ageing/documents/Resources/VIPEE-English.pdf>> accessed 9 May 2022.

⁹² United Nations, *Report of the Second World Assembly on Ageing: Madrid, 8-12 April 2002, A/CONF.197/9* (2002).

⁹³ United Nations Principles for Older Persons, Adopted by General Assembly resolution 46/91 of 16 December 1991.

⁹⁴ *ibid.*

⁹⁵ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Claudia Mahler (n 41) para 43.

⁹⁶ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte, 'Report of the Independent Expert on the Enjoyment of All Human Rights by Older

Even if standards are incorporated, their execution still remains problematic, as it is also evident in the Georgian context. In 2014, the Population Unit of the United Nations Economic Commission for Europe (UNECE) prepared the Road Map for Mainstreaming Ageing in Georgia.⁹⁸ This policy document provided guidance for strengthening the implementation of the Madrid International Plan of Action on Ageing and its Regional Implementation Strategy (MIPAA/RIS) in Georgia.⁹⁹ As a result, in 2016, the “Concept of State Policy on the Aging of the Population of Georgia”¹⁰⁰ was developed. It addresses various issues related to older people, such as a gender-based approach and gender mainstreaming.¹⁰¹ The document set goals to improve health care for older persons; it underscored the importance of the integration and participation of older persons in public life.¹⁰² Besides, it covers the social security of older persons, their labor and employment and aims to provide adequate social protection by taking into account the consequences of demographic and socio-economic changes.¹⁰³

At the end of 2017, for the implementation of the “Concept of State Policy on the Aging of the Population of Georgia,” Action Plan 2017-2018¹⁰⁴ was approved. However, more than half of the commitments of Georgia’s National Action Plan on Ageing for 2017-2018 have not been fulfilled. Georgian Public Defender’s (Ombudsman’s) reports indicate that the Action Plan from the very beginning gave the impression that it was only formally adopted.¹⁰⁵ The validity of the above-mentioned document expired in 2018, and to this day, a new action plan has not

Persons, A/HRC/33/44, 2016’ para 89 <<https://www.ohchr.org/en/special-procedures/ie-older-persons/annual-reports>>.

⁹⁷ Fredvang and Biggs (n 42) 11–13.

⁹⁸ United Nations Economic Commission For Europe, ‘Road Map for Mainstreaming Ageing Georgia, ECE/WG.1/22’ <https://unece.org/DAM/pau/age/Capacity_building/Road_Maps/Georgia/Publication/ECE-WG.1-22_12-15.pdf> accessed 13 May 2022.

⁹⁹ *ibid* 1.

¹⁰⁰ Parliament of Georgia, ‘Resolution 5146-III, On Approving the Concept of State Policy on the Aging of the Population of Georgia, 2016’ <<https://matsne.gov.ge/ka/document/view/3297267?publication=0>> accessed 13 May 2022.

¹⁰¹ *ibid* 1(8), 2 (2.8).

¹⁰² *ibid* 2.2.

¹⁰³ *ibid* 2.4, 2.10.

¹⁰⁴ Government of Georgia, ‘Resolution N490 On Approving Georgia’s National Action Plan on Ageing for 2017-2018, 2017’ <https://www.gov.ge/files/469_63003_384301_490.pdf> accessed 13 May 2022.

¹⁰⁵ Public Defender (Ombudsman) of Georgia, ‘Special Report on the Legal Status of the Elderly in Georgia’ (2020) 19 <<http://www.ombudsman.ge/geo/191030122948spetsialuri-angarishebi/khandazmul-pirta-uflebrivimdgomareoba-sakartveloshi>> accessed 9 May 2022.

been adopted.¹⁰⁶ This indicates that either policymakers struggle to see the State's role in building resilience for older persons, or they simply lack a political will or both.

2.4. Is there a need for a new Convention?

The UN has adopted different human rights conventions that specifically protect the rights of particular groups, such as children, women, and persons with disabilities. However, there is no similar treaty at the universal level that explicitly and comprehensively addresses the human rights of older persons.¹⁰⁷

The UN General Assembly established the Open-Ended Working Group on Ageing (OEWGA) in 2010. The working group is mandated to consider the existing international framework of the human rights of older persons, identify possible gaps and find ways to address them, including by considering, if appropriate, the feasibility of further instruments and measures.¹⁰⁸

OEWGA Member States have not yet reached a consensus about developing a new convention. In the meantime, the discussion about this possibility begs the question as to what difference, if any, would a new convention have on the rights of older persons.¹⁰⁹

Some scholars try to answer this question in light of the existing experiences with the specific human rights treaties that target particular groups, such as women or children (Convention on the Elimination of All Forms of Discrimination Against Women and Convention on the Rights of the Child, respectively).¹¹⁰ Opinions on this differ: some claim that it will have a negative effect or will not make a change. These arguments derive mostly from the general scepticism towards human rights treaties and their success for individuals. Some question adoption of the new human rights instrument from the perspective of cultural relativism, whilst others draw attention to the argument that only the existence of international treaties

¹⁰⁶ Public Defender (Ombudsman) of Georgia, 'Report of the Public Defender of Georgia 2020' (n 15) 312.

¹⁰⁷ Annie Herro and Andrew Byrnes, 'Transcending the Framing Contests over the Human Rights of Older Persons' (2020) 38 *The Australian Year Book of International Law Online* 251, 254 <https://brill.com/view/journals/auso/38/1/article-p251_12.xml> accessed 9 May 2022.

¹⁰⁸ United Nations, Resolution adopted by the General Assembly on 21 December 2010, A/RES/65/182 para 28.

¹⁰⁹ See: Israel Doron and Itai Apter, 'International Rights of Older Persons: What Difference Would a New Convention Make to the Lives of Older People' (2009) 11 *Marquette Elder's Advisor* 367 <<https://heinonline.org/HOL/P?h=hein.journals/marqelad11&i=371>> accessed 9 May 2022.

¹¹⁰ *ibid* 368.

does not necessarily guarantee the change. They underscore the challenges of implementation and enforcement of human rights treaties.¹¹¹

While the answer to the question raised above ultimately depends on the Convention's actual content and the implementation and enforcement tools,¹¹² I subscribe to the argument that the adoption of a new international human rights treaty on the rights of older persons can have a positive impact on their lives. Human rights violations that older persons experience is different from those of other groups¹¹³ and a new Convention would provide recognition for specific disadvantages faced by older persons. In other words, "a social problem does not exist for a society unless it is recognised by that society to exist."¹¹⁴ It can also play a symbolic role and highlight that older persons' rights are important enough to have a dedicated instrument.¹¹⁵ Besides, it can be useful litigation, advocacy, and mainstreaming tool¹¹⁶ that can clarify States' responsibilities and improve their accountability.¹¹⁷ Last but not least, it could empower older persons to claim their rights on an equal basis with others, whose rights are enshrined in specific treaties.¹¹⁸

Finally, I share the belief that a new convention can provide a "paradigm shift" in thinking about the rights of older persons. Specifically, the UN Convention on the Rights of Persons with Disabilities (CRPD) can be used as an example.¹¹⁹ The CRPD rejected a medical model of approaching the rights of people with disabilities; instead, the social model on which the Convention is built on allowed to recognize them as right-holders. "The social model of disability explains disability as a social construct and focuses on society rather than

¹¹¹ *ibid* 370–372.

¹¹² *ibid* 383.

¹¹³ Megret (n 30) 30.

¹¹⁴ Herbert Blumer, 'Social Problems as Collective Behavior' (1970) 18 *Social Problems* 298, 301–302 <https://heinonline.org/HOL/Page?public=true&handle=hein.journals/socprob18&div=35&start_page=298&collection=journals&set_as_cursor=0&men_tab=srchresults> accessed 9 May 2022.

¹¹⁵ Update to the 2012 analytical study (n 28) 55.

¹¹⁶ Doron and Apter (n 109) 378–379, 384.

¹¹⁷ 'Strengthening Older People's Rights: Towards a UN Convention. A Resource for Promoting Dialogue on Creating a New UN Convention on the Rights of Older Persons' 8 <<https://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf>> accessed 14 May 2022.

¹¹⁸ Herro and Byrnes (n 107) 254, 264–265.

¹¹⁹ Andrew Byrnes and Titti Mattsson, 'Background Paper, 20th Informal ASEM Seminar on Human Rights of Older Persons' (2021) 21 <<https://asef.org/wp-content/uploads/2021/02/ASEMHRS20-Background-paper.pdf>> accessed 9 May 2022.

individual. Claiming that disability is the result of the way environment and society respond to the impairment.”¹²⁰ Based on this experience, one might argue that a new convention can have the same effect on the rights of older persons. This can be possible by “taking active measures against ageism and reconceptualizing the way in which societies view older persons, from passive receivers of care and assistance and an impending burden on welfare systems and economies, to active contributors to society.”¹²¹

Chapter 3. Social Security as a Form of “Resilience” for Older Persons’ Vulnerabilities

From the standpoint of the Vulnerability theory, social security systems are understood as a form of “Resilience” provided by the State to tackle the vulnerabilities of older persons. This chapter examines whether international and regional instruments on the right to social security impose on States’ obligations that are responsive to specific disadvantages faced by older persons.

This chapter focuses on the content of the right to social security and provides an overview of the standard-setting instruments in the field. The first part of this chapter starts with the discussion about the right to social security in IHRL, and it clarifies States’ human rights obligations. The chapter pays particular attention to the ILO instruments in this area because of the unique expertise and the role of the organization.

The second part of this chapter reviews regional instruments adopted by the CoE that explicitly cover the right to social security. After that, it discusses the European Convention on Human Rights (ECHR) to demonstrate the interdependence of civil and political rights and the right to social security; it overviews how the right to social security can fall within the ambit of the Convention.

¹²⁰ Theresia Degener, *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary* (Valentina Della Fina, Rachele Cera and Giuseppe Palmisano eds, 1st ed. 2017., Springer International Publishing 2017) 42.

¹²¹ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte, ‘Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/39/50, 2018’ para 82 <<https://www.ohchr.org/en/special-procedures/ie-older-persons/annual-reports>> accessed 10 May 2022.

3.1. International legal framework for the right to social security

3.1.1. The right to social security in the UN human rights instruments

The concept of social security has evolved and is used in various ways worldwide.¹²² The reference to the right to social security first appeared in International Law in the Declaration of Philadelphia in 1944,¹²³ which listed it as one of the obligations of the International Labour Organisation (ILO). The Declaration states that social security should be available to “all in need” regardless of their status as workers or non-workers.¹²⁴

Later, it was recognized as a human right in the UDHR. Article 22 of the UDHR states that “everyone, as a member of society, has the right to social security” and is entitled to its realization through national efforts and international cooperation. The right to social security is not defined in Article 22; however, it takes on meaning through the reference in Article 25, which is more qualified and extends the right only in situations of contingency.¹²⁵ Article 25 (1) declares that “everyone has the right to... social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”¹²⁶

After adopting the UDHR in 1948, it took many years for the social and economic rights to be included in a binding international treaty - International Covenant on Economic Social and Cultural Rights (ICESCR), adopted in 1966. Article 9 of the ICESCR sets out the right to social security as follows: “the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”¹²⁷

Committee of the Economic, Social and Cultural Rights (CESCR) describes the purpose of the right to social security and recognizes its central importance “in guaranteeing human dignity for all

¹²² Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (1. ed, Oxford University Press 2014) 610–616.

¹²³ ILO, ‘General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization, Report III (Part 1B)’ (International Labour Conference, 100th Session 2011) 154 <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152602.pdf> accessed 9 May 2022.

¹²⁴ Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), 1944 part III (f).

¹²⁵ Richard Pierre Claude and Bernardo W Issel, ‘Health, Medicine and Science in the UDHR’ (1998) 3 Health and Human Rights 126, 135 <<https://heinonline.org/HOL/P?h=hein.journals/harhrj3&i=285>> accessed 10 May 2022.

¹²⁶ UDHR Article 25 (1).

¹²⁷ ICESCR.

persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.”¹²⁸ CESCR defined the right to social security as encompassing “the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”¹²⁹

CESCR states that social security “plays an important role in poverty reduction and alleviation.”¹³⁰ Notably, General Comment No. 19 is often criticized for failing to move from “traditional work-related formulation of social security to a broader inclusion of causes of poverty, such as lack of housing and food, and natural disasters and emergencies.”¹³¹ Another criticism goes to the list of contingencies covered by the right to social security, which according to some scholars, ignores contingencies specific to working women, such as domestic violence, sexual harassment, etc.¹³²

The right to social security implies two predominant categories: contributory social insurance schemes, which generally involve contributions from beneficiaries, employers, and sometimes, the State; and non-contributory social assistance schemes - typically taxation funded measures that are designed to transfer resources to everyone who experiences a particular risk or contingency, or is in a situation of need.¹³³

When discussing the legal framework of the right to social security, it is vital to see its links to other rights. It is a pivotal means to ensure individuals’ subsistence and secure their basic socio-economic rights under the ICESCR. For instance, Article 9 is interlinked with realizing the right to an adequate standard of living, health, education, and culture.¹³⁴ It is also essential to see the interdependence with not only rights contained in the ICESCR but also rights of civil and political

¹²⁸ CESCR, General Comment No. 19, para 1.

¹²⁹ *ibid* para 2.

¹³⁰ *ibid* para 3.

¹³¹ Beth Goldblatt, ‘Gender, Poverty and the Development of the Right to Social Security’ (2014) 10 *International Journal of Law in Context* 460, 463 <<https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/gender-poverty-and-the-development-of-the-right-to-social-security/4E14010B17CF57668F9A720B834CF012>> accessed 16 May 2022.

¹³² *ibid*.

¹³³ CESCR, General Comment No. 19 para 4.

¹³⁴ ICESCR Articles 11, 12, 13, 15.

nature contained in the ICCPR and the role of social security in the realization of those rights. In other words, “social security furthers the independent values of reducing inequality and promoting fairness, equality, social justice and social cohesion.”¹³⁵

There are other UN human rights instruments that regulate the right to social security, such as the Convention on the Rights of the Child,¹³⁶ Convention on the Elimination of All Forms of Racial Discrimination;¹³⁷ International Convention on the Protection of the Rights of All Migrant Workers and Their Families,¹³⁸ Convention on the Rights of Persons with Disabilities (CRPD).¹³⁹ Besides, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) contains various references to the right to social security and approaches it from a gender dimension.¹⁴⁰ CEDAW Committee has emphasized that older women experience aging differently. The Committee highlighted that the discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination. It notes that States “should provide adequate non-contributory pensions, on an equal basis with men, to all women who have no other pension or have insufficient income security, and that State-funded allowances should be made available and accessible to older women, particularly to those living in remote or rural areas.”¹⁴¹

3.1.2. States’ human rights obligations in relation to the right to social security

Unlike civil and political rights, the rights contained in the ICESCR are qualitatively different and require financial resources; thus, the Covenant provides for the progressive realization of these rights.¹⁴² However, the ICESCR also imposes various obligations which are of immediate effect. In relation to the right to social security, in the General Comment No. 19, the CESCR stressed that

¹³⁵ Saul, Kinley and Mowbray (n 122) 611.

¹³⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Articles 26, 27.

¹³⁷ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 5(e)(iv).

¹³⁸ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158, Article 27 and 54.

¹³⁹ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, United Nations, Treaty Series, vol. 2515, Dec. 2006, p. 3 Article 28.

¹⁴⁰ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, Articles 11(1)(e), 11(2)(b), 14(2).

¹⁴¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27, para 44.

¹⁴² ICESCR Article 2(1).

States parties have immediate obligations such as “the guarantee that the right will be exercised without discrimination of any kind (Article 2, paragraph 2), ensuring the equal rights of men and women (Article 3), and the obligation to take steps (Article 2, paragraph 1) towards the full realization of Articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security.”¹⁴³

There is a typology of obligations developed in IHRL: “*respect*,” “*protect*,” and “*fulfil*” human rights.¹⁴⁴ In practice, these obligations are closely interlinked, and it may not always be easy to make a clear-cut distinction between them. However, the typology can be seen as a conceptual device to identify the various ways in which states can and must fulfil their obligations that are specific to IHRL.¹⁴⁵

In General Comment No. 19, the Committee explains these elements in relation to the right to social security. *Respect* for the right to social security means that “States should not engage in any practice or activity that, for example, denies or limits equal access to adequate social security...”¹⁴⁶ Obligation to *protect* requires States to prevent third parties from interfering with the enjoyment of the right.¹⁴⁷ The obligation to *fulfil* can be subdivided into the obligations to *facilitate*, *promote* and *provide*.¹⁴⁸ The obligation to *facilitate* requires States to take positive measures to assist individuals and communities in enjoying the right to social security.¹⁴⁹ The obligation to *promote* obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes.¹⁵⁰ States are also obliged to *provide* the right to social security when individuals or groups are unable to realize the right themselves.¹⁵¹

In order to prevent social protection programmes from being subjected to political manipulation and to make them more sustainable and reliable,¹⁵² a core aspect of the human rights-based

¹⁴³ CESCR, General Comment No. 19 para 40.

¹⁴⁴ International Commission of Jurists (ICJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997 II, para 7.

¹⁴⁵ Daniel Moeckli and others (eds), *International Human Rights Law* (Third edition, Oxford University Press 2018) 97–99.

¹⁴⁶ CESCR, General Comment No. 19 para 44.

¹⁴⁷ *ibid* paras 45-46.

¹⁴⁸ *ibid* para 47.

¹⁴⁹ *ibid* para 48.

¹⁵⁰ *ibid* para 49.

¹⁵¹ *ibid* para 50.

¹⁵² Sepulveda and Nyst (n 7) 27–28.

approach is that social protection programmes must be enshrined and defined in national legal frameworks.¹⁵³ It is also important for beneficiaries to identify actors who bear responsibility for allocating the entitlements that they receive. For these reasons, States are also recommended to enshrine the right to social security in national constitutions.¹⁵⁴

Social security policies should also be comprehensive, coherent, and coordinated in order to reduce fragmentation and ensure capacity building of all stakeholders responsible for implementing social protection programs.¹⁵⁵ In addition, if the right to social security is violated, States should ensure access to accountability mechanisms and effective remedies.¹⁵⁶ It is also recommended to guarantee anonymous, culturally appropriate complaints procedures that are also accessible, simple, fair, and effective.¹⁵⁷

Notably, in the cases where the receipt of benefits is tied to the beneficiaries' commitment to fulfilling certain conditions, States must ensure that these co-responsibilities do not undermine the human rights of beneficiaries. This means that conditionalities should not be designed as a punitive measure.¹⁵⁸

A Human rights-based approach to social security also dictates respect for the principles of equality and non-discrimination.¹⁵⁹ The latter also refers to the need to take into account a gender perspective on social security. CESCR pays a particular attention to the gender perspective in relation to contributory schemes and calls on States to take steps to eliminate the factors that prevent women from equally contributing to such schemes.¹⁶⁰ However, General Comment No. 19 has received criticism from scholars for not explicitly stating some of the underlying causes that prevent women from access to work and to social security; specifically, for not mentioning women's "unpaid subsistence labour, work in family enterprises, and in household and reproductive labour" which is not seen as "work".¹⁶¹ Thus, in order for women to realize their right

¹⁵³ CESCR, General Comment No. 19 para 67.

¹⁵⁴ Sepulveda and Nyst (n 7) 13.

¹⁵⁵ *ibid* 31.

¹⁵⁶ CESCR, General Comment No. 19 paras 77-81.

¹⁵⁷ Sepulveda and Nyst (n 7) 62.

¹⁵⁸ *ibid* 52.

¹⁵⁹ CESCR, General Comment No. 19 paras 29-31.

¹⁶⁰ *ibid* para 32.

¹⁶¹ Goldblatt (n 131) 464.

to social security, it is important to address “women’s life-cycle risks and the burden of care that they bear, as well as the differences in access to services, work and productive activities...”.¹⁶²

CESCR has noted that the elements of the right to social security may vary according to different conditions; however, the Committee refers to a number of essential factors that are universal in all circumstances. It includes the obligation of the States to ensure the *availability* of social security systems, which does not refer to specific programs but rather to the existence of benefits for the relevant social risks and contingencies.¹⁶³ Social security programs must be available to all individuals without discrimination,¹⁶⁴ and targeting methods should only be employed with the aim of progressively achieving universal coverage.¹⁶⁵ Benefits must also be *adequate* in amount and duration to ensure an adequate standard of living and adequate access to health care. CESCR links *adequacy* of social security benefits and respect to the principle of human dignity.¹⁶⁶

Moreover, States have the obligation to guarantee the *accessibility* to the right to social security for everyone, with particular attention to disadvantaged and marginalized groups. This element draws attention to reasonable, proportionate, and transparent qualifying conditions, access to information, as well as physical¹⁶⁷ and cultural accessibility.¹⁶⁸ Transparency and access to information are particularly important in order to reduce the likelihood of mismanagement of resources allocated for social protection programs.¹⁶⁹ It can also be instrumental in increasing public support for investments in social security policies.¹⁷⁰ Besides, the element of *accessibility* requires ensuring that beneficiaries of social security schemes are able to participate in the administration of the social security systems.¹⁷¹ Participation of beneficiaries allows policy-makers to receive their feedback and improve the effectiveness of social protection programs. However, participatory

¹⁶² Sepulveda and Nyst (n 7) 32–33.

¹⁶³ CESCR, General Comment No. 19 paras 11-15.

¹⁶⁴ *ibid* para 11.

¹⁶⁵ Sepulveda and Nyst (n 7) 41.

¹⁶⁶ CESCR, General Comment No. 19 para 22.

¹⁶⁷ *ibid* paras 23-27.

¹⁶⁸ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 72.

¹⁶⁹ Sepulveda and Nyst (n 7) 54.

¹⁷⁰ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 78.

¹⁷¹ CESCR, General Comment No. 19 para 26.

mechanisms must be authentic in a way that it takes into account existing asymmetries of power within the community.¹⁷²

3.1.3. International Labor Organization - the pioneer in the field of social security

Although the concept of social security as it is known today emerged in the middle of the twentieth century, the ILO's first activities in this field date back to the 1919 ILO Constitution. The Preamble to the ILO Constitution recognized the need to improve labour conditions in respect of "prevention of unemployment, ... the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury."¹⁷³ As the international agency specifically entrusted with setting international labor standards, the ILO has primary responsibility for the realization of the right to social security since its creation.¹⁷⁴ The history of the development of the right to social security in the UN instruments shows the deference to the ILO's standard-setting expertise in the area.¹⁷⁵

Before diving into the ILO instruments, it should be noted that they are created and supervised based on the principle of *Tripartism*, which implies dialogue and cooperation between organizations of employers and workers and government representatives that makes the ILO unique in the UN system. The Tripartite structure is also important at the national level for ensuring greater cooperation among the social partners and stronger awareness and participation in matters related to international labor standards.¹⁷⁶

The ILO has adopted 31 Conventions and 23 Recommendations in this area, contributing to the development of social security as a universal human right.¹⁷⁷ While a large number of conventions

¹⁷² Sepulveda and Nyst (n 7) 59–60.

¹⁷³ Constitution of the International Labour Organisation (1919) Preamble.

¹⁷⁴ ILO, 'Social Security for Social Justice and a Fair Globalization, Recurrent Discussion on Social Protection (Social Security) under the ILO Declaration on Social Justice for a Fair Globalization, 2011, Report VI' (2011) para 27 <https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_152819.pdf>.

¹⁷⁵ Saul, Kinley and Mowbray (n 122) 612–619.

¹⁷⁶ ILO, *Rules of the Game: An Introduction to the Standards-Related Work of the International Labour Organization*, p 49 (Centenary edition 2019) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_672549.pdf> accessed 10 May 2022.

¹⁷⁷ 'ILO | Social Protection Platform' <<https://www.social-protection.org/gimi/ShowWiki.action?wiki.wikiId=792>> accessed 10 May 2022.

are shelved, in 2002, the ILO Governing body confirmed that it regards eight Conventions as being up-to-date.¹⁷⁸

The ILO interprets the right to social security as the right to get protection from the society through a series of public measures to provide the benefits, whether in cash or in-kind, to secure protection, *inter alia*, from:

- a) lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- b) lack of access or unaffordable access to health care;
- c) insufficient family support, particularly for children and adult dependants;
- d) general poverty and social exclusion.¹⁷⁹

Georgia has been a member of the ILO since 1993;¹⁸⁰ however, it has not ratified any of the up-to-date ILO conventions on social security.¹⁸¹ Nevertheless, the importance of the ILO instruments is significant because of the organization's unique expertise in the area. Besides, as it is pointed out in the Declaration on Fundamental Principles and Rights at Work and its Follow-Up: "in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances."¹⁸²

Among the ILO instruments, the framework Convention on Social Security (Minimum Standards), 1952 (No. 102) 102 is a landmark international instrument that has greatly influenced the

¹⁷⁸ ILO, 'Social Security for Social Justice and a Fair Globalization, Recurrent Discussion on Social Protection (Social Security) under the ILO Declaration on Social Justice for a Fair Globalization, 2011, Report VI' (n 174) 12–13.

¹⁷⁹ *ibid* 9.

¹⁸⁰ 'International Labour Standards Country Profile: Georgia'

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:102639> accessed 10 May 2022.

¹⁸¹ 'Up-to-Date Conventions Not Ratified by Georgia'

<https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102639> accessed 10 May 2022.

¹⁸² ILO, Declaration on Fundamental Principles and Rights at Work and its Follow-Up, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010) 6.

development of standards in the field.¹⁸³ Other ILO conventions on social security add more detailed and stronger protections to different branches. At the time of adoption of the Convention No. 102, some States were concerned about whether the establishment of minimum standards was the most useful mean for dealing with this matter, or how realistic could it be to achieve the goals set in the Convention; whether having a soft law instrument was preferable and so on.¹⁸⁴

Convention No. 102 covers nine principal branches of social security: medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivors' benefits. Ratifying States can accept as a minimum 3 out of the 9 branches of social security. To ensure that choice of benefits is reasonably equivalent,¹⁸⁵ at least 1 of these 3 branches should cover a long-term contingency or unemployment.¹⁸⁶ However, States are encouraged to continually expand coverage and move gradually towards the full achievement of the Convention's goals.¹⁸⁷

The Convention declares minimum standards of organization, financing, and management of social security. Notably, Convention No. 102 does not contain detailed provisions regarding the financing and administration of social security. It is based on the idea that there is no single model of social security applicable to all countries. Each society has to develop the best means of guaranteeing the protection required if it complies with the common principles.¹⁸⁸ For this reason, ILO social security instruments place on the State the *general responsibility* for the proper administration of social security systems.¹⁸⁹

Apart from the Conventions, ILO also adopts Recommendations that serve as non-binding guidelines. In some cases, recommendations supplement Conventions by providing more detailed

¹⁸³ ILO, 'General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization' (n 123) paras 54-55.

¹⁸⁴ ILO, *Objectives and Minimum Standards of Social Security*. [Electronic Resource], vol REPORT IV (2) (1951) 8–15, 174–178 <<https://labordoc.ilo.org>> accessed 10 May 2022.

¹⁸⁵ ILO, 'General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization' (n 123) para 61.

¹⁸⁶ ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) Article 2(a).

¹⁸⁷ ILO, 'General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization' (n 123) para 62.

¹⁸⁸ ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019) (n 7) 7.

¹⁸⁹ ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) Article 71(3), 72(2).

guidance on how they could be applied. However, Recommendations can also be autonomous, not linked to a Convention.¹⁹⁰

There are 23 recommendations addressing the right to social security. The most prominent is the Social Protection Floors Recommendation, 2012 (No. 202). It was adopted following the issuance of General Comment No. 19 (CESCR), and its influence is evident starting from the preamble, where it reaffirms that social security is a human right. Principles enshrined in the Recommendation do not offer a one-size-fits-all model. Instead, in line with national circumstances, States should strike “a balance among universality, adequacy, solidarity and sustainability.”¹⁹¹ The Recommendation aims to ensure that all members of society enjoy at least a minimum essential level of social protection “throughout their lives.”¹⁹²

The ILO advocates for a two-dimensional strategy to be pursued through national social protection policies, which are *horizontal* and *vertical* dimensions. The former refers to the universal protection of the population by ensuring at least minimum levels of income security and access to essential health care for as many people as possible; while the latter refers to progressively ensuring higher levels of social security.¹⁹³ Recommendation No. 202 calls for the implementation of Social Protection Floors (SPF), which should comprise at least four basic social security guarantees, including access to essential health care and basic income security for children, persons of active age who are unable to earn sufficient income, and older persons.¹⁹⁴

For the guidance in relation to the old-age pensions in the ILO instruments, as it is the main focus of the present thesis, apart from the discussed instruments, due attention should be paid to the Old Age, Invalidity and Survivor’s Benefits Convention No. 128 and its accompanying Recommendation No. 131.¹⁹⁵ Together these instruments provide a framework for ensuring

¹⁹⁰ ILO, *Rules of the Game: An Introduction to the Standards-Related Work of the International Labour Organization* (n 176) 18.

¹⁹¹ ILO, ‘World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future’ (n 10) 34.

¹⁹² ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 20–21.

¹⁹³ ILO, ‘World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future’ (n 10) 34.

¹⁹⁴ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 5.

¹⁹⁵ ILO, ‘World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future’ (n 10) 167.

income maintenance and income security in old age.¹⁹⁶ Along with Convention No. 102, specific instruments provide more detailed and advanced protection in relation to old-age pensions. For instance, in terms of protection, as a minimum standard, Convention No. 102 declares that at least 50% of all employees or economically active population should be protected (forming not less than 20% of all residents) or all residents with means under the prescribed threshold.¹⁹⁷ On its part Convention No. 128 declares more advanced standards and states that all employees should be protected, including apprentices or categories of the economically active population (forming at least 75% of the whole economically active population); or all residents with means under the prescribed threshold.¹⁹⁸ Its accompanying Recommendation No. 131 states that Coverage should be extended further to persons whose employment is of casual nature; or all economically active persons.¹⁹⁹ Finally, Recommendation No. 202 brings more human rights dimension into the ILO instruments; since it reaffirms that social security is a human right it declares that all residents of a nationally prescribed age should be provided with basic social security guarantees.²⁰⁰ These instruments also differ in terms of the standards in relation to the coverage of social security systems and the levels of benefits. These aspects will be further discussed and applied throughout the analysis of old-age pension schemes in Georgia in Chapter 4.

3.2. Regional Instruments in the field of Social Security – Council of Europe

At the regional level, since its creation in 1949, one of the goals of the Council of Europe (CoE) has been the promotion of economic and social progress.²⁰¹ The CoE has adopted several binding as well as non-binding instruments that explicitly cover the right to social security. Georgia has been a Member State since 27 April 1999, and it is a party to a number of instruments²⁰² relevant to the present thesis.

Notably, the work conducted by the CoE in the field of social security in a way overlaps with the

¹⁹⁶ *ibid* 250–251.

¹⁹⁷ ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) Article 27.

¹⁹⁸ ILO, C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) Article 16.

¹⁹⁹ ILO, R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131) Article 2.

²⁰⁰ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 6.

²⁰¹ Council of Europe. Statute of the Council of Europe, European Treaty Series - No. 1, London, 5.V.1949.

²⁰² Council of Europe, 'Georgia - Member State' (*CoE*) <<https://www.coe.int/en/web/portal/georgia>> accessed 10 May 2022.

activities carried out by the ILO.²⁰³ However, the significance of regional instruments lies in the fact that they are “more closely attuned to the specific conditions and distinctive political concepts of the area concerned.”²⁰⁴

Fundamental social and economic rights at the regional level are guaranteed in the European Social Charter (ESC),²⁰⁵ adopted in 1961 and revised in 1996 (RESC).²⁰⁶ The original treaty of 1961 is the result of nearly ten years of preparatory work. From the *travaux préparatoires* of the ESC, it is evident that at the time of adoption of the Charter, arguments against the formulation of economic and social rights as individual rights prevailed. It was considered that a large number of socio-economic rights were not individual rights in the legal sense. Therefore, the adoption of a separate instrument containing these rights was seen as “an empty and meaningless gesture” while “the exercise of the rights in question would remain inoperative.”²⁰⁷ Eventually, the Charter was adopted, guaranteeing the right to social security, among other rights of social and economic nature.

As already noted, there are different versions of the Social Charter; therefore, the extent of States’ obligations depends on which of these texts each State has ratified. RESC takes account of the “evolution” that occurred since the adoption of the ESC.²⁰⁸ Georgia ratified the RESC in 2005, accepting 63 of the Revised Charter’s 98 paragraphs. Among the accepted provisions are Articles 12.1 and 12.3 which cover the right to social security.²⁰⁹

Compliance with the Charter is monitored by the European Committee of Social Rights (ECSR),

²⁰³ C Villars, ‘Social Security Standards in the Council of Europe: The ILO Influence’ (1979) 118 *International Labour Review* 343, 343 <<https://heinonline.org/HOL/P?h=hein.journals/intlr118&i=357>> accessed 9 May 2022.

²⁰⁴ *ibid* 345.

²⁰⁵ ‘Details of Treaty No.035’ (*Treaty Office*) 035 <<https://www.coe.int/en/web/conventions/full-list>> accessed 13 May 2022.

²⁰⁶ ‘Details of Treaty No.163’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 13 May 2022.

²⁰⁷ Council of Europe, ‘European Social Charter, Collected (Revisional) Edition of the “Travaux Préparatoires”’ (1953) Volume III 827–828 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c1c49>> accessed 10 May 2022.

²⁰⁸ Matthias C Kettermann, ‘A Soft Law Reality Check: Reflections on the Role and Influence of Council of Europe Expert Bodies on Standard-Setting in European Human Rights Law with Special Reference to Normative Impacts on the Czech Republic International Law’ (2006) 2 *Hanse Law Review* 106, 109 <<https://heinonline.org/HOL/P?h=hein.journals/hanselr2&i=108>> accessed 9 May 2022.

²⁰⁹ ‘Country Profiles, Georgia’ (*Council of Europe*) <<https://www.coe.int/en/web/european-social-charter/georgia>> accessed 11 May 2022.

on the one hand, through the Collective Complaints Procedure - lodged by the social partners and other non-governmental organisations, which was introduced by the Additional Protocol to the European Social Charter adopted in 1995 [Georgia has not yet ratified the Additional Protocol].²¹⁰ On the other hand, ECSR monitors through Reporting System, which implies national reports drawn up by Contracting Parties.²¹¹ Under the reporting procedure, the ECSR publishes its “Conclusions” every year based on annual States’ self-assessment reports.²¹²

The right to social security guaranteed by the Charter in Article 12.1 requires the establishment and maintenance of social security systems. As the ECSR has explained social security system exists within the meaning of Article 12.1 when it complies with the following criteria:

“Number of risks covered: the social security system should cover the traditional risks and therefore provide the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, and maternity benefit.

Personal scope: the social security system must cover a significant percentage of the population for the health insurance and family benefit. Health coverage should extend beyond employment relationships. The system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.

Funding: the social security system must be collectively financed, which means funded by contributions of employers and employees and/or by the State budget. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.).²¹³

The European Committee of Social Rights (ECSR) underscores that the principle of collective financing is a fundamental feature of a social security system as it ensures sharing of the burden

²¹⁰ ‘Details of Treaty No.158’ (*Treaty Office*) 158 <<https://www.coe.int/en/web/conventions/full-list>> accessed 16 May 2022.

²¹¹ ‘European Committee of Social Rights’ (*European Social Charter*) <<https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>> accessed 16 May 2022.

²¹² ‘Reporting System of the European Social Charter’ (*European Social Charter*) <<https://www.coe.int/en/web/european-social-charter/national-reports>> accessed 16 May 2022.

²¹³ *Conclusions 2017 - Georgia - Article 12-1* [2017] European Committee of Social Rights 2017/def/GEO/12/1/EN.

among the members of the community. ECSR refers to the importance of collective financing by contributions of employers and employees and/or by the State budget.²¹⁴

The ECSR explains the nature of the rights enshrined in the Charter and states that “when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time.”²¹⁵ Therefore, Article 12.3 of the Charter requires States to improve their social security systems progressively.

For compliance with the right to social security, according to Article 12.2 of the RESC, the standards of the European Code of Social Security should be met.²¹⁶ European Code of Social Security (1964) and the Revised European Code of Social Security from 1990 provide detailed regulations on the right to social security.²¹⁷ The Code is almost identical to the already discussed ILO Convention No. 102. However, it provides benefits above the minimum standards laid down in the ILO Convention No. 102.²¹⁸ The Code adapts provisions of the ILO Convention No. 102 to the particular objectives of the Council of Europe and to the specific conditions of its member States.²¹⁹ However, Georgia has not accepted neither Article 12.2 of the RESC nor is it a party to the European Code of Social Security Code.

Notably, Article 23 of the Charter is the first provision in the human rights treaty that explicitly protects the rights of older persons, which obliges States “to devise and carry out coherent actions.”²²⁰ The focus of Article 23 is on the social protection of older persons outside the employment field.²²¹ It requires States to ensure that older persons remain full members of society and have the resources “to lead a decent life and play an active part in public, social and cultural

²¹⁴ ‘Digest of the Case Law of the European Committee of Social Rights’ (2018) 137–138 <<https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>> accessed 15 May 2022.

²¹⁵ *Decision on the merits: International Association Autism-Europe v France* [2003] European Committee of Social Rights COMPLAINT No. 13/2002 para 53.

²¹⁶ RESC Article 12.2.

²¹⁷ Council of Europe, ‘Details of Treaty No.048’ (*Treaty Office*) 048 <<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyenum=048>> accessed 11 May 2022.

²¹⁸ Villars (n 203) 344.

²¹⁹ *ibid* 346.

²²⁰ *Conclusions XIII-3 - Statement of interpretation - Article 4 Additional Protocol (Article 23)* [1995] European Committee of Social Rights XIII-3_Ob_-4/Ob/EN.

²²¹ ‘Digest of the Case Law of the European Committee of Social Rights’ (n 214) 199.

life” and to enable older persons “to choose their life-style freely and to lead independent lives.”²²² Georgia has not accepted Article 23 of the Charter; however, the ECSR has noted that States are nevertheless bound to ensure a minimum level of well-being for older persons even if they have not accepted Article 23.²²³

The Council of Europe Recommendation CM/Rec(2014)2 invites the Member States to consider themselves to be bound by Article 23.²²⁴ Besides, in relation to old-age pensions, the Parliamentary Assembly of CoE (PACE) has also emphasized the importance of Article 23 of the revised European Social Charter in Resolution 1882 (2012) on Decent Pension For All.²²⁵ The Resolution is concerned about the guarantee of adequate pension levels that offer pensioners a decent standard of living.²²⁶ PACE has also adopted Resolution 1752 (2010) on Decent Pensions for Women, which asks member States to address gender discrimination in old-age pension schemes and to take into account women’s career patterns.²²⁷ These instruments will be further discussed throughout the analysis of Georgian old-age pension schemes in Chapter 4.

3.3. Protection of the right to social security afforded by the European Convention on Human Rights

At the beginning of this chapter, it was emphasized that it is essential to see the interdependence of the right to social security with not only other social and economic rights but also rights of civil and political nature and the role of social security in the realization of those rights. For this reason, this sub-chapter discusses the European Convention on Human Rights and Fundamental Freedoms (ECHR) to briefly outline the reasons behind the omission of social and economic rights from the list of substantive rights of the Convention and then to illustrate how violation of the right to social security can still fall within the ambit of the ECHR. Selected case-law is limited based on the specific focus of the present thesis.

²²² RESC Article 23.

²²³ *Conclusions 2009 - Armenia - Article 13-1* [2010] European Committee of Social Rights 2009/def/ARM/13/1/EN.

²²⁴ CoE, Recommendation CM/Rec(2014)2 and explanatory memorandum (n 38) para 25.

²²⁵ Council of Europe Parliamentary Assembly, Resolution 1882 (2012), Decent pensions for all, Para 3.

²²⁶ *ibid* para 2.

²²⁷ Council of Europe Parliamentary Assembly, Resolution 1752 (2010) Decent pensions for women, para 5.

3.3.1. European Convention on Human Rights

The European Convention on Human Rights and Fundamental Freedoms (ECHR) was adopted on 5 November 1950 [entered into force on 3 September 1953].²²⁸ Signatory States to this regional instrument undertook the obligation to secure and guarantee to everyone within their jurisdiction the fundamental civil and political rights defined in the Convention.²²⁹ The ECHR also established the European Court of Human Rights (ECtHR),²³⁰ which has the authority to issue legally binding judgements. According to Article 34 of the Convention: “the Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto...”.

The preamble of the Convention states that it takes the “first steps for the collective enforcement of *certain of the rights* stated in the Universal Declaration“ [emphasis added].²³¹ Some scholars attribute the absence of social and economic rights from the text of the Convention to the drafters’ conservative approach to the justiciability of socio-economic rights;²³² others also refer to the drafters’ intention for the Convention to be “selective in the protection it affords” to keep it minimalist in scope in order to ensure its adoption.²³³

However, as was stated by the ECtHR judge Pinto De Albuquerque, the argument that “the founding fathers intended to recognize in the Convention only civil and political rights” is “flawed” because it ignores the clear intention of the ECHR, which “envisages the “development” of human rights in the light of the Universal Declaration on Human Rights, where economic and social rights are foreseen.” In addition, in order to emphasize that “most of the civil rights have social and economic derivations,”²³⁴ judge Pinto De Albuquerque referred to the earlier judgment

²²⁸ Council of Europe, ‘Details of Treaty No.005’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 10 May 2022.

²²⁹ European Court of Human Rights, ‘The ECHR in 50 Questions’ 9, 3 <https://www.echr.coe.int/Documents/50Questions_ENG.pdf> accessed 15 May 2022.

²³⁰ ECHR Article 19.

²³¹ *ibid* preamble.

²³² Marco Duranti, *The Conservative Human Rights Revolution : European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017) 329–330.

²³³ William Schabas, *The European Convention on Human Rights: A Commentary* (1st edn, Oxford University Press 2015) 63.

²³⁴ *Partly Concurring, Partly Dissenting Opinion of Judge Pinto de Albuquerque, Konstantin Markin v Russia*, [2012] ECtHR [GC] App. no. 30078/06.

of the Court - *Airey v Ireland*, where the Court stated that “there is no water-tight division separating that sphere from the field covered by the Convention.”²³⁵

3.3.2. European Court of Human Rights

The ECtHR has stressed the links between the access to appropriate social protection and some of the rights recognized in the ECHR. However, the Court usually sets a high threshold for such cases and gives a wide margin of appreciation to States, using the argument that “national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds,” unless a policy in question is “manifestly without reasonable foundation.”²³⁶ This was a primary argument when deciding the case *Fábián v. Hungary*,²³⁷ concerning a legislative amendment that upended the payment of old-age pensions to persons employed in specific categories of the public sector, whereas pensioners working in the private sector remained eligible to receive the pension. The applicant claimed that it amounted to unjustified interference with his property rights contrary to Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 (Prohibition of discrimination) of the Convention.²³⁸ The ECtHR found no violation and noted that the applicant had not demonstrated that, as a pensioner employed by the civil service, he was in a relevantly similar situation to pensioners employed in the private sector with regard to his eligibility for the payment of old-age pensions.²³⁹

In relation to old-age pensions, the same line of reasoning can be found in the case *Stummer v Austria* which concerned the national pension scheme that did not take work in prison into account when calculating applicants’ pensions.²⁴⁰ The ECtHR declared that the affiliation of working prisoners to the old-age pension system remained a question of choice of “social and economic strategy” within a wide margin of appreciation of the State and found no violation of Article 14 in conjunction with Article 1 of Protocol No. 1.²⁴¹

Article 14 of the ECHR, in conjunction with Article 1 of Protocol No. 1, was also used by the applicant in the case *Anderle v the Czech Republic*, which concerned differentiated pensionable

²³⁵ *Airey v Ireland* [1979] ECtHR App. no. 6289/73 para 26.

²³⁶ *Fábián v Hungary* [2017] ECtHR [GC] App. no. 78117/13 para 115.

²³⁷ *ibid.*

²³⁸ *ibid* para 3.

²³⁹ *ibid* paras 84, 114, 131.

²⁴⁰ *Stummer v Austria* [2011] ECtHR [GC] App. no. 37452/02 para 8.

²⁴¹ *ibid* paras 90, 101.

age for men and women. The applicant complained about the pension scheme which established a different pensionable age for women caring for children while there was no similar lowering of the pensionable age for men in the same position.²⁴² The ECtHR found that it was objectively and reasonably justified. In the words of the Court “more favorable treatment of women who raised children was originally designed to compensate for the factual inequality and hardship arising out of the combination of the traditional mothering role of women and the social expectation of their involvement in work on a full-time basis.”²⁴³

Besides, the court has also stressed the link between the insufficiency of old-age pension and Article 3 of the ECHR (Prohibition of torture or inhuman or degrading treatment or punishment). For instance, this was evident in the case *Larioshina v. Russia*, where the applicant alleged insufficiency of old-age pension to maintain an adequate standard of living. In this case, the Court stated that a wholly insufficient amount of pension and the other social benefits might, in principle, raise an issue under Article 3 of the Convention. However, according to the Court, “there should be an indication that the amount of the applicant’s pension and the additional social benefits available cause such damage to a person’s physical or mental health that can attain the minimum level of severity falling within the ambit of Article 3.”

Apart from the discussed rights enshrined in the ECHR, the Court has also noted that “..acts and omissions of the authorities in the field of health-care policy may in certain circumstances engage their responsibility under Article 2” (Right to life).²⁴⁴ Besides, where access to social benefits is intended to benefit the family unit, it may fall within the ambit of Article 8 (Right to respect for private and family life) of the ECHR.²⁴⁵

In short, even though the cases discussed above were limited based on the focus of the present thesis, the case-law of the ECtHR demonstrates that realization of the right to social security is also essential for the rights that are civil and political in nature. Notably, some of the provisions contained in the Convention can serve as an avenue for claiming social and economic rights. However, the approach of the Court also demonstrates a reluctance to give a wide opening for this kind of cases through the ECHR’s substantive rights.

²⁴² *Andrle v the Czech Republic* [2011] ECtHR App. no. 6268/08 para 3.

²⁴³ *ibid* para 53.

²⁴⁴ *Nitecki v Poland (dec)* [2002] ECtHR App. no. 65653/01.

²⁴⁵ for instance, *Dhahbi v Italy* [2014] ECtHR 17120/09.

Chapter 4. Right to Social Security – The Case of Georgia

The present chapter discusses the legal framework for the right to social security in Georgia. It starts with the overview of the Constitution of Georgia with regard to social rights, as the Constitution is highest in the hierarchy of normative acts²⁴⁶ in Georgia. It is followed by an overview of Georgian old-age pension schemes, the main form of social security for older persons. Thereafter, the chapter analyses Georgian old-age pension schemes. Throughout the analysis, I reflect on the relationship between the Vulnerability theory and the human rights-based approach. The overall aim is to see how Georgia manages to build “resilience” for older persons’ vulnerabilities.

4.1. Tendency to marginalize socio-economic rights - the Constitution of Georgia

The preamble of the Georgian Constitution establishes the “firm will” of citizens “to secure universally recognised human rights and freedoms.”²⁴⁷ The principle of “Social State” is one of the foundational provisions in the Georgian Constitution. The Constitution elaborates on the meaning of the principle of Social State in Article 5, located in chapter I (General Provisions). Article 5 declares Georgia a “Social State” and stipulates that the State should “take care of” “strengthening the principles of social justice, social equality and social solidarity within society.” Article 5 covers different social areas, including taking care of “human health care and social protection, ensuring the subsistence minimum and decent housing, and protecting the welfare of the family.”²⁴⁸ However, provisions located in chapter I of the Constitution have declaratory character, and they are not justiciable rights.²⁴⁹

Apart from Article 5, social rights find their place in the Constitution through Article 4, which recognizes universally recognized human rights other than those explicitly provided by the Constitution (Article 4 (2)). The same Article states that “an international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or

²⁴⁶ Organic Law of Georgia on Normative Acts, 2009, Article 7.

²⁴⁷ Constitution of Georgia, 1995 Preamble.

²⁴⁸ *ibid* Article 5(4).

²⁴⁹ Nika Arevadze, ‘The Social State Principle at Play: Constitutional Case-Law on Social Matters Special Edition: The 1921 Constitution of the Democratic Republic of Georgia’ (2021) 2021 Journal of Constitutional Law 149, 149–172 <<https://heinonline.org/HOL/P?h=hein.journals/constulv2021&i=149>> accessed 9 May 2022.

the Constitutional Agreement of Georgia” (Article 4 (5)). As noted in the previous Chapter, social rights are guaranteed by a number of already discussed international and regional instruments that Georgia is a party to.

Chapter II of the Constitution, titled “Fundamental Rights,” contains enforceable human rights. It contains few human rights of social character that can be judicially enforced, such as labour rights (Article 26), the right to education (Article 27), the right to health (Article 28), the right to a healthy environment (Article 29), as well as the right to equality (Article 11). However, some of the important social rights, including the right to social security, are absent from Chapter II. Judicial control of rights and freedoms enumerated in Chapter II of the Constitution is provided by the Constitutional Court of Georgia.²⁵⁰ The Court, among other things, has the mandate to review the constitutionality of normative acts on the basis of complaints presented by individuals, legal persons, and the Public Defender (Ombudsman) of Georgia.²⁵¹

Notably, constitutional amendments that took place in 2018 changed the content of social rights in the Constitution.²⁵² Before the amendments, a number of social rights were included in Chapter II. For instance, Article 31 guaranteed “equal socio-economic development for all regions of the country;” Article 32 provided that “the State shall promote helping the unemployed find work;” Article 36(2) obliged the State to promote family welfare.²⁵³ In the current version of the constitution, all these rights are located in Article 5 of the Chapter I of the constitution. The rationale behind this was that “the rights that are being moved into Chapter I are “abstract rights,” and therefore not directly enforceable.”²⁵⁴ One of the prevailing arguments was that if socio-economic rights are directly enforceable in the courts, “this will draw judges into pronouncing on matters of social policy, and the allocation of scarce resources, which is the exclusive role of the Parliament.”²⁵⁵

²⁵⁰ Constitution of Georgia, 1995 Article 59(2).

²⁵¹ *ibid* Article 60(4(a)).

²⁵² Arevadze (n 249) 150.

²⁵³ Georgian constitution, 1995, before 2018 amendments.

²⁵⁴ Jeffrey Jowell, ‘Review of Amendments to the Constitution of Georgia in Respect of Human Rights and Judiciary Matters’ (USAID and East-West Management Institute 2017) 5 <<http://ewmi-prolog.org/images/files/2106PROLoG-ReviewofConstitutionalAmendmentsstoHRandJudiciaryrelatedmattersJeffreyJowellENG.pdf>> accessed 9 May 2022.

²⁵⁵ *ibid* 6.

Despite the limited list of social rights in Chapter II of the Constitution, the Constitutional Court of Georgia has made several important decisions in the field of social rights. The next section will look at these cases more closely.

4.2. The Principle of “Social State” - Case-law of the Constitutional Court of Georgia

Generally speaking, the court has developed a very careful approach to social rights, often limiting itself with the arguments about the principle of separation of powers and a conservative understanding of the justiciability of social rights (even before the 2018 Constitutional amendments).²⁵⁶

Notably, in the earlier judgements, the Constitutional Court of Georgia had made important statements with regard to social rights in relation to the principle of the “Social State.” The Court has indicated that the State should provide at least the minimum necessary level of social protection, and the action of the State in this regard should be of a “stable, evolutionary nature and be distinguished by positive dynamics.”²⁵⁷ However, in more recent judgments the Court developed more careful approach regarding the justiciability of social rights and the interpretation of the principle of “Social State.” For instance, in the case *Public Defender of Georgia v. the Parliament of Georgia*, the applicant questioned the constitutionality of the rule, which barred individuals from seeking judicial remedy for the assessment methodology, levels and amount of social assistance. Opinions of the judges were divided equally about the justiciability of the right to social security and social assistance. Consequently, the claim regarding these rights was not satisfied, and the question was left undecided.²⁵⁸ Notably, dissenting judges claimed that adjudication of social rights by the Court requires exceptional caution and moderateness in order not to violate the principle of separation of power. However, they also noted that this argument could not be used to completely reject judicial control in this sphere. Dissenting judges underscored that the principle of separation of power requires mutual control and a balancing

²⁵⁶ Arevadze (n 249) 150, 154, 156.

²⁵⁷ *Bachua Gachechiladze, Simon Turvandishvili and others v the Parliament of Georgia* [2002] Constitutional Court of Georgia N1/1/126,129,158 para IV.

²⁵⁸ *Public Defender of Georgia v the Parliament of Georgia* [2009] Constitutional Court of Georgia N1/2/434 II, para 5.

mechanism, and it makes up means for the individuals to protect themselves from the arbitrariness of the State.²⁵⁹

Later in 2018, the Court issued a landmark judgment *Tamar Tandashvili v. the Government of Georgia*, where the applicant claimed that the rule that excluded persons unlawfully residing on the premises owned by the State from registering in the database for socially vulnerable families was unconstitutional. The rule did not cover persons who were already registered in the database.²⁶⁰ The Constitutional Court discussed the case in relation to the right to equality. It stated that the registration in the database was the precondition to receiving social assistance and other welfare benefits related to the status of socially vulnerable families. The Court found it unreasonable to distinguish between persons with similar social needs using the argument of protection of State property, and therefore, it deemed the norm discriminatory.²⁶¹ This Judgement is of particular importance also because the Court applied the right to dignity to social welfare matters. The Constitutional Court assessed whether the State is authorized to leave a person without social assistance as a means of protecting State property. The Court stated that the rule in question forces persons to choose between their shelter and their subsistence needs. The Court rejected the use of social security programs as a punitive measure, as it violates the right to dignity and its central requirement that “humans cannot be used as instruments to achieve goals.” In the words of the Constitutional Court of Georgia, “often, social assistance serves the purpose of ensuring a physical survival and creation of development perspectives for individuals. As a result of the disputed norms, the State instrumentalizes human hardships in order to protect its own property.”²⁶²

Notably, recording notice of the case of *Tamar Tandashvili v. the Government of Georgia* gives an interesting insight into the way the constitutional court of Georgia approaches socio-economic rights and particularly the right to social security. The applicant also claimed that the disputed norm violated the universally recognized right to social security and assistance.²⁶³ Regarding this

²⁵⁹ *ibid* Dissenting Opinion of the justices – Ketevan Eremadze and Besarion Zoidze para 17.

²⁶⁰ *Citizen of Georgia Tamar Tandashvili v the Government of Georgia* [2018] Constitutional Court of Georgia N2/3/663 para 7.

²⁶¹ *ibid* II, paras 2–38.

²⁶² *ibid* II, paras 39–54.

²⁶³ *Recording notice, Citizen of Georgia Tamar Tandashvili v the Government of Georgia* [2017] Constitutional Court of Georgia N2/11/663 II, para 8.

claim, the Constitutional Court stated that the issue of social assistance fell within the scope of Article 32 of the Georgian Constitution. The latter declared the State's responsibility to aid the unemployed and ensure a minimum standard of living (Georgian Constitution before 2018 amendments), which stemmed from the principle of the Social State.²⁶⁴ The Court further elaborated that “while fundamental rights are in most cases self-executing, the realization of social rights is conditional upon the State resources and their implementation requires the accumulation of significant funds and the Constitution of Georgia is less demanding in relation to the principle of Social State and its constituent elements.”²⁶⁵ Here the Court refers to the right to social security and social assistance, however, this reasoning and the wording employed, indicates to the existence of hierarchy between “fundamental rights” and social provisions, of which the latter constitute “policy objectives rather than real human rights.”²⁶⁶

Right to equality enshrined in the Constitution of Georgia served as an avenue in another case - *Roin Gavashelishvili and Valeriane Migineishvili v. the Government of Georgia*, which concerned the rule about full and partial eligibility for a package of social security benefits under the State's Universal Healthcare program.²⁶⁷ The Court noted that the State is afforded a wide margin of discretion when selecting policies in the field of healthcare, but in all cases, it is obligated to follow the principle of equality, and limited budgetary considerations cannot serve as a justification in every case.²⁶⁸ The Court emphasized the particular importance of the healthcare program and its potential impact on the applicants' health and deemed the norm discriminatory.²⁶⁹

The case law discussed above shows that the right to equality and dignity enshrined in the Constitution of Georgia can serve as an avenue for future litigations on social rights in some instances. However, it's also noteworthy that the Constitutional Court's approach to social rights, involving State's financial burden, signals their conservative approach to these rights.²⁷⁰

²⁶⁴ *ibid* II, paras 8-22.

²⁶⁵ *ibid* II, paras 17-18.

²⁶⁶ Arevadze (n 249) 156.

²⁶⁷ *Citizens of Georgia Roin Gavashelishvili and Valeriane Migineishvili v the Government of Georgia* [2017] Constitutional Court of Georgia N1/11/629, 652 I, para 7.

²⁶⁸ *ibid* II, paras 31– 38.

²⁶⁹ *ibid* III para 1.

²⁷⁰ Arevadze (n 249) 262.

4.3. Old-age pension schemes in Georgia

Currently, there are two pension schemes operating in Georgia: the universal non-contributory State Pension and the contributory scheme, known as the Accumulated Pension scheme.

The State Pension scheme is regulated by the Law of Georgia on State Pensions (2005).²⁷¹ The preamble of the law states that it pursues to ensure that older citizens realize their economic and social rights that are enshrined in the Constitution of Georgia by establishing a State pension within the existing resources.²⁷² The Law of Georgia on State Pensions states that it is built on principles of protection of human rights, equality before the law, universality, consistency, solidarity between generations, and the State's guarantee of receiving pensions.²⁷³

On the other hand, the Accumulated Pension scheme is regulated by the Law of Georgia on Accumulated Pensions (2018).²⁷⁴ In 2014 the Georgian Government approved Resolution N400 on the Socio-Economic Development Strategy "Georgia 2020," by which the Government undertook to develop the Accumulated Pension scheme alongside the existing universal State Pension scheme. According to the Development Strategy "Georgia 2020," the Government of Georgia considered it "necessary to gradually move to the accumulated pension system, which in turn will help alleviate the pressure caused by the sustainable growth of the basic pension."²⁷⁵ The document states that the pension reform should help increase the amount of savings in the country and create an additional source of investment in parallel with the provision of social security.²⁷⁶

Legally covered population:

- ◆ *Non-contributory State Pension scheme:* citizens of Georgia; stateless persons having a status in Georgia; aliens who have legally resided in the territory of Georgia for the last 10 years by the moment of applying for a pension; and foreign nationals who have been granted dual citizenship; however, they must receive a pension from only one State.²⁷⁷

²⁷¹ Law of Georgia on State Pensions, 2005, Article 2.

²⁷² *ibid.*

²⁷³ *ibid* Article 3.

²⁷⁴ Law of Georgia on Accumulated pensions, 2018,.

²⁷⁵ Government of Georgia, 'Resolution N400, Approval of Georgia's Socio-Economic Development Strategy "Georgia 2020" and some related measures'

<http://www.economy.ge/uploads/ecopolitic/2020/saqartvelo_2020.pdf> accessed 9 May 2022.

²⁷⁶ *ibid* 59–60.

²⁷⁷ Law of Georgia on State Pensions, 2005, Article 1(2).

Besides, a person cannot benefit from the non-contributory State Pension, if he/she is entitled to benefits provided for by the Law of Georgia on State Compensation and State Academic Stipends.²⁷⁸

- ◆ Contributory Accumulated Pension scheme: citizens of Georgia, stateless persons, and foreign nationals residing permanently in Georgia [legally].²⁷⁹ At the time of enactment of the Law of Georgia on Accumulated Pensions, the scheme was mandatory for legally employed persons under the age of 40, and it was voluntary for those aged 40 or above. Involvement in the scheme is voluntary for self-employed persons.²⁸⁰

Qualifying Conditions:

- ◆ Age 65 for men and 60 for women for non-contributory²⁸¹ as well as contributory²⁸² pension_schemes.

Financial arrangements:

- ◆ Non-contributory State Pension scheme: pensions are funded from the budget of Georgia, and the amount of the pension is determined annually by the Law on the State Budget of Georgia for the respective year.²⁸³ In addition, according to the Law of Georgia on the Development of Mountainous Regions, pensioners permanently residing in a mountainous settlement will be given a monthly supplement in the amount of 20% of the pension package provided for them.²⁸⁴
- ◆ Contributory Accumulated Pension scheme: contributions are financed by: a) employees - 2% of the monthly earnings; b) employer - 2% of monthly payroll; c) the State - 2% of employee's monthly earnings if lower than Gel 2000 (Approx. €640) or 1% if greater than Gel 2000 before tax deductions; d) Self-employed persons contribute 4% of their declared earnings.²⁸⁵ The State pays 2% until the amount of the annual accrued total salary reaches GEL 24,000 (Approx. €7 690). After that, the State treasury transfers 1% of the accrued income to the employee's individual pension account until the total amount of the accrued

²⁷⁸ ibid Article 5(2)(4).

²⁷⁹ Law of Georgia on Accumulated pensions, 2018, Article 1 (4(b), (c)).

²⁸⁰ ibid Articles 3(5), 22.

²⁸¹ Law of Georgia on State Pensions, 2005, Article 5(1).

²⁸² Law of Georgia on Accumulated pensions, 2018, Article 2(r).

²⁸³ Law of Georgia on State Pensions, 2005, Article 7(1).

²⁸⁴ Law of Georgia on the Development of High Mountainous Regions, 2015, Article 4(2(a)).

²⁸⁵ Law of Georgia on Accumulated pensions, 2018, Article 3(6).

salary exceeds GEL 60,000 (Approx. €19 225) per year. This means that the State treasury doesn't make contributions to the employee's individual pension account above that threshold.²⁸⁶

Administrative responsibility:

- ◆ *Non-contributory State Pension scheme*: administrative responsibility is placed on the Social Service Agency (SSA) established by the Government of Georgia, which is subordinated to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.²⁸⁷
- ◆ *Contributory Accumulated Pension scheme*: administrative responsibility is placed on the State Pension Agency, which is responsible for the implementation, management, and administration of the accumulated pension scheme.²⁸⁸ The particularity of the accumulated pension scheme is that the Pension Agency invests the accumulated pension funds in low-risk, medium-risk, or high-risk portfolios.²⁸⁹ Thus, benefit reflects contributions made by an employee, employer, and the State, plus the interest from the investments.²⁹⁰

4.4. Building “resilience“ through old-age pension schemes in Georgia

Vulnerability theory criticizes the ideological premise that “individuals are responsible for their own welfare.”²⁹¹ Instead, it contends that even though nothing can completely mitigate human vulnerability,²⁹² institutions are the main duty-holders for providing recourses to address our vulnerabilities.²⁹³

It's fair to conclude that similar logic of thinking is rooted in the human rights-based approach to social security, which means moving towards a concentration on rights and entitlements. This makes individuals entitled to make legitimate claims, while States are duty-bearers,

²⁸⁶ *ibid.*

²⁸⁷ Law of Georgia on State Pensions, 2005, Articles 4 (j), 10.

²⁸⁸ Law of Georgia on Accumulated pensions, 2018, Articles 4, 8.

²⁸⁹ *ibid* Article 27.

²⁹⁰ *ibid* Article 32.

²⁹¹ Marth Albertson Fineman, ‘Elderly as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility’ (2012) 20 *Elder Law Journal* 71, 74

<<https://heinonline.org/HOL/P?h=hein.journals/elder20&i=75>> accessed 9 May 2022.

²⁹² Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 146.

²⁹³ Fineman, ‘Elderly as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility’ (n 291) 96.

responsible and accountable for their human rights obligations.²⁹⁴

The following sub-chapters analyze Georgian old-age pension schemes in light of the human rights instruments. The analysis is organized around the principles of universality based on solidarity, non-discrimination and equality, and adequacy of social security. These principles are linked to one another, and questions raised under each principle might also fall within another.

4.4.1. Horizontal coverage – the principle of universality based on solidarity

As discussed in Chapter 3, the right to social security is everyone's human right. States have a minimum core obligation to provide a minimum essential level of benefits to all individuals and families.²⁹⁵ Therefore, the human rights-based approach dictates that providing these benefits is not a policy option but a legal obligation of States under IHRL.²⁹⁶

Notably, the CESCR recognizes the importance of the guiding principles established in ILO Recommendation No. 202, which are in line with the human rights obligations regarding the right to social security.²⁹⁷ The universality of social protection is at the core of this Recommendation,²⁹⁸ meaning that States should ensure that all members of society enjoy at least a minimum essential level of social protection “throughout their lives.”²⁹⁹

At the regional level, as noted in Chapter 3, the Revised European Social Charter through Article 12.1 requires the social security system to cover a significant percentage of the population.³⁰⁰

²⁹⁴ Sepulveda and Nyst (n 7) 18.

²⁹⁵ CESCR, General Comment No. 19 para 59.

²⁹⁶ Sepulveda and Nyst (n 7) 22–23.

²⁹⁷ UN. Economic and Social Council, ‘Social Protection Floors: An Essential Element of the Right to Social Security and of the Sustainable Development Goals, E/C.12/2015/1’, (2015) para 14
<<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJvHEXEU4Khj3y6yINSyq8u5n%2Ba%2BgVU%2FQRd1%2BntxmQe%2BeWynffCas%2FNsBp%2Bf2U0tNs0CiwKxDpx8dBbFO50SIXs>> accessed 10 May 2022.

²⁹⁸ ILO, ‘ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019)’ (n 8) para 101.

²⁹⁹ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 20-21.

³⁰⁰ *Conclusions 2017 - Georgia - Article 12-1* (n 213).

As explained in General Comment No.19, “all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups...”.³⁰¹ Therefore, even though everyone is entitled to claim their right to social security, it does not equalize everyone’s needs and prioritizes the disadvantaged and marginalized groups’ protection. This line of thinking is also evident in the Vulnerability theory, which argues about the universality of vulnerability while acknowledging that “it is manifested differently in individuals, often resulting in significant differences in position and circumstances.”³⁰²

As noted throughout the thesis, recognizing vulnerability as a shared condition between human beings leads to bringing it into the category of a societal problem. Bearing this in mind, the theory calls for collective solutions to societal problems.³⁰³ In the human rights-based approach, this is reflected in the principle of solidarity, a crucial element of the principle of universality of social security systems. The principle of solidarity brings individuals’ problems into the realm of societal problems. As emphasized by CESCR, “social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.”³⁰⁴ According to General Comment No.19, States are obliged to provide social security to individuals or groups who can’t realize the right themselves. To support those individuals and groups, General Comment No.19 emphasizes the need to establish non-contributory schemes or other social assistance measures.³⁰⁵

Similarly, in terms of the ILO instruments, paragraph 3(a) of the Recommendation No. 202 declares that the universality of protection requires social solidarity. Paragraph ‘h’ of the same article demonstrates that universality is closely linked to the principle of solidarity in financing.³⁰⁶ As the ILO Committee of Experts noted, “strengthening people’s security through greater social solidarity means basing social security systems on such organizational principles as risk pooling and collective financing by the members of the community and

³⁰¹ CESCR, General Comment No. 19 para 23.

³⁰² Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 133.

³⁰³ *ibid* 141–142.

³⁰⁴ CESCR, General Comment No. 19 para 3.

³⁰⁵ *ibid* para 50.

³⁰⁶ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 3 (a) (h).

guarantee a minimum level of protection sufficient to maintain a family of the beneficiary in health and decency.”³⁰⁷ Social solidarity is seen as a manifestation of collective values, mutual assistance, “sharing of responsibilities, and of the human values of empathy, compassion and care for the weak.”³⁰⁸

At the regional level, ECSR also underscores the importance of collective financing as it ensures sharing of the burden among the members of the community.³⁰⁹

Moving to the Georgian context, under the non-contributory State Pension, all women and men can expect to receive a regular, monthly pension when reaching the age of 60 and 65, respectively; it is unconditional and thus truly universal. All pensioners receive the same amount, irrespective of contributory years, the average salary, or paid taxes. UN Independent Expert on the enjoyment of all human rights by older persons on her mission in Georgia in 2018 positively assessed the universality of the non-contributory old-age pension system.³¹⁰ However, the Independent Expert noted that because the system is not means-tested, as recommended by ILO, it may incentivize informal work.³¹¹ The ILO report on the Assessment of the Social Protection System in Georgia (2020) claims that “the universal old-age pension in Georgia is a policy success story as it covers **Around 97.4 percent of older persons.**”³¹² Universal non-contributory pension schemes are most in compliance with human rights obligations as they respond to the claim of universality of human rights norms.³¹³ Thereof, the non-contributory old-age pension scheme (State Pension) in Georgia can be celebrated in terms of horizontal coverage.

³⁰⁷ ILO, ‘General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization’ (n 123) para 34.

³⁰⁸ *ibid* para 452.

³⁰⁹ ‘Digest of the Case Law of the European Committee of Social Rights’ (n 214) 137–138.

³¹⁰ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte, ‘Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons on Her Mission to Georgia, A/HRC/39/50/Add.1, 2018’ para 57
<<https://digitallibrary.un.org/record/1638448>> accessed 10 May 2022.

³¹¹ *ibid* para 59.

³¹² ILO, ‘Assessment of the Social Protection System in Georgia’ (2021) Report para 81
<http://www.ilo.org/moscow/information-resources/publications/WCMS_767261/lang--en/index.htm> accessed 9 May 2022.

³¹³ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 9.

However, the new Accumulated Old-age Pension scheme can be analyzed in light of the principle of universality based on solidarity. In terms of the financial arrangements, the State contributes 2% to employees' monthly earnings, as noted earlier.³¹⁴ Such a design of the pension scheme can contribute to the increase of social inequality among older persons, as the State makes bigger contributions to high-income citizens than to the low-income population, and no contribution is made to unemployed persons.³¹⁵ According to the latest statistical data, in 2021, in Georgia, 20.6% of the population was unemployed.³¹⁶ This means that no contribution was made to their pension accounts.

Besides, ILO Recommendation R.131 states that periods of incapacity due to sickness or maternity should be incorporated into periods of contribution.³¹⁷ A lack of solidarity in the contributory scheme in Georgia is also evident as periods of sickness, care, or parental leave are non-contributory.³¹⁸

In terms of horizontal coverage, as noted earlier, the involvement of self-employed persons is voluntary.³¹⁹ The ILO Committee of Experts recommended moving gradually to compulsory membership of self-employed workers. It is seen as a possible means to extend the coverage of the social security schemes. Particular importance is given to the State's support in the form of social contribution subsidies.³²⁰ According to 2021 data from the National Statistics Office of Georgia, 32.4% of workers are self-employed.³²¹ As noted earlier, self-employed people are expected to credit 4% of their income with the State's additional 2% input.³²² They might not be willing to voluntarily join the scheme and cut their income by 4%. To encourage self-

³¹⁴ Law of Georgia on Accumulated pensions, 2018, Article 3(6).

³¹⁵ 'Ten Remarks on Pension Reform' (*Transparency International - Georgia*) <<https://transparency.ge/en/post/ten-remarks-pension-reform>> accessed 9 May 2022.

³¹⁶ Geostat, 'Employment and Unemployment - National Statistics Office of Georgia' <<https://www.geostat.ge/en/modules/categories/683/Employment-Unemployment>> accessed 10 May 2022.

³¹⁷ ILO, R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131) para 16-18, 20-21.

³¹⁸ Martin Hutsebaut, 'Pension System Reform in Georgia Comments and Alternatives' [2017] Friedrich-Ebert-Stiftung | Tbilisi Office 5, 2 <<http://library.fes.de/pdf-files/bueros/georgien/13980.pdf>> accessed 9 May 2022.

³¹⁹ Law of Georgia on Accumulated pensions, 2018, Articles 3(5), 22.

³²⁰ ILO, 'General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization' (n 123) para 328.

³²¹ National Statistics Office of Georgia, 'Indicators of the Labour Force (Employment and Unemployment 2021 IV Quarter)' (2021) <<https://www.geostat.ge/media/43200/Indicators-of-the-Labour-Force--IV-Quarter%2C-2021-year.pdf>> accessed 10 May 2022.

³²² Law of Georgia on Accumulated pensions, 2018, Article 3 (6).

employed to join the pension scheme, it could provide more flexibility for them.³²³ It could offer lower contribution burdens, considering that they are often paid at irregular intervals, and their revenues are often not predictable.³²⁴

Apart from self-employed people, the Georgian Contributory pension scheme doesn't reach informal workers. In General Comment No.19, CESCR calls for the consideration of protection for persons in the informal economy and encourages States to pay special attention to them.³²⁵ ILO defines informal economy as “all economic activities by workers and economic units that are - in law or practice - not covered or insufficiently covered by formal arrangements.”³²⁶ The duty to ensure that informal workers are covered by social security systems is particularly important where these systems are based on a formal employment relationship,³²⁷ as this is the case in Georgia's contributory old-age pension scheme. For addressing this coverage gap, universal social security schemes can be instrumental.³²⁸ While Georgia has a non-contributory old-age pension scheme as well, which reaches informal workers, the coverage gap is still problematic. As the ILO Committee of Experts has emphasized, contributory pension schemes play an important role in income security in old age by providing better pensions related to previous earnings.³²⁹

To sum up, the non-contributory old-age pension is truly universal and is based on the principle of solidarity; however, the Accumulated Old-age Pension scheme is not aimed at strengthening the economic state of those who need decent pension in old age the most. The system lacks solidarity, and those who are unemployed, have low income, or prefer to opt out of the contributory scheme will have less or no savings on their accounts. As rightly noted by

³²³ OECD, *Employment Outlook 2019: The Future of Work, Left on Your Own? Social Protection When Labour Markets Are in Flux* (OECD Publishing 2019) 306 <https://read.oecd-ilibrary.org/employment/oecd-employment-outlook-2019_bfb2fb55-en> accessed 10 May 2022.

³²⁴ *ibid* 299.

³²⁵ CESCR, General Comment No. 19 paras 28, 31.

³²⁶ The General Conference of the International Labour Organization, meeting in its 90th Session, 2002, ‘Conclusions Concerning Decent Work and the Informal Economy’ para 3 <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/---reloff/documents/meetingdocument/wcms_080105.pdf>.

³²⁷ CESCR, General Comment No. 19 para 34.

³²⁸ ILO, ‘General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization’ (n 123) para 313.

³²⁹ ILO, ‘ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019)’ (n 8) para 545.

the Independent Expert on the Enjoyment of All Human Rights by Older Persons, the system does not include critical elements of solidarity.³³⁰

4.4.2. Do pension schemes provide equal resilience? – the principle of non-discrimination and equality

The Vulnerability theory was primarily prompted by dissatisfaction with the formal equality,³³¹ which according to the theory, “leaves undisturbed - and may even serve to validate - existing institutional arrangements that privilege some and disadvantage others.”³³² Instead, the theory argues for substantive equality, which “might involve the development of an idea baseline or general right standard against which to measure the situation of a specific individual or group.”³³³ To achieve substantive equality for older persons in terms of material and economic resources, the theory suggests that their assistance should be beyond what is offered to the rest of society, considering their increased vulnerability.³³⁴

The main objective of the human rights-based approach is also to fulfill the right based on principles and standards enshrined in IHRL.³³⁵ Principles of equality and non-discrimination are core elements of the IHRL and “the elimination of discrimination is fundamental to the enjoyment of economic, social and cultural rights on a basis of equality.”³³⁶ International human rights treaties, on the one hand, mandate to ensure that equality is achieved through laws or policies that treat men and women in a neutral manner; and on the other hand, human rights treaties advocate for substantive equality, as they are “concerned, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.”³³⁷ The human rights-based approach to social security dictates that these principles should guide social protection

³³⁰ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte (n 311) para 60.

³³¹ Fineman, ‘Elderly as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility’ (n 291) 101.

³³² *ibid* 102.

³³³ *ibid* 103.

³³⁴ *ibid* 104.

³³⁵ UNRISD, ‘The Human Rights-Based Approach to Social Protection (Issue Brief 2)’, Geneva, 1 <<https://www.unrisd.org>> accessed 10 May 2022.

³³⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, para 3.

³³⁷ *ibid* para 7.

systems throughout all stages, including selecting beneficiaries and delivering benefits.³³⁸ It also suggests that “States must prioritise the protection of the most disadvantaged and marginalised individuals and groups.”³³⁹

The principle of non-discrimination is included in the definition of social security’s scope provided by the CESCR.³⁴⁰ And States have an obligation to guarantee that the right to social security is enjoyed without discrimination, whether in law or in fact.³⁴¹ Even though States can progressively realize the right to social security, they have immediate obligations to address discrimination of any kind in the enjoyment of the right.³⁴²

The ILO Convention No. 102 recognized the principle of equality of treatment between nationals and non-nationals in Article 68. In the context of Recommendation No. 202, it entails that States should eliminate discrimination in terms of providing social security to all persons.³⁴³ The Recommendation³⁴⁴ demonstrates that the already discussed principle of universality has strong links to the principles of social inclusion, non-discrimination, gender equality, responsiveness to special needs, and respect for the rights and dignity of persons protected.³⁴⁵

As noted in the previous Chapter, CESCR pays particular attention to the gender perspective in relation to contributory schemes and calls on States to take steps to “eliminate the factors that prevent women from equally contributing to such schemes.”³⁴⁶ The gender perspective on the right to social security is crucial for developing, implementing, and monitoring programs.³⁴⁷ By ignoring this, social protection systems can even exacerbate inequalities.³⁴⁸ As noted earlier, the Vulnerability theory suggests bringing the life-course experience of an

³³⁸ Sepulveda and Nyst (n 7) 32.

³³⁹ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 110.

³⁴⁰ CESCR, General Comment No. 19 para 2.

³⁴¹ *ibid* para 29.

³⁴² *ibid* para 40.

³⁴³ ILO, ‘ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019)’ (n 8) Para 112.

³⁴⁴ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 3.

³⁴⁵ ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019)(n 7) para 110.

³⁴⁶ CESCR, General Comment No. 19 para 32.

³⁴⁷ Sepulveda and Nyst (n 7) 32.

³⁴⁸ *ibid* 33.

individual to the fore, and it contends that the failure of one system in the cycle affects an individual's future state of resilience.³⁴⁹ The same logic of thinking can be found in the human rights-based approach to social security. It contends that to ensure that men and women benefit equally, and social protection systems must be responsive to “women's life-cycle risks and burden of care that they bear, as well as the differences in access to services, work.”³⁵⁰

The human rights-based approach suggests that women's role as caregivers must be explicitly addressed.³⁵¹ In this regard, the Vulnerability theory contends that “it is the nature of and significance given to the social task of caretaker that operates to disadvantage the individuals who occupy that role, not the gender of the caretaker.”³⁵² Therefore, the theory regards it as a societal problem rather than a gender equality problem.³⁵³ This leads us to the argument that there is a need to rethink the concept of “work.” However, some scholars who make the same argument look at this topic from a gender perspective. For instance, Beth Goldblatt suggests “to deconstruct the meaning of ‘work’” and underscores the need to delink it from formal employment and to consider what work means for women, including their care work and reproductive labor.³⁵⁴ One can question the Vulnerability theory's argument by asking whether care work is not valued as work because women have historically dominated in it. Therefore, the gendered nature of unpaid work, such as housework and caregiving,³⁵⁵ cannot be ignored.

The Parliamentary Assembly of CoE asked member States to address gender discrimination in old-age pension schemes through measures that take into account “career breaks and women's and men's different career patterns.”³⁵⁶ Therefore, States should “find appropriate solutions for people with periods in their career in which they have made no pension contributions (such

³⁴⁹ Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 147.

³⁵⁰ Sepulveda and Nyst (n 7) 33.

³⁵¹ Sepulveda and Nyst (n 7).

³⁵² Fineman, ‘Vulnerability and Inevitable Inequality’ (n 21) 141.

³⁵³ *ibid.*

³⁵⁴ Goldblatt (n 131) 468.

³⁵⁵ Lou Tessier and others, ‘Social Protection Floors and Gender Equality: A Brief Overview, ESS Working Paper No. 37, International Labour Office, Social Protection Department.’ (International Labour Organization 2013) 3 <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_218850.pdf>.

³⁵⁶ Council of Europe Parliamentary Assembly, Resolution 1752 (2010) Decent pensions for women, para 5.

as those, mainly women, with family responsibilities, in low-paid or precarious jobs, or the long-term unemployed who are unable to contribute or save enough for a decent pension).”³⁵⁷

However, in the Georgian context, the contributory scheme fails to provide an alternative for women who are not considered “workers” because they engage in unpaid care and domestic work, and there are no care-related contribution credits. To address this issue, some countries recognize care work in the calculation of pension entitlements.³⁵⁸

Besides, as rightly highlighted by the CEDAW Committee in General Recommendation No. 27, “gender-based discrimination in employment throughout their life has a cumulative impact in old age, forcing older women to face disproportionately lower incomes and pensions, or even no pension, compared with men.”³⁵⁹ This means that States should consider women’s overrepresentation in the informal economy, in casual, temporary, or part-time employment,³⁶⁰ low paid jobs.³⁶¹ The Parliamentary Assembly of the CoE, in Resolution 1752 (2010) Decent Pensions for Women, indicated the need for measures to eliminate the pay gap between men and women that is later in life the cause of a pension gap.³⁶²

In the latest annual report of the Georgian Public Defender, it is indicated that cases of alleged discrimination on the grounds of sex/gender accounted for 16% of the overall number of cases, which makes gender the second most prevalent in the list of grounds for discrimination in the country. And these are only the statistics based on cases that have reached the equality body.³⁶³

According to the 2021 data, the gender pay gap in Georgia is significant. The National Statistics Office of Georgia published the Adjusted Gender Wage Gap data on February 24,

³⁵⁷ Council of Europe Parliamentary Assembly, Resolution 1882 (2012), Decent pensions for all, para 6.3.4.

³⁵⁸ Tessier and others (n 355) 3.

³⁵⁹ CEDAW, General Recommendation No. 27 para 20.

³⁶⁰ Tessier and others (n 355) 3.

³⁶¹ World Bank, ‘World Development Report 2012: Gender Equality and Development’ (World Bank 2012) 79 <<https://openknowledge.worldbank.org/handle/10986/4391>> accessed 10 May 2022.

³⁶² Council of Europe Parliamentary Assembly, Resolution 1752 (2010) Decent pensions for women, para 3.

³⁶³ Public Defender (Ombudsman) of Georgia, ‘Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination’ (Public Defender (Ombudsman) of Georgia 2021) 5 <<https://ombudsman.ge/eng/spetsialuri-angarishebi/spetsialuri-angarishi-diskriminatsiis-tsinaaghmddeg-brdzolis-misi-tavidan-atsilebisa-da-tanastorobis-mdgomareobis-shesakheb>> accessed 10 May 2022.

2022. According to the data, the hourly gender wage difference is 15.9%. In the case of the monthly salary difference, the figure is 21.4%. It is noteworthy that the hourly gender pay gap calculated according to activities is the highest - 16.8% in the service sector, 15.4% in industry, and 13.2% in construction.³⁶⁴ It should be noted that the adjusted monthly gender pay gap exceeds the hourly gender pay gap in all areas, which in many cases can be attributed to women's unpaid domestic labor.³⁶⁵ Thus, this data indicates that women in Georgia earn much less than men, meaning that they will save less in their pension accounts, and the government will contribute less to their pensions.

The grounds for the entitlement to a pension in Georgia is the attainment of the age of 65 for men and 60 for women,³⁶⁶ for both contributory and non-contributory pension schemes. In General Comment No.16, CESCR noted that “article 3 in relation to article 9 requires, inter alia, equalization of the compulsory retirement age for both men and women.”³⁶⁷ The CEDAW committee developed the same line of argumentation, as it regards different mandatory retirement ages as discriminatory, and it advocates for optional retirement age.³⁶⁸ Notably, as mentioned in Chapter 3, at the regional level, the ECtHR justifies differentiated pensionable age for men and women based on the argument that it can compensate for the inequalities women face in the household and beyond.³⁶⁹ However, earlier retirement age can be particularly problematic in relation to the contributory pension schemes. As rightly noted by the ILO Committee of Experts, earlier retirement leads to “less capital in women's accounts to finance retirement.”³⁷⁰ For this reason, in the Georgian context, there should be scrutiny to ensure the fairness of differentiated retirement age in light of equality and non-discrimination, considering that more women are involved in the labour force nowadays than in the past. One of the possible solutions for this issue can be to provide the option for everyone to retire earlier, which none of the Georgian pension schemes allow. Besides, what

³⁶⁴ Geostat, ‘Adjusted Gender Pay Gap (GPG) - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/39/wages>> accessed 10 May 2022.

³⁶⁵ ‘Adjusted Gender Pay Gap Published by GEOSTAT for the First Time’ (*UN Women – Georgia*) <<https://georgia.unwomen.org/en/stories/news/2022/03/adjusted-gender-pay-gap-published-by-geostat-for-the-first-time>> accessed 9 May 2022.

³⁶⁶ Law of Georgia on State Pensions, 2005, Article 5.

³⁶⁷ CESCR, General Comment No. 16 para 26.

³⁶⁸ CEDAW, General Recommendation No. 27 para 20.

³⁶⁹ *Andrle v. the Czech Republic* (n 242) para 53.

³⁷⁰ *Direct Request (CEACR) - adopted 2000, published 89th ILC session (2001)* (ILO).

gives the optional earlier retirement additional value is that according to the ILO Recommendation on Income Security, 1944 (No. 67), earlier retirement can be particularly important for persons who have worked for years in arduous or unhealthy occupations.³⁷¹ Notably, the flexible retirement age should not only depend on the occupations performed but also “the working ability of elderly persons, with due regard to demographic, economic and social factors.”³⁷²

Finally, women are more likely to be widows than men worldwide because of the cultural practices of early marriage and women’s longer life expectancy.³⁷³ According to the ILO Convention No. 128, persons entitled to survivors’ benefits also include spouses of lost breadwinners.³⁷⁴ Georgia lacks any legal framework for paying benefits to a surviving spouse when a pensioner dies.

Through the lens of the principle of non-discrimination and equality, a non-contributory pension scheme, like the one operating in Georgia (State Pension), reduces the risk of exclusion of beneficiaries, as it is available to everyone who satisfies the age requirement.³⁷⁵ Such schemes are also more gender-sensitive and the most efficient means for compensating older women for their years of unpaid or underpaid work.³⁷⁶ While contributory systems, if not properly designed, can exacerbate already existing inequalities.

4.4.3. Vertical coverage – the principle of adequacy

Social security systems are pivotal for older persons; as they age, they rely less and less on income from employment. Therefore, the adequacy of old-age pensions is essential to ensure their life in dignity and guarantee basic income security.³⁷⁷

³⁷¹ ILO, R067 - Income Security Recommendation, 1944 (No. 67) para 12.

³⁷² CESCR, General Comment No. 6 para 28.

³⁷³ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 119.

³⁷⁴ ILO, C128 - Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128) Article 21.

³⁷⁵ UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (n 45) para 70.

³⁷⁶ *ibid* para 95.

³⁷⁷ ILO, Universal Social Protection for Human Dignity, Social Justice and Sustainable Development (2019)(n 7) para 498.

The right to social security includes an equal enjoyment of adequate protection from social risks and contingencies.³⁷⁸ The CESCR explains that “benefits, whether in cash or in-kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care..”.³⁷⁹ In case of contributory systems, CESCR stresses the importance of “a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.”³⁸⁰ Ensuring a minimum essential level of benefits is a core obligation on the part of the State.³⁸¹

ILO Recommendation No. 202 sets adequacy and predictability of benefits among the principles that the Member States should apply when developing national social protection floors while also referring to the “respect for the rights and the dignity of people covered by social security guarantees.”³⁸²

As also noted in Chapter 3, the ECtHR has also linked social benefits to Article 3 of the Convention when there is an indication that the amount of the applicant’s pension and the additional social benefits available cause such damage to a person’s physical or mental health that can attain the minimum level of severity falling within the ambit of Article 3.³⁸³

Although Georgia has not accepted Article 23 of the revised European Social Charter, the European Committee of Social Rights (ECSR) has noted that States are nevertheless bound to ensure a minimum level of well-being for older persons.³⁸⁴ In the Recommendation 2000 (2012) on decent pensions for all, the Parliamentary Assembly of the CoE (PACE) expressed concerns about the need to ensure the adequacy of pension systems and stated that “the trends towards smaller pensions and the increased use of funded schemes are creating new intra- and intergenerational inequality and therefore pose a threat to social cohesion...”³⁸⁵

³⁷⁸ CESCR, General Comment No. 19, para 9.

³⁷⁹ *ibid* para 22.

³⁸⁰ *ibid*.

³⁸¹ *ibid* para 59(a).

³⁸² ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) para 3(c) (f).

³⁸³ *Larioshina v Russia (dec)* [2002] ECtHR App. no. 56869/00 para 3; *Budina v Russia (dec)* [2009] ECtHR App. no. 45603/05 para 3.

³⁸⁴ *Conclusions 2009 - Armenia - Article 13-1* (n 223).

³⁸⁵ Council of Europe Parliamentary Assembly - Recommendation 2000 (2012) - Decent pensions for all para 1.

The ILO Convention Nos. 102 and 128 set minimum replacement rates of 40%³⁸⁶ and 45%,³⁸⁷ respectively, for tax-financed pensions, as is the case with non-contributory pension schemes in Georgia (State Pension). Recommendation No. 131 provides advanced protection and sets at least 55% of the reference wage. Recommendation No. 131 also declares that the level of benefit should be increased if the beneficiary requires constant help.³⁸⁸ Recommendation No. 202 declares that benefits in cash or in-kind should ensure essential health care and basic income security to secure effective access to necessary goods and services; prevent or alleviate poverty, vulnerability, and social exclusion; and enable life in dignity.³⁸⁹

In the Georgian context, the average monthly nominal earning, according to the 2021 data (for the IV quarter), constitutes 1463.8 GEL (Approx. €467).³⁹⁰ The amount of State Pensions in Georgia does not satisfy the minimum standards of the ILO Convention Nos. 102 and 128. This is because for the year 2022, according to the Law of Georgia on the State Budget, the amount of the State Pension is determined as follows: a) for a pensioner under the age of 70 - 260 GEL (Approx. €83); B) for a pensioner aged 70 or over - 300 GEL (Approx. €95).³⁹¹ Additionally, the pensioners permanently residing in a mountainous settlement are given a monthly supplement in the amount of 20 percent of the pension package provided for them.³⁹² Notably, the amount of money provided by the universal old-age pension system is slightly more than the subsistence minimum in Georgia. According to the official statistical data from February 2022, the subsistence minimum in Georgia for a working-age person is 231,3 GEL (Approx. €73), and for an average consumer - 204,9 GEL (Approx. €65).³⁹³ It can be concluded that the purpose of the old-age pension is not to ensure a dignified life for older persons but to protect them from extreme poverty. As rightly indicated by the Public Defender of Georgia in her reports, the pension amount does not protect against the problems related to the health condition of the older persons, the purchase of medicines, and the nutritional

³⁸⁶ ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) Article 65(10).

³⁸⁷ ILO, C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) Article 29(1).

³⁸⁸ ILO, R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131) paras 22-25.

³⁸⁹ ILO, R202 - Social Protection Floors Recommendation, 2012 (No. 202) paras 2, 4, 8.

³⁹⁰ Geostat, 'Wages - National Statistics Office of Georgia'

<<https://www.geostat.ge/en/modules/categories/39/wages>> accessed 10 May 2022.

³⁹¹ Law of Georgia on the State Budget of Georgia, 2022, Article 30(4).

³⁹² Law of Georgia on the Development of High Mountainous Regions, 2015, Article 4(2(a)).

³⁹³ Geostat, 'Subsistence Minimum - National Statistics Office of Georgia'

<<https://www.geostat.ge/en/modules/categories/49/subsistence-minimum>> accessed 10 May 2022.

needs.³⁹⁴ As also noted in the UN Independent Expert’s Report on the Enjoyment of All Human Rights by Older Persons, non-contributory pension in Georgia has a poverty alleviation function around the minimum subsistence level.³⁹⁵

For the contributory old-age pension schemes, the ILO Convention Nos. 102 and 128 set minimum replacement rates of 40% and 45%, respectively, of the insured’s previous earnings over their last 30 working years.³⁹⁶ It is too soon to tell how the new contributory system in Georgia will perform considering that it was introduced in 2018. However, it is still worth commenting on the potential drawbacks of the scheme. In theory, if we calculate based on the current average monthly salary in Georgia, for contributory old-age pension scheme to meet minimum standards based on Conventions Nos. 102 and 128, monthly annuity payments should constitute approximately 585 GEL (Approx. €186) and 658 GEL (Approx. €210), respectively. However, considering the above-discussed drawbacks of the contributory scheme, such as the coverage gap and issues identified from the perspective of non-discrimination and equality, it is likely that many older persons will still face economic difficulties in old age. Contributory schemes are likely to mirror existing economic inequalities throughout the working age, and the system’s performance will highly depend on the investment process.

And lastly, as mentioned above, the Georgian government envisages gradually moving to the accumulated pension system, which according to the official statements, “will help alleviate the pressure caused by the sustainable growth of the basic pension.”³⁹⁷ The government has noted that the “pension reform should help increase the amount of savings in the country and create an additional source of investment in parallel with the provision of social security.”³⁹⁸ While this sounds promising for the government to allocate resources, one should not forget

³⁹⁴ Public Defender (Ombudsman) of Georgia, ‘Special Report on the Legal Status of the Elderly in Georgia’ (n 105) 19.

³⁹⁵ UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte (n 311) para 58.

³⁹⁶ ILO, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102) Article 29; ILO, C128 - Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128) Article 18.

³⁹⁷ Government of Georgia (n 275).

³⁹⁸ *ibid* 59–60.

that “social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.”³⁹⁹

Chapter 5. Conclusion – Findings and Recommendations

This thesis examined the extent to which IHRL is responsive to the specific disadvantages faced by older persons and demonstrated a need to rethink and reconceptualize the way we think and talk about older persons and their human rights. For this, the Vulnerability theory has provided a necessary vocabulary for framing older age as a social construct. This led to the conclusion that older persons’ vulnerabilities should be normalized as aging is a part of the human life-cycle experience. This has shifted the focus from analyzing how vulnerable individuals are to how State institutions address their vulnerabilities.

When it comes to older persons’ rights in IHRL, there is an absence of explicit attention. Most of the instruments that specifically engage with the older persons’ rights are non-binding instruments or policy documents. The same issue was identified in the Georgian context, whereas policy documents are often only formally adopted, and there is a lack of compliance with the promises made in these documents. Thus, the analysis showed the need for Georgia to assess existing policies aimed at protecting older persons' and further develop them based on the human rights standards and principles.

Besides, this thesis has laid down arguments in favor of adopting a new Convention on the rights of older persons by emphasizing its potential to provide useful litigation, advocacy, and mainstreaming tool that can improve accountability on the part of the States. Furthermore, a new convention can reconceptualize the way in which societies view older persons from passive recipients of care and assistance to active contributors to society.

By exploring the right to social security, as it is developed in the existing human rights law, this thesis demonstrated that various instruments provide comprehensive guidance for the design and implementation of the right to social security for older persons. However, the analysis revealed that Georgia is not a party to various standard-setting instruments in the

³⁹⁹ CESCR, General Comment No. 19 para 10.

field. For instance, Georgia has not ratified any of the up-to-date ILO Conventions on social security; The same issue was identified in relation to the regional instruments. Even though Georgia ratified the Revised European Social Charter in 2005, it only accepted 63 out of the Charter's 98 paragraphs. Among non-ratified articles is Article 23 of the RESC, which focuses on social protection for older persons outside the employment field. Ratification of these instruments would provide Georgia with useful guidance for the design of social security schemes and raise its accountability at the regional and international levels.

When examining the degree to which Georgia provides “resilience” for the vulnerabilities of older persons, first, the analysis identified the tendency of marginalization of social and economic rights in the Georgian Constitution. It found that the Georgian Constitutional Court has a very conservative approach to socio-economic rights, looking at them as more “abstract rights” rather than directly enforceable rights. The case law showed that the right to equality and dignity enshrined in the Constitution could serve as an avenue for future litigations on socio-economic rights, including the right to social security. However, Georgia should consider recognizing the human right to social security in the Constitution among the “fundamental rights” and guarantee that human rights standards guide social security systems.

As for the old-age pension schemes in Georgia, they are unable to build the resilience necessary to address older persons' vulnerabilities. The analysis revealed that the non-contributory old-age pension scheme in Georgia is truly universal and is based on the principle of solidarity. However, in the case of the Accumulated old-age pension scheme, the system has a coverage gap. It does not include critical elements of solidarity. The analysis showed that the accumulated pension scheme can potentially contribute to the growth of social inequality among the retired population as the State contributes more to high-income citizens than to the low-income population, and no contribution is made to, for instance, unemployed people and informal workers. Besides, a lack of solidarity in the contributory scheme is also evident as periods of sickness, care, or parental leave are non-contributory.

Moreover, the contributory pension scheme in Georgia does not provide flexibility for self-employed people to encourage them to participate in the scheme, considering that they are often paid at irregular intervals, and their revenues are often not predictable.

Georgian contributory scheme fails to consider women's and men's different career patterns. The scheme ignores the existing gender pay gap in Georgia. It also fails to provide an alternative for women who engage in unpaid care and domestic work. To address this issue, it is necessary to recognize care work in calculating pension entitlements and take steps toward reducing the gender pay gap in Georgia.

The analysis also demonstrated the need for further scrutiny of the differentiated retirement age between men and women, especially in relation to the contributory pension schemes, to ensure fairness in light of the principles of equality and non-discrimination. Besides, pension schemes should provide a possibility of optional earlier retirement, depending on the occupation and the working ability of older persons, with due regard to demographic and socio-economic factors.

Furthermore, this thesis also revealed the lack of a legal framework to ensure paying benefits to a surviving spouse when a pensioner dies, particularly impacting women, who statistically tend to live longer than men.

In terms of adequacy of old-age pension schemes, the analysis demonstrated that the purpose of the non-contributory State Pension in Georgia is not to ensure a dignified life for older persons but to protect them from extreme poverty. Concerning the new contributory scheme, it was concluded that, even though it is too soon to tell how the scheme will perform, in light of the coverage gaps and lack of solidarity, Contributory schemes are likely to mirror existing economic inequalities throughout the working age.

To address existing challenges, non-contributory and contributory pension schemes in Georgia must be guided by international human rights standards and principles for the right to social security. These standards and principles should be applied throughout the design, implementation, and evaluation of old-age pension schemes in Georgia.

It can be said that universal pension schemes, in general, are more compliant with human rights obligations, especially principles of universality based on solidarity and the principle of equality and non-discrimination. They are also more gender-sensitive and can compensate older women for their years of unpaid or underpaid work.

Finally, based on the analysis carried out in the present thesis, it can be concluded that if the human rights-based approach to social security is properly applied in practice, it is responsive to human vulnerabilities. This thesis has found that the logic of thinking proposed by the Vulnerability theory can be linked to general principles applicable to the right to social security. However, this does not diminish the value of the theory. Quite the opposite, the Vulnerability theory helps to better understand the concept of “vulnerability”. It provides a useful vocabulary for discussing and conceptualizing older persons’ rights. For this reason, this thesis suggests that the Vulnerability theory should be used in the elaboration of a new instrument on the rights of older persons. After all, the world’s ageing population is waiting for their vulnerabilities to be recognized and addressed.

Bibliography

Literature and Scholarly Articles

- Arevadze N, 'The Social State Principle at Play: Constitutional Case-Law on Social Matters Special Edition: The 1921 Constitution of the Democratic Republic of Georgia' (2021) 2021 Journal of Constitutional Law 149.
- Blumer H, 'Social Problems as Collective Behavior' (1970) 18 Social Problems 298.
- Claude RP and Issel BW, 'Health, Medicine and Science in the UDHR' (1998) 3 Health and Human Rights 126.
- Degener T, *The United Nations Convention on the Rights of Persons with Disabilities. A Commentary* (Valentina Della Fina, Rachele Cera and Giuseppe Palmisano eds, 1st ed. 2017., Springer International Publishing 2017).
- Doron I and Apter I, 'International Rights of Older Persons: What Difference Would a New Convention Make to the Lives of Older People' (2009) 11 Marquette Elder's Advisor 367.
- Duranti M, *The Conservative Human Rights Revolution : European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press 2017)
- Fineman MA, 'Elderly as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility' (2012) 20 Elder Law Journal 71.
- Fineman MA, 'The Vulnerable Subject and the Responsive State' (2010) 60 Emory Law Journal 251.
- Fineman MA, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale Journal of Law and Feminism 1.
- Fineman MA, 'Vulnerability and Inevitable Inequality' (2017) 4 Oslo Law Review 133.
- Fredvang M and Biggs S, 'The Rights of Older Persons: Protection and Gaps under Human Rights Law, Social Policy Working Paper No. 16' [2012] Brotherhood of St Laurence and University of Melbourne Centre for Public Policy 2012 21.
- Goldblatt B, 'Gender, Poverty and the Development of the Right to Social Security' (2014) 10 International Journal of Law in Context 460.
- Henkin L, 'The Universality of the Concept of Human Rights' (1989) 506 The Annals of the American Academy of Political and Social Science 10
- Herro A and Byrnes A, 'Transcending the Framing Contests over the Human Rights of Older Persons' (2020) 38 The Australian Year Book of International Law Online 251.

- Kettermann MC, ‘A Soft Law Reality Check: Reflections on the Role and Influence of Council of Europe Expert Bodies on Standard-Setting in European Human Rights Law with Special Reference to Normative Impacts on the Czech Republic International Law’ (2006) 2 *Hanse Law Review* 106.
- McInerney-Lankford S, ‘Legal Methodologies and Human Rights Research: Challenges and Opportunities’ [2017] *Research Methods in Human Rights* 38.
- Megret F, ‘The Human Rights of Older Persons: A Growing Challenge’ (2011) 11 *Human Rights Law Review* 37 .
- Moeckli D and others (eds), *International Human Rights Law* (Third edition, Oxford University Press 2018)
- Saul B, Kinley D and Mowbray J, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (1. ed, Oxford University Press 2014)
- Shaw MN, *International Law* (Eighth edition, Cambridge University Press 2017)
- Villars C, ‘Social Security Standards in the Council of Europe: The ILO Influence’ (1979) 118 *International Labour Review* 343
- William Schabas, *The European Convention on Human Rights: A Commentary* (1st edn, Oxford University Press 2015)

Reports, General Surveys and Publications

- ‘Strengthening Older People’s Rights: Towards a UN Convention. A Resource for Promoting Dialogue on Creating a New UN Convention on the Rights of Older Persons’ <<https://social.un.org/ageing-working-group/documents/Coalition%20to%20Strengthen%20the%20Rights%20of%20Older%20People.pdf>> accessed 14 May 2022
- Byrnes A and Mattsson T, ‘Background Paper, 20th Informal ASEM Seminar on Human Rights Human Rights of Older Persons’ (2021) <<https://asef.org/wp-content/uploads/2021/02/ASEMHRS20-Background-paper.pdf>> accessed 9 May 2022
- ILO ‘General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization, Report III (Part 1B)’ (International Labour Conference, 100th Session 2011) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152602.pdf> accessed 9 May 2022
- ILO, ‘Assessment of the Social Protection System in Georgia’ (2021) Report <http://www.ilo.org/moscow/information-resources/publications/WCMS_767261/lang--en/index.htm> accessed 9 May 2022

- ILO, ‘Social Security for Social Justice and a Fair Globalization, Recurrent Discussion on Social Protection (Social Security) under the ILO Declaration on Social Justice for a Fair Globalization, 2011, Report VI’ (2011)
<https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_152819.pdf>
- ILO, ‘Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey Concerning the Social Protection Floors Recommendation 2012 (No. 202) Report III (Part B)’ (ILO 2019)
<https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf> accessed 9 May 2022
- ILO, ‘World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future’ (International Labour Organization 2021) ILO Flagship Report <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_817572.pdf> accessed 9 May 2022
- ILO, General Conference, meeting in its 90th Session, 2002, ‘Conclusions Concerning Decent Work and the Informal Economy’
<https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/---reloff/documents/meetingdocument/wcms_080105.pdf>
- ILO, *Rules of the Game: An Introduction to the Standards-Related Work of the International Labour Organization* <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_672549.pdf> accessed 10 May 2022
- ILO, World Social Security Report 2010/11. Providing Coverage in Times of Crisis and Beyond (ILO 2010)
<https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_146566.pdf> accessed 9 May 2022
- ILO, ‘Giving Globalization a Human Face (General Survey on the Fundamental Conventions), Report III (Part 1B)’ (2012)
<http://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm> accessed 11 May 2022
- International Labour Conference Geneva, Switzerland 1951 :34th, *Objectives and Minimum Standards of Social Security. [Electronic Resource]*, vol REPORT IV (2) (1951) <<https://labordoc.ilo.org>> accessed 10 May 2022
- Jowell J, ‘Review of Amendments to the Constitution of Georgia in Respect of Human Rights and Judiciary Matters’ (USAID and East-West Management Institute 2017)
<<http://ewmi-prolog.org/images/files/2106PROLoG-ReviewofConstitutionalAmendmentstoHRandJudiciaryrelatedmattersJeffreyJowellENG.pdf>> accessed 9 May 2022
- Martin Hutsebaut, ‘Pension System Reform in Georgia Comments and Alternatives’ [2017] Friedrich-Ebert-Stiftung | Tbilisi Office 5 <<http://library.fes.de/pdf-files/bueros/georgien/13980.pdf>> accessed 9 May 2022

- OHCHR, ‘Normative Standards in International Human Rights Law in Relation to Older Persons, Analytical Outcome Paper 2012’
<<https://www.ohchr.org/en/documents/outcome-documents/analytical-outcome-paper-normative-standards-international-human-rights>> accessed 11 May 2022
- Public Defender (Ombudsman) of Georgia, ‘Report On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2021) Annual Report
<<https://ombudsman.ge/res/docs/2022040413242699860.pdf>> accessed 9 May 2022
- Public Defender (Ombudsman) of Georgia, ‘Report On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2020) Annual Report
<<https://ombudsman.ge/res/docs/2021070814020446986.pdf>>
- Public Defender (Ombudsman) of Georgia, ‘Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination’ (Public Defender (Ombudsman) of Georgia 2021)
<<https://ombudsman.ge/eng/spetsialuri-angarishebi/spetsialuri-angarishebi-diskriminatsiis-tsinaaghmddeg-brdzolis-misi-tavidan-atsilebisa-da-tanastorobis-mdgomareobis-shesakheb>> accessed 10 May 2022
- Public Defender (Ombudsman) of Georgia, ‘Special Report on the Legal Status of the Elderly in Georgia’ (2020) <<http://www.ombudsman.ge/geo/191030122948spetsialuri-angarishebi/khandazmul-pirta-uflebrivi-mdgomareoba-sakartveloshi>> accessed 9 May 2022
- Quinn G and Doron I (Issi), ‘Against Ageism and Towards Active Social Citizenship for Older Persons The Current Use and Future Potential of the European Social Charter’ <<https://rm.coe.int/against-ageism-and-towards-active-social-citizenship-for-older-persons/1680a3f5da>> accessed 11 May 2022
- *Report of the Second World Assembly on Ageing: Madrid, 8-12 April 2002, A/CONF.197/9* (2002)
- Sepulveda M and Nyst C, ‘The Human Rights Approach to Social Protection’ (Ministry for Foreign Affairs of Finland 2012)
<<https://www.ohchr.org/sites/default/files/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>> accessed 9 May 2022
- Stein C, Moritz I and WHO Ageing and Health Programme, ‘A Life Course Perspective of Maintaining Independence in Older Age’ (World Health Organization)
<<https://apps.who.int/iris/handle/10665/65576>>
- Tessier L and others, ‘Social Protection Floors and Gender Equality: A Brief Overview, ESS Working Paper No. 37, International Labour Office, Social Protection Department.’ (International Labour Organization 2013)
<https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_218850.pdf>

- UN. 'Report of the World Assembly on Aging, Vienna' (1982) A/CONF.113/31 <<https://www.un.org/esa/socdev/ageing/documents/Resources/VIPEE-English.pdf>> accessed 9 May 2022
- UN. Human Rights Council and UN. Secretary-General, 'Report of the UN Special Rapporteur on Peaceful Assembly and Freedom of Association, Maina Kiai. UN Doc. A/71/385, 2016' <<https://digitallibrary.un.org/record/844481#record-files-collapse-header>>
- UN. Human Rights Council, Independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona*, 'Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, A/HRC/14/31, 2010'
- UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Claudia Mahler*, 'Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/48/53, 2021'
- UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte, 'Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/33/44, 2016'
- UN. Human Rights Council. Independent Expert on the Enjoyment of All Human Rights by Older Persons Rosa Kornfeld-Matte, 'Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons, A/HRC/39/50, 2018'
- United Nations office of the High Commissioner for Human Rights, 'Update to the 2012 Analytical Outcome Study on the Normative Standards in International Human Rights Law to Older Persons' <<https://social.un.org/ageing-working-group/documents/eleventh/OHCHR%20HROP%20working%20paper%202022%20Mar%202021.pdf>> accessed 9 May 2022
- University College London UNPF, 'Loneliness and Social Isolation Among Older People in the Eastern Europe and Central Asia Region' (2022) <https://eeca.unfpa.org/sites/default/files/pub-pdf/loneliness_study_english.pdf> accessed 11 May 2022
- WB, 'World Development Report 2012: Gender Equality and Development' (World Bank 2012) <<https://openknowledge.worldbank.org/handle/10986/4391>> accessed 10 May 2022

International Treaties

- Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13,
- Convention on the Rights of Persons with Disabilities, 13 December 2006, United Nations, Treaty Series, vol. 2515, Dec. 2006, p. 3

- Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3,
- European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5,
- European Social Charter (Revised), 3 May 1996, ETS 163,
- International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195,
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158,
- International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171,
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3,
- Universal Declaration of Human Rights, 10 December 1948, 217 A (III),

International Labour Organization Instruments

- C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)
- C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
- C158 - Termination of Employment Convention, 1982 (No. 158)
- Constitution of the International Labour Organisation (1919)
- R067 - Income Security Recommendation, 1944 (No. 67)
- R131 - Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131)
- R162 - Older Workers Recommendation, 1980 (No. 162)
- R166 - Termination of Employment Recommendation, 1982 (No. 166)
- R202 - Social Protection Floors Recommendation, 2012 (No. 202)

Other Documents

- CoE, 'European Social Charter, Collected (Revisional) Edition of the "Travaux Préparatoires"' (1953) Volume III
<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c1c49>> accessed 10 May 2022

- CoE, *Recommendation CM/Rec(2014)2 and Explanatory Memorandum* (Council of Europe 2014)
<<https://rm.coe.int/1680695bce%20%20%20https://rm.coe.int/1680695bce>>
- Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), 1944
- ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, International Labour Conference, Geneva, 18 June 1998 (Annex revised 15 June 2010)
- International Commission of Jurists (ICJ), *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 26 January 1997
- Parliamentary Assembly - Recommendation 2000 (2012) - Decent pensions for all
- Parliamentary Assembly Resolution 1793 (2011) Promoting active ageing – capitalising on older people’s working potential,
- Parliamentary Assembly, Recommendation 1796 (2007) The situation of elderly persons in Europe,
- Parliamentary Assembly, Resolution 1752 (2010) Decent pensions for women,
- Parliamentary Assembly, Resolution 1882 (2012), Decent pensions for all,
- Recommendation No. R (94)9 of the Committee of Ministers to Member States Concerning Elderly People, 1994,
- Statute of the Council of Europe, European Treaty Series - No. 1, London, 5.V.1949
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, 8 December 1995, E/1996/22,
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4,
- UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19,
- UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20,
- UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27,

- UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ A/RES/70/1, (2015)’
- UN Principles for Older Persons, Adopted by General Assembly resolution 46/91 of 16 December 1991
- UN. Economic and Social Council, ‘Social Protection Floors: An Essential Element of the Right to Social Security and of the Sustainable Development Goals, E/C.12/2015/1’, (2015)
- United Nations Economic Commission For Europe, ‘Road Map for Mainstreaming Ageing Georgia, ECE/WG.1/22’
- United Nations, Resolution adopted by the General Assembly on 21 December 2010, A/RES/65/182

National Legislation of Georgia and Government Papers

- Constitution of Georgia, 1995
- Law of Georgia on Accumulated pensions, 2018,
- Law of Georgia on State Pensions, 2005,
- Law of Georgia on the Development of High Mountainous Regions, 2015,
- Law of Georgia on the Elimination of All Forms of Discrimination, 2014
- Law of Georgia on the State Budget of Georgia, 2022,
- Organic Law of Georgia on Normative Acts, 2009,
- Government of Georgia, ‘Resolution N400, Approval of Georgia’s Socio-Economic Development Strategy “Georgia 2020” and some related measures’
<http://www.economy.ge/uploads/ecopolitic/2020/saqartvelo_2020.pdf> accessed 9 May 2022
- Government of Georgia, ‘Resolution N490 On Approving Georgia’s National Action Plan on Ageing for 2017-2018, 2017’
<https://www.gov.ge/files/469_63003_384301_490.pdf> accessed 13 May 2022
- Parliament of Georgia, ‘Resolution 5146-III, On Approving the Concept of State Policy on the Aging of the Population of Georgia, 2016’
<<https://matsne.gov.ge/ka/document/view/3297267?publication=0>> accessed 13 May 2022

Table of Cases:

European Court of Human Rights

- *Airey v Ireland* [1979] ECtHR App. no. 6289/73
- *Andrle v the Czech Republic* [2011] ECtHR App. no. 6268/08
- *British Gurkha Welfare Society and Others v the United Kingdom* [2016] ECtHR App. no. 44818/11
- *Budina v Russia (dec)* [2009] ECtHR App. no. 45603/05
- *Dhahbi v Italy* [2014] ECtHR 17120/09
- *Direct Request (CEACR) - adopted 2000, published 89th ILC session (2001)* (ILO)
- *Fábián v Hungary* [2017] ECtHR [GC] App. no. 78117/13
- *Larioshina v Russia (dec)* [2002] ECtHR App. no. 56869/00
- *Nitecki v Poland (dec)* [2002] ECtHR App. no. 65653/01
- *Partly Concurring, Partly Dissenting Opinion of Judge Pinto de Albuquerque, Konstantin Markin v Russia*, [2012] ECtHR [GC] App. no. 30078/06
- *Schwizgebel v Switzerland* [2010] ECtHR App. No. 25762/07
- *Stummer v Austria* [2011] ECtHR [GC] App. no. 37452/02

Constitutional Court of Georgia

- *Bachua Gachechiladze, Simon Turvandishvili and others v the Parliament of Georgia* [2002] Constitutional Court of Georgia N1/1/126,129,158
- *Citizen of Georgia Tamar Tandashvili v the Government of Georgia* [2018] Constitutional Court of Georgia N2/3/663; *Recording notice, Citizen of Georgia Tamar Tandashvili v the Government of Georgia* [2017] Constitutional Court of Georgia N2/11/663
- *Citizens of Georgia - Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v Minister of Labor, Health and Social Affairs of Georgia* [2014] Constitutional Court of Georgia N2/1/536
- *Citizens of Georgia Roin Gavashelishvili and Valeriane Migineishvili v the Government of Georgia* [2017] Constitutional Court of Georgia N1/11/629, 652
- *Political Associations of Citizens - 'the New Rights' and 'the Conservative Party of Georgia' v the Parliament of Georgia* [2010] Constitutional Court of Georgia N1/1/493

- *Public Defender of Georgia v Government of Georgia* [2015] Constitutional Court of Georgia N2/4/603
- *Public Defender of Georgia v the Parliament of Georgia* [2009] Constitutional Court of Georgia N1/2/434

European Committee on Social Rights

- *Conclusions XIII-3 - Statement of interpretation - Article 4 Additional Protocol (Article 23)* [1995] European Committee of Social Rights XIII-3_Ob_-4/Ob/EN
- *Decision on the merits: International Association Autism-Europe v France* [2003] European Committee of Social Rights COMPLAINT No. 13/2002
- *Conclusions 2017 - Georgia - Article 12-1* [2017] European Committee of Social Rights 2017/def/GEO/12/1/EN
- *Conclusions 2009 - Armenia - Article 13-1* [2010] European Committee of Social Rights 2009/def/ARM/13/1/EN

Other Online Sources

- ‘Adjusted Gender Pay Gap Published by GEOSTAT for the First Time’ (*UN Women – Georgia*) <<https://georgia.unwomen.org/en/stories/news/2022/03/adjusted-gender-pay-gap-published-by-geostat-for-the-first-time>> accessed 9 May 2022
- ‘Country Profiles, Georgia’ (*Council of Europe*) <<https://www.coe.int/en/web/european-social-charter/georgia>> accessed 11 May 2022
- ‘Details of Treaty No.005’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 10 May 2022
- ‘Details of Treaty No.035’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 13 May 2022
- ‘Details of Treaty No.048’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=048>> accessed 11 May 2022
- ‘Details of Treaty No.158’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 16 May 2022
- ‘Details of Treaty No.163’ (*Treaty Office*) <<https://www.coe.int/en/web/conventions/full-list>> accessed 13 May 2022
- ‘Digest of the Case Law of the European Committee of Social Rights’ (2018) <<https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>> accessed 15 May 2022

- ‘European Committee of Social Rights’ (*European Social Charter*)
<<https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights>> accessed 16 May 2022
- ‘Fineman on Vulnerability and Law – New Legal Realism’
<<https://newlegalrealism.org/2015/11/30/fineman-on-vulnerability-and-law/>> accessed 9 May 2022
- ‘Georgia - Member State’ (*CoE*) <<https://www.coe.int/en/web/portal/georgia>> accessed 10 May 2022
- ‘ILO | Social Protection Platform’ <<https://www.social-protection.org/gimi/ShowWiki.action?wiki.wikiId=792>> accessed 10 May 2022
- ‘ILO: 4 Billion People Worldwide Are Left without Social Protection’ (29 November 2017) <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_601903/lang-en/index.htm> accessed 9 May 2022
- ‘International Labour Standards Country Profile: Georgia’
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:102639> accessed 10 May 2022
- ‘Reporting System of the European Social Charter’ (*European Social Charter*)
<<https://www.coe.int/en/web/european-social-charter/national-reports>> accessed 16 May 2022
- ‘Ten Remarks on Pension Reform’ (*Transparency International - Georgia*)
<<https://transparency.ge/en/post/ten-remarks-pension-reform>> accessed 9 May 2022
- ‘Up-to-Date Conventions Not Ratified by Georgia’
<https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102639> accessed 10 May 2022
- European Court of Human Rights 2021, ‘Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention’
<https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf> accessed 13 May 2022
- European Court of Human Rights C of E, ‘The ECHR in 50 Questions’ 9
<https://www.echr.coe.int/Documents/50Questions_ENG.pdf> accessed 15 May 2022
- Ministry of Labour, Health and Social Affairs, ‘„სოციალური კოდექსი“’ (*MOH*, 2021) <<https://www.moh.gov.ge/ka/news/6004/%E2%80%9Esocialurikodeksi%E2%80%9C>> accessed 9 May 2022
- OECD, *Employment Outlook 2019: The Future of Work, Left on Your Own? Social Protection When Labour Markets Are in Flux* (OECD Publishing 2019)
<https://read.oecd-ilibrary.org/employment/oecd-employment-outlook-2019_bfb2fb55-en> accessed 10 May 2022

- Social Protection Interagency Cooperation Board (SPIAC-B), ‘A Joint Statement on the Role of Social Protection in Responding to the COVID-19 Pandemic’ <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/genericdocument/wcms_740551.pdf> accessed 9 May 2022
- UNRISD, ‘The Human Rights-Based Approach to Social Protection (Issue Brief 2)’, Geneva <<https://www.unrisd.org>> accessed 10 May 2022

Statistical Data

- Geostat , ‘Indicators of the Labour Force (Employment and Unemployment 2021 IV Quarter)’ (2021) <<https://www.geostat.ge/media/43200/Indicators-of-the-Labour-Force--IV-Quarter%2C-2021-year.pdf>> accessed 10 May 2022
- Geostat, ‘Adjusted Gender Pay Gap (GPG) - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/39/wages>> accessed 10 May 2022
- Geostat, ‘Employment and Unemployment - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/683/Employment-Unemployment>> accessed 10 May 2022
- Geostat, ‘Population - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/41/population>> accessed 11 May 2022
- Geostat, ‘Subsistence Minimum - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/49/subsistence-minimum>> accessed 10 May 2022
- Geostat, ‘Wages - National Statistics Office of Georgia’ <<https://www.geostat.ge/en/modules/categories/39/wages>> accessed 10 May 2022
- Helpage, ‘Country Ageing Data | Data | Global AgeWatch Index 2015’ <<https://www.helpage.org/global-agewatch/population-ageing-data/country-ageing-data/?country=Georgia&printer=1>> accessed 9 May 2022