

PUBLIC DEFENDER OF GEORGIA

**SPECIAL REPORT ON THE RIGHT
TO ADEQUATE HOUSING**



GEORGIA

2015



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(OMBUDSMAN) OF GEORGIA



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TABLE OF CONTENTS

INTRODUCTION	4
1. INTERNATIONAL LEGAL INSTRUMENTS	4
2. DOMESTIC LEGAL INSTRUMENTS	8
3. PRACTICE OF IMPLEMENTING THE RIGHT TO ADEQUATE HOUSING	10
3.1 Subjects of the right to adequate housing	10
3.2. Database of the homeless persons and the statistics of shelter provision	11
3.3. Social Housing in a Supporting Environment	15
3.4. Protection from forced eviction	16
3.5. Inclusion of homeless persons in social programs	20
3.6. Temporary shelters/tents set up for homeless persons	24
CONCLUSION	25
RECOMMENDATIONS	26

INTRODUCTION

The right to adequate housing is one of the fundamental values of the socio-economic rights. The homeless belong to one of the most vulnerable groups and require effective and adequate support from the State to live decent lives. In spite of the fact that the right to housing is enshrined in legislation both on international and national levels, it is violated on regular basis.

Every year Georgia's Public Defender's Office receives numerous complaints related to lack of adequate housing or shelter. The review of such applications has revealed a series of legal and practical problems which are in the focus of the present report. Practice has shown that violations of housing related human rights are rather related to systemic problems than having an individual or casual character. There are no unified database of the homeless both on regional and central levels to keep a track on exact statistical data related to the violations of housing rights. Nor are there effective mechanisms to ensure legal guarantees for the homeless on the legislative level. Isolated provisions included in various laws are hardly ever realized in practice. With the existing legislation, who belong to one of the most vulnerable groups have no access to those minimal social benefits designated for the country's poor. Lack of targeted financial assistance allocated in both central and municipal budgets for the local homeless is yet another problem adding to a handful of problems related to housing.

Therefore, the present special report is focused on systemic faults related to rights of the homeless. The report is divided into several parts. The first part deals with the legal guarantees enshrined in national and international laws. The following part looks into the practice of and gaps in reviewing the issues related the homeless. The same part will highlight the responsibility of the state authorities and the effectiveness of measures taken by the latter. The final part of the report consists of recommendations to relevant government structures.

It should be noted that the present report is not the primary document produced by the Public Defender on the homeless individuals. There is a separate chapter on the legal problems of the homeless in the Public Defender's report to the Parliament of Georgia delineating the situation of human rights and freedoms for the past four years¹. Based on the fact that there have been no substantial changes in many aspects, the present special report partially relies on the annual parliamentary reports but with in-depth and thorough analysis of the subject matter of the report.

1. INTERNATIONAL LEGAL INSTRUMENTS

The right to adequate housing is one of the fundamental human rights protected by the international law on human rights and enshrined in numerous international treaties and covenants. The first international document to recognize the human right to adequate standard of living is the Universal Declaration of Human Rights. The signatory countries to the documents agree that the right to access to housing together with the right to food, clothing and social services is a necessary prerequisite to maintain health and well-being of families². It is a common knowledge that the Universal Declaration of Human Rights has played an important role in further strengthening and promoting the human rights and the right to adequate standard of living was later on referred to

¹ See 2009 (second half), 2010, 2011 and 2012 parliamentary reports of the Public Defender on human rights and freedoms in Georgia. Chapter on the right to adequate housing.

² Article 25, Clause 1 of the Universal Declaration of Human Rights of the United Nations of 10 December 1948

in numerous international treaties³.

The International Covenant on Economic, Social and Cultural Rights adopted in 1966 is considered the key document in regards with the right to adequate standard of living. The standards enshrined in the document represent the legal source of utmost international importance. It can be assumed that the Covenant has promoted the legal development of the right with a great contribution of the UN Committee on Economic, Social and Political Rights which, in addition to providing competent explanation of the rights, monitors the realization of the rights enshrined in the covenant by the member states. Based on the above said, the present report reviews the international standards to adequate standard of living in the light of this very covenant.

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to an adequate standard of living. This norm is the most precise and specific in interpreting the right of every individual to an adequate standard of living: *‘The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to the effect the essential importance of international co-operation based on free consent’*. Therefore, it is important that the right be interpreted not only in the context of living, but an adequate standard of living.

The Committee on Economic, Social and Cultural Rights clarifies the content of the right enshrined in Article 11 which is relevant for relevant implementation of the rights by the member states. According to clarification *‘the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity’*.⁴ Therefore, the right to an adequate housing is more than just four walls and a ceiling. Rather it is the unity of those minimal conditions that are necessary for individual’s physical and mental wholeness.

The Committee on Economic, Social and Cultural Rights has highlighted the limits of the right by discussing the criteria of adequate standard of living necessary for living a life in security, peace and dignity. The concept of adequacy is the international benchmark for state housing policy aimed to overcome homelessness. Ignorance of one of the criteria outlined below means the violation of the rights enshrined in Article 11 of the Covenant. These criteria are as important as the existence of basic infrastructure and shelter. The following factors must be taken into account in determining whether particular forms of shelter can be considered to constitute ‘adequate housing’:

1. Legal security of tenure
2. Availability of services, materials, facilities and infrastructure
3. Affordability (personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised)
4. Habitability

³ See for instance 1) International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 5, E Paragraph, Clause 3; 2) Convention on the Elimination of all Forms of Discrimination Against Women, 1979, Article 14, Clause 2, Paragraph H; 3) The Convention on the Rights of the Child, 1989, Article 27, Paragraph 3; 4) The 1951 Convention Relating to the Status of Refugees, Article 21; 5) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, Article 43, Clause 1, Paragraph D

⁴ General Comment 4 of the Committee for Economic, Social and Cultural Rights, Paragraph 7, 1991

5. Accessibility (implementation of adequate housing policy tailored to groups with various social status/vulnerable groups)
6. Location (Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities)
7. Cultural adequacy⁵.

In other words, adequate housing means adequate privacy, adequate space, adequate security, physical access, adequate security, legal security of tenure, structural stability and durability, adequate lightening and ventilation, adequate basic infrastructure including drinking water, sanitary and hygienic conditions and waste removal, safe environment that does not pose health risks, and adequate location in regards to work and basic services⁶. It is evident that the element of adequacy is an integral part of the right and therefore the State should take measures for gradual, irreversible and full realization of these criteria.

While discussing the issues related to an adequate standard of living, it is important to identify who falls under the category of the homeless, who are the subject of the right. Generally, there is no consensus on an international level over the definition of homelessness and it continues to be the subject of wider discussions. The definitions varies from those being quite narrow according to which homelessness is the ‘absence of a roof above one’s head’ to a broader one according to which homelessness depends on the quality of accommodation, probability of homelessness, its duration and the responsibility for a response⁷. The UN’s Special Rapporteur on the Right to Adequate Housing underlined that the narrow definition of the term is irrelevant⁸. This position relies on the definition provided by the Committee according to which an adequate housing is more than just four walls and a ceiling and it also implies living a life in peace and dignity.

With the absence of a universal definition and based on the existing context, the states independently determine the meaning of the term. In this regard it is critical to collect information and data on vulnerable groups and implement monitoring of the homeless in the country as these data are the key to developing flexible definition applicable to various forms of homelessness. In addition, only an effective definition makes it possible to develop relevant housing policy and mobilise necessary financial and administrative resources of its implementation.

According to a definition provided by the Committee on Economic, Social and Cultural Rights effective monitoring of the situation with respect to housing of individuals and families is another obligation of immediate effect⁹. For a State party to satisfy its obligations it must take whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard the State Party must provide detailed information about those groups within society that are vulnerable and disadvantaged with regard to housing. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.¹⁰

It is worth noting that because of complexity and increasing importance of the right to adequate housing, its meaning is often misinterpreted. One of the most common mistakes is an assumption in

⁵ Ibid, Paragraph 8.

⁶ United Nations Centre for Human Settlements (Habitat): Strategies to Combat Homelessness (Nairobi 2005).

⁷ *The Right to Adequate Housing*, The office of the UN High Commissioner in Georgia, information brochure 21/rev.1, 2011, pp.31-32.

⁸ The UN Special Rapporteur on the Right to Adequate Housing №UN Doc. E/CN.4/2005/48; Article 13.

⁹ General Comment 4 of the Committee for Economic, Social and Cultural Rights, Paragraph 13, 1991.

¹⁰ Ibid

that the State is responsible for building houses for its citizens and that every applicant should get a house¹¹. Contrary to this assumption and according to the principles enshrined in the international law, the State is responsible for providing housing to individuals only under specific circumstances. The second biggest mistake is to define the right to adequate housing as the right to ownership. The right to the adequate housing is more than ownership, as regardless of their ownership status, homeless persons must have an access to safe, secure and dignifying housing. In addition, the State is not responsible for awarding an individual in question with the ownership of a proposed accommodation. Yet another of the widespread mistakes is to assume that the State is responsible for immediately implementing every aspect of the right to adequate housing¹². Contrary to the above said, the State has the responsibility to take measures using maximum resources available to progressively achieve the full realization of the right. In addition, these measures must be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the covenant.¹³

In regards with the standards of the rights highlighted in the Covenant and together with the Committee's competent definitions, Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights and the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights are also of utmost importance. In spite of the fact that the guiding principles are not binding, they serve as a guidelines of the states as they convey impartial and unbiased definitions of the rights as well as the nature and scales of violations caused by the actions or lack of actions by the States. In addition, the guiding principles provide recommendations on measures to be implemented as a response to such violations and instruments for legal protection. Respectively, the States should strive to incorporate and adhere to the principles while developing or implementing national housing policy and/or relevant legislation.

Among the regional treaties on the right to adequate housing the European Social Charter and its Article 31 stands out for its importance. The norm specifies that in order to effectively realise the right to accommodation the Member States take the responsibility to 1) to promote access to housing of an adequate standard 2) prevent and reduce homelessness with a view to its gradual elimination 3) to make the price of housing accessible to those without adequate resources. Due to the fact that Georgia opted out from that Article, it does not recognize the responsibility to respect, protect and adhere to that responsibility.

In spite of the fact that Georgia has opted out from the Social Charter, the country still has the responsibility over the right to housing under the UN 1966 Covenant on Economic, Social and Cultural Rights. Therefore, the state policy should aim to develop and implement an effective, short and long term housing strategy in order to progressively and irreversibly eliminate homelessness in the country. This step will contribute to progressive equation of the national mechanism for the realization of the right to housing with the international standards. This will in its turn lead to Georgia's readiness to opt in the Article 31 of the European Social.

The International Covenant on Economic, Social and Cultural Rights gives due discretion to the State Parties to develop legislation in regards with the adequate housing. The Limburg Principles contain useful information relating to the responsibility of the states to develop national legislation. More specifically: *'At the national level States parties shall use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures, consistent with*

11 The UN Special Rapporteur on the Right to Adequate Housing Nº UN Doc. E/CN.4/2005/48; Article 11.

12 Ibid

13 General Comment 3 of the Committee for Economic, Social and Cultural Rights, Paragraph 2, 1991

the nature of the rights in order to fulfill their obligations under the Covenant'.¹⁴ The state has a discretion to determine which instrument is more 'relevant' in regards with the right to adequate housing. If the steps taken by the State are 'irrelevant' and fail to enable the homeless to realise their rights, the State will be held responsible for develop legislation targeted on the needs of the homeless, cancel or amend existing norm.¹⁵

2. NATIONAL LEGAL INSTRUMENTS

On 30 April 2014 the Parliament of Georgia passed a resolution on approving the National Human Rights Strategy (for 2014 — 2020). One of the goals of the strategy is to implement the state responsibility in regards with the right to adequate housing and responding to problems related to homelessness. In spite of the fact that the strategy sets specific objectives related to the realisation of the right, 2014–2015 action plan approved by the government of Georgia does not stipulate concrete steps in order to achieve the objectives outlined in the strategy.

There is national legislation relating to the right to adequate housing which would regulate the issues in a systemic manner. Existing norms and instruments regarding the right are general and are to be found in the Law on Social Assistance adopted on 29 December 2006. The document provides not only definition of the subject, but also highlights the responsibilities of both central and local governments. The national legislation fails to recognise such important aspects of the right to adequate housing as prevention of homelessness, protection against discrimination on the grounds of homelessness, instruments for the implementation of the responsibilities by authorities, division of responsibilities among various bodies of the authorities and other important factors.

According to Article 4, Paragraph P of the Law of Georgia on Social Allowance a homeless individual is 'a person without permanent and specific residence who is registered as homeless in the local self-government authorities'. The definition sets two cumulative requirements. The first one identifies the subjects of a homeless individual, while the other one determines the responsible authority for registering homeless persons providing at the same time the proof for their homelessness. The implementation of both material and procedural parts of the definition is hindered by problems.

The first part of the definition is rather broad and general and fails to clarify based on which criteria can an individual be considered as 'having no place for permanent residence'. Because of ambiguity of the norm, the similar entries from other legal acts as well as court practice may be used as supporting instruments. The Georgian Civil Code provides a definition of a place of residence according to which: 'The place where a natural person chooses his ordinary dwelling is deemed to be the place of residence of the person.'¹⁶ *The Supreme Court of Georgia further defined 'a place of residence/dwelling'* and point out that the term is of a broader character and 'a place of registration' and 'permanent place of residence' represent its specific types¹⁷. The Court ruled that *'while determining a permanent place of residence, it is important to consider whether or not a person has been factually living there and s/he is willing to have a permanent residence at this place. Moreover, the will of the person - to establish a place of residence — must be provided with the means to implement this will, which means that a person must have an accommodation,*

¹⁴ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Paragraph 17.

¹⁵ 'Housing Rights Legislation - Review of International and National Legal Instruments'. The Office of the High Commissioner for Human Rights, UN Habitat, 2002

¹⁶ The Civil Code of Georgia, Article 20, Clause 1.

¹⁷ Decision № 86-1896-1849 (3-10) of the Supreme Court of Georgia, 9 June 2011.

*house or other types of accommodation at that particular place*¹⁸. Therefore, in order to deem a place as a permanent place of residence, three criteria must be in place. More specifically, a person must 1) have a place of residence 2) a will to live at that place 3) and opportunities to implement that will. If one of the criteria is absent, we can consider that we are dealing with the absence of permanent place of residence.

As for the registration, it should be noted that the Law on Social Allowance does not stipulate specific regulations for the local authorities to register the homeless. The data obtained from the local authorities point out to the absence of registration methodology for the homeless.¹⁹ First of all what is implied here is availability of necessary documentation/information without which administrative body cannot make a decision for registering a person as homeless in a relevant database. Because of ambiguity related to a definition of a homeless person and a lack of registration methodology, the question related to running databases falls under the question and so does the relevance of the registered persons with the status of homeless persons.

Vagueness of the norm is verified by the local government units themselves, in particular, according to the explanation provided by the City Hall of Tbilisi City Municipality “the applicant, who considers himself/herself homeless, may not be considered as one, since the “Law on Social Allowances” of Georgia provides quite vague and inexplicit criteria for granting the homeless status to an individual”²⁰. Thus, the City Hall of Tbilisi City municipality, which, due to the high number of applying citizens, faces the most acute problem of homelessness, considers the national definition of subjects as vague and useless. Opposite to given statement, the local government units of the cities of Zugdidi, Kutaisi and Gori maintain the common database of the persons individuals based of the applications of the citizens of Georgia²¹. Therefore, we may conclude that the vagueness of the norm causes ambiguous practice, due to which the databases are also ambiguous and incomplete and do not reflect the exact number of homeless persons. Accuracy of the database is of crucial importance, as the fact of registration automatically imposes the obligation to provide shelter.

The responsibility of the central government in regards to the homeless persons is limited to maintaining a common registry. Pursuant to the Article 17, item “d” of the “Law on Social Allowances” of Georgia, LEPL Social Service Agency: “maintains the common registry of the homeless persons registered with the local self-government units”. The record does not envisage the purpose of the obligation, or the aim of maintaining the database. Respectively, there is no activity package available, which the central government needs to implement after the formation of the database.

As mentioned above, the responsibilities of the local government unit, as well as their scope, are concentrated in the Article 18 of the “Law on Social Allowances” of Georgia. The given norm envisages 1) providing shelter; 2) registration of the individuals living in shelter; 3) availability of the information about the homeless persons registered in the database to the Social Service Agency and 4) availability of the information regarding the existing social programs on local level to the homeless persons. It is obvious, that the local government units bear the majority of responsibilities regarding the homeless persons. Thus, implementation of the responsibilities imposed by law on

¹⁸ Ibid

¹⁹ The Mayor’s office of the Kutaisi City, 03.06.2014, Letter №01-3272; the Mayor’s office of the Tbilisi City, 21.10.2014. Letter 06/14288340-10.

²⁰ City Hall of Tbilisi City Municipality, 8 January 2014, Letter №06/13337301-10.

²¹ Executive branch of the local self-government (hereinafter referred as Gamgeoba) of Gori Municipality 9 October 2014. Letter №515; Gamgeoba of Zugdidi Municipality 17 September 2014, Letter №05-1/416.

their behalf essentially stipulates the quality of providing the adequate housing in the country. In this process the “Law on Social Allowances” of Georgia does not envisage the involvement of the central government at any level, or the government is not responsible for carrying out those activities, which support the effective implementation of the local municipalities’ rights to review the application.

The legal guarantee of the local government’s responsibility to provide shelter is the fundamental right of the homeless persons. Pursuant to the Article 4, item “b” of the above mentioned law, the shelter is defined as a “provider of social services, which offers housing and food to the homeless person”. Therefore, shelter is a place, where an individual receives basic needs. Otherwise, a shelter is a type of social allowance, intended for the most vulnerable social group during the period of homelessness – absence of adequate housing due to specific reasons. Respectively, shelter is a transit social assistance and after serving its purpose is a subject to termination.

On 7 February 2014 Government of Georgia issued the Resolution 131 “technical regulation: about approving the minimum standards for operating of temporary shelters for the homeless persons”. The document defines the necessary aspects of setting up a shelter and putting it into exploitation.

According to the above mentioned resolution the notion of a dispossessed individual emerged in the national legislation, which is “a person who resides in the street, lacks permanent housing, legal income and does not possess immovable property registered to his/her name, or a person who at the moment resides in the street and his/her life is endangered”²².

On the basis of guarantees envisaged by the legislation regarding the shelters and their operation, according to the information received from the local government units there are no similar institutions in any municipality, except for Batumi²³. Although, according to the data provided by the City Hall of Tbilisi City Municipality, the local government unit plans to build a shelter on the territory of Lilo, which, hypothetically, will be put into exploitation in the second half of 2015. According to the capital city’s 2015 budget approved by Tbilisi City Assembly on 19 December 2014 in compliance with the Resolution 18-57, GEL 1,211,300 is allocated for building the homeless shelter (program code 6.2.21.). City Hall of Kutaisi City also plans to set up a homeless shelter and has allocated GEL 300 000 to this direction²⁴.

3. PRACTICE OF IMPLEMENTING THE RIGHT TO ADEQUATE HOUSING

3.1 Subjects of the right to adequate housing

Despite the fact that the notion of homelessness is not defined in correspondence with the purpose of international legal acts, according to the concept of adequate housing and its authoritative definition, the subjects of the right can be divided into three categories, in particular:

22 “Technical regulation – about approving the minimum standards for operating of temporary shelters for the homeless persons”. Article №2, item 2 of the Resolution 131 issued by the Government of Georgia on 7 February 2014

23 1) Gamgeoba of Zugdidi Municipality 17 September 2014, Letter №05-1/416 2) City Hall of Kutaisi City Municipality, 22 September 2014, Letter №1403/645, 3) City Hall of Tbilisi City Municipality, 21 October 2014, Letter №06/14288340-10.

24 Announcement of the Mayor of Kutaisi City Shota Murghulia, 25 January 2015, <http://www.kutaisi.gov.ge/news/id/876> Last accessed: 26 January 2015

Category I – persons without roof over their heads: they do not possess neither permanent nor temporary housing; they spend nights together with their belongings in the streets, building entrances, parks and other unplanned places;

Category II – persons who do not own a house/apartment: individuals who, due to the lack of permanent housing, move from one place of residence to another (e.g. relatives, friends, specialized institutions, unauthorized access to housing, individuals who are at risk of homelessness after eviction, etc.)

Category III – persons lacking minimum/essential living conditions: persons, who have a place of residence, although cannot access the basic needs essential for self-sufficiency.

According to the national legislation of Georgia and above mentioned analysis and definition provided by Supreme Court of Georgia, one may conclude that the homeless person as defined by the “Law on Social Allowances” of Georgia can be only a subject belonging to first or second categories. Although, the third category of homeless persons – those lacking basic needs, are not envisaged under the national definition. Thus, the persons lacking basic needs do not have the access to state care and can only benefit from the benevolent assistance provided by local government units.

The problem of defining the subject was further complicated by the notion of dispossessed person as per Resolution 131 issued by the Government of Georgia on 7 February 2014. Interoperability of the notions of “homeless” and “dispossessed” envisaged under the given resolution and the “Law on Social Allowances” of Georgia is unclear and creates problems in practice. During 2014 Public Defender of Georgia identified the cases, when, given a vague definition of a “homeless person” under the “Law on Social Allowances” of Georgia, the City Hall of Tbilisi City Municipality, implements the definition of a homeless person according to the Resolution 131 issued by the Government of Georgia on 7 February 2014. Given approach is unjustifiable, since the dispossessed persons represent one of the vulnerable groups of the homeless – the persons without roof over their heads, whereas the notion of “homeless” holds much broader definition and covers different forms of manifestation of homelessness, which also have a need of housing. It should be also considered that Tbilisi Temporary Shelter program, due to its special profile, is not accessible for all categories of homeless persons. Respectively, reviewing the applications for housing provision by the local government in the frameworks of standard program is unacceptable.

3.2. Database of the homeless persons and the statistics of shelter provision

Despite the fact, that according to the “Law on Social Allowances” of Georgia the local self-government units, as well as the central government represented by the LEPL Social Service Agency is responsible for maintaining the common database of homeless individuals, in practice this obligation is not being met. The given flaw is mainly caused the vagueness of the definition of subject and absence of methodology for determining the status. The information acquired by the Public Defender of Georgia from different municipalities reveals, that such databases are not maintained in some self-government units, whereas in others the precondition for registration in the database is submitting the application for shelter provision²⁵.

²⁵ City Hall of Tbilisi City Municipality, 8 January 2014, Letter №06/13337301-10, Gamgeoba of Gori Municipality, 9 October 2014, Letter №515, Gamgeoba of Zugdidi Municipality, 17 September 2014, Letter №05-1/416

Another problem, emerging in the direction of maintenance of common database, is linked with the ambiguous practice of availability of the databases of local government units to the LEPL Social Service Agency. According to the information provided to the Public Defender of Georgia, at this stage the existing databases of municipalities of the cities of Gori and Zugdidi are not being communicated with the LEPL Social Service Agency, whereas the Kutaisi City Municipality provides the existing data to the central government unit²⁶. The described practice confirms the absence of an accurate common database on a country level. Respectively, the scope of violations of the rights to homelessness and adequate housing is unclear. Given the absence of the mentioned information, it is impossible to develop effective housing policy and identify the necessary activities for its implementation.

As already mentioned in the previous chapters, the fundamental cause of the systematic problem of implementation of the right to adequate housing is the absence of housing funds and necessary financial means for their creation on a country level. Particularly, after studying the applications received by the Apparatus of the Public Defender of Georgia, it was revealed that the applications of the homeless persons for shelter provision cannot be fulfilled by the local government units due to the absence of housing funds. Even in those cases, when the Public Defender of Georgia provides a recommendation to the local self-government units in regard to shelter provision, the decision of the administrative body remains unchanged and the absence of housing funds and/or financial means represents the reason for not fulfilling the recommendation. The cases investigated by the Public Defender of Georgia demonstrate that the rejection decisions of the local government units in regard to the registration of the homeless persons and shelter provision, due to the absence of proper resources, are frequently subjects of dispute of common courts, when the judiciary emphasizes the problem of legitimacy of such decisions, which means that rejection of implementation of the right, solely based on the absence of financial means, is not sufficient²⁷. For more clarity in regard to the scope of violations of the right to adequate housing, the Apparatus of the Public Defender of Georgia requested the statistical data about the number of homeless persons and activities implemented for shelter provision on the territory of administrative unit from five cities of Georgia.

In a number of cases, the statistical data for the same period, at different times, received from the local government units as requested by the Public Defender of Georgia, is contradictory. The given particularity, again, emphasizes the fact that the databases of homeless persons are not maintained accurately and in a number of cases reflect superficial data. Below is presented statistical information, provided by the municipal units to the Public Defender of Georgia in the process of development of special report. Provided information reveals that in comparison to other cities, in terms of implementation of the right to adequate housing, the situation is relatively better in Batumi.

According to the data provided by the City Hall of Tbilisi City Municipality, during 2012-2013 up to 10,000 families applied to the self-government unit requesting shelter. Out of which, within the frameworks of “Local Housing in a Supporting Environment” program housing was provided to 24 families. Besides, 22 persons received one-time compensation²⁸. In spite of the request, City Hall of Tbilisi City Municipality did not provide the statistical data of 2014.

26 Gamgeoba of Gori Municipality, 9 October 2014, Letter №515, Gamgeoba of Zugdidi Municipality, 17 September 2014, Letter №05-1/416; City Hall of Kutaisi Municipality 22 September 2014, Letter №1403/645.

27 see e.g. 1) Resolution of the Administrative Cases Panel of Tbilisi City Court, 26 June 2013, case №3/1963-13; 2) Resolution of the Administrative Cases Panel of Tbilisi City Court, 18 January 2013, case №3/4730-12; 3) Resolution of the Administrative Cases Panel of Tbilisi City Court, 8 December 2012, case №3/3397-12; 4) Resolution of the Administrative Cases Panel of Tbilisi City Court, 12 April 2013, case №3-423-13.

28 City Hall of Tbilisi City Municipality, 21 October 2014, Letter №06/14288340-10).

According to the data presented by the local government of Kutaisi in 2011, 2012, and 2013 707 Georgian citizens addressed the local self-government requesting shelter, out of which 41 families received temporary housing²⁹. During January–September 2013 194 Georgian citizens addressed the self-government unit of Kutaisi with a request to receive shelter, none of which were fulfilled, since the City Hall of Kutaisi City Municipality does not have a housing fund and financial means for compensating the apartment rent³⁰.

In 2012–2013 83 families addressed the Gamgeoba of Zugdidi Municipality requesting place of residence. Local self-government provided compensation of the apartment rent to 48 homeless families. Since Zugdidi Municipality does not possess a housing fund, none of the applicants received temporary housing³¹.

Despite the request, Gamgeoba of Zugdidi Municipality did not provide the statistical data of 2014.

In 2012–2013 383 applications for shelter provision were received by the Gamgeoba of Gori Municipality, none of which were fulfilled due to absence of housing fund³². As for 2014, 16 beneficiaries addressed the municipality, none of whom received shelter³³.

According to the information provided by the City Hall of Batumi City Municipality, 1,650 applications for shelter provision were registered in 2012–2013³⁴. As for 2014, 521 families addressed the City Hall requesting housing. According to the official data provided by the local self-government unit, in 2010–2013 within the frameworks of “Local Housing in a Supporting Environment” program 15 socially vulnerable and 14 internally displaced families were provided with housing. In 2013 under “Providing Housing to the Large Families” project 5 large families’ housing applications were fulfilled. Besides, in 2013–2014 during winter period, City Hall organized a temporary shelter in the building of former “Orphanage”, which accommodated 20 beneficiaries. From May 2014 the program was replaced by the project “Temporary Night Shelter”, which provided a night’s accommodation, two meals a day, essential clothing and necessary medical care to 30 beneficiaries. In 2015 the project plans to provide services to 45 beneficiaries³⁵.

Statistical data reveals that the local government units face the identical problem of absence of housing funds. The mentioned issue is closely linked with the provision of financial means necessary for their creation to the central and local budgets. According to the information received from the regions, in 2012, 2013 and 2014 the budget of the City Hall of Kutaisi City Municipality did not envisage the financial means for addressing the needs of the homeless persons. Gamgeoba of Gori Municipality faced the similar problem. Using the funds from the budget of the same years Gamgeoba of Zugdidi Municipality provided the compensation of apartment rent to 48 families. Unfortunately, despite the request, Gori and Zugdidi Municipalities did not provide the statistical data of 2014 in regard to the funds allocated for addressing the needs of homeless persons in the local budgets. City Hall of Tbilisi City Municipality did not provide the statistical data of 2012–2013; although they informed us that in 2014 budget GEL 955,000 was allocated for operating of the homeless shelter. For the same purpose, the amount was increased to GEL 1,211,300 in 2015 budget. Also, City Hall of Batumi City Municipality spent GEL 58 900 out of local budget under the “Local Housing in a Supporting Environment” project. Besides, in 2013 GEL 126,750 was allocated to

29 City Hall of Kutaisi City Municipality, 28 November 2013, Letter №01-8883.

30 City Hall of Kutaisi City Municipality, 22 September 2014, Letter №1403/645

31 Gamgeoba of Zugdidi Municipality, 21 November 2013, Letter №10-12395.

32 Gamgeoba of Gori Municipality, 22 November 2013, Letter № 7856).

33 Gamgeoba of Gori Municipality, 9 October 2014, Letter №155

34 City Hall of Batumi City Municipality, 27 November 2013, Letter №04-04/29908.

35 City Hall of Batumi City Municipality, 3 November 2014, Letter №25/21516.

“Providing Housing to the Large Families” project in local budget. The local government of Batumi city has not provided the data of 2014.

According to the statistical data provided by the local government units, given the absence of housing funds, some regions solve the housing problem of a smaller group of homeless persons by providing the compensation of apartment rent using the available local resources. Unfortunately, according to the information received from the local government unit³⁶, there is no regulatory act/methodology available, based on which the Gamgeobas would provide the homeless persons with the necessary compensation for renting the apartment. Respectively, there are no specific criteria defined for selecting those families, who are eligible for the needed allowance. Transparency of Gamgeoba’s work in this particular direction is essential. Whereas the response provided to the citizens needs to be justified, so that the homeless persons are given the opportunity to prove the necessity of receiving assistance.

Given the insufficiency or in several cases complete absence of financial means in the local budgets, municipal units are not supported financially from the central budget. According to the information provided by the Ministry of Finance of Georgia, in 2012, 2013 and 2014 state budget did not include the allotments for addressing the needs of homeless persons³⁷. Although, it is noteworthy, that based on the decree issued on 31 October 2012 by the Government of Georgia “about the required activities for registration of the individuals unlawfully living in the state or privately owned property” and “about the necessary activities for providing social assistance to certain categories of families”, under the Resolution issued on 28 November 2012, the Law on State Budget of Georgia of 2012-2013 defined the legislative acts for the allotments for social programs, in regard to the particular family categories receiving compensation of apartment rent (GEL 200) during the period of 6 months. The effectiveness and results of the given regulations will be discussed below in more detail, although, it should be also noted that after 2013 the validity of these acts was not extended.

The Public Defender of Georgia considers, that providing compensation of apartment rent to the homeless persons can be considered as one of the (and not a major) means of overcoming homelessness, although, in such cases, defining the family categories eligible for receiving allowance and its duration is of crucial importance.

According to the data of the Ministry of Finance of Georgia, the funds are not planned to be allocated in 2015 state budget, since no government structure has requested financial means for setting up housing funds or homeless shelters. Social assistance programs in 2015 state budget do not cover the compensation of apartment rent for the homeless persons and families living below the poverty line. Budget also does not include the funds necessary for building shelters or social housing for the homeless persons. The major financial document of the state provides allowances for the following categories: 1) refugees (asylum seekers), individuals possessing humanitarian status (program code 34 01); 2) Internally Displace Persons (program code 34 02); 3) environmental migrants (program code 34 01) 4) children with special needs (program code 32 02 05). As for the provision of apartment rent, the budget envisages such assistance only for the internally displaced persons (program code 34 02).

Respectively, there is a severe lack of resources for overcoming homelessness in the country. Despite this, for several years, the local and central government have not demonstrated any efforts aiming to raise funds and/or developing a strategy for their creation.

36 Exception: “About adopting of the implementation instructions for compensation program for the residents of demolished and uninhabitable buildings of Tbilisi City” Resolution 35.50.1312 of the Government of Georgia issued on 26 December 2012. Although, the present resolution envisages the compensation for the specific group of homeless persons, in particular the residents of demolished buildings, and does not entirely cover the other categories of homeless persons.

37 Ministry of Finance of Georgia, 7 November 2013, Letter №04-02/85810.

3.3. Social Housing in a Supporting Environment

Implementation of responsibility, in terms of the right to adequate housing, is closely linked with the financial and economic resources of the state. Respectively, when discussing the effectiveness of implementation of responsibility, the challenges linked with the lack of financial resources need to be considered. According to the definition provided by the Committee of Economic, Social and Cultural Rights, even under the condition of severe lack of resources, the state holds minimum core responsibilities, under which it has to ensure the implementation of the right at a minimum. E.g. *prima facie* the state is not meeting its imposed responsibilities, if the certain group of persons residing on its territory does not have access to essential food products, water, basic communications (electricity, sewerage, etc.) and basic shelter and housing³⁸.

During its extensive work experience, the committee frequently faced the problem of the states justifying their failure to implement the minimum core responsibilities imposed by the international agreements by the absence of adequate resources. In this regard the committee has formulated the following statement: “For justifying the failure to implement the minimum core responsibilities by the lack of adequate resources, the state needs to demonstrate that given the available resources it has tried its best to prioritize the implementation of those responsibilities.”³⁹ Thus, given the lack of resources, the state is not exempt from the responsibility and in such case needs to prove the exerted attention and efforts directed towards the effective implementation of the right.

In case if the state has ultimately exhausted the available resources and even after certain efforts was not able to implement the right, it has to take measures for obtaining international aid and cooperation. According to the Article 2, item 1 of the Pact of Economic, Social and Cultural Rights, the state is obliged to take measures “in order to ultimately exploit the available resources independently or through international aid and cooperation, especially in terms of economic and technical fields”. Thus, when discussing the resources, aside of the available state ones, the resources possibly obtained within the frameworks of international aid and cooperation should be also considered⁴⁰.

The program “Social Housing in a Supportive Environment” implemented jointly by the Swiss Agency for Development and Cooperation and local self-governments, is a clear example of assistance obtained within the frameworks of international cooperation. Within the frameworks of the given program 75 homeless families including the internally displaced persons received adequate housing in Tbilisi from 2009 till now⁴¹. Although, it is also noteworthy that, as a result of ineffective and uncoordinated work of local or central government units, seven homeless families selected by the program were not able to use the provided housing, since it had been illegally occupied by other homeless persons. In December 2013 some of the beneficiaries filed lawsuits, which are currently in process⁴².

Within the frameworks of the program 14 families, including 6 local and 8 internally displaced, received housing in Kutaisi in 2010–2014⁴³. In Batumi 15 local and 14 internally displaced families received housing in 2010–2013⁴⁴. Despite the request, the Gamgeoba of Gori Municipality and the

38 General comment №3 of Committee of Economic, Social and Cultural Rights, paragraph 10

39 same as above

40 Same as above, paragraph 13

41 City Hall of Tbilisi City Municipality, 21 October 2014, Letter №06/14288340-10

42 Resolution of the Administrative Panel of Tbilisi City Court issued on 28 May 2014 (Case №4564-13) remained unchanged according to 28 November 2014 verdict of Tbilisi Court of Appeals (Case №3/b-1132-14). Second instance verdict has been appealed to the Supreme Court of Georgia

43 City Hall of Kutaisi City Municipality, 19 September 2014, Letter №01-766.

44 City Hall of Batumi City Municipality 27 November 2013, Letter №04-04/29908

City Hall of Zugdidi City⁴⁵ did not provide the statistical data of the administrative unit regarding the families who had received housing within the frameworks of the program.

In spite of certain challenges, “Social Housing in a Supporting Environment” program can be evaluated as successful, although, unfortunately, there is no mechanism available for rehabilitation of the homeless persons living in the shelter. This implies supporting the beneficiaries by central and local government sector to independently generate income, sufficient for renting the apartment and leaving the shelter. The given statement is further verified by the data provided by the City Halls of Kutaisi and Tbilisi City Municipalities⁴⁶. Specifically, the institution of the capital city was left by 2 beneficiaries. In the first case the reason of the given action was a death of beneficiary, while another one received alternate housing provided by the Ministry Of Internally Displaced Persons From The Occupied Territories, Accommodation and Refugees of Georgia. One beneficiary died (and therefore left the shelter) in Kutaisi. As a result, the problem, related to the transition of the right to adequate housing, emerges. Due to the absence of similar mechanisms, on one hand the person is unable to leave the shelter, since he/she is not able to improve his/her socio-economic condition and cannot provide himself/herself with the housing, on the other hand, the mentioned fact causes the unreasonable increase in state spendings. For the same reason, other homeless persons, who face the problems similar to the beneficiaries of social housing, are not able to benefit from the services of the institutions.

Based on the above mentioned reasons, central and local government sector needs to direct coordinated efforts towards defining the scope of homelessness and identification of the resources available for a systemic solution of the problem on a country level. After identification of state resources, the optimal ways of their exploitation need to be defined. In the case if the available state resources are not sufficient for overcoming the problem of homelessness, in order to implement the minimal core responsibilities, the state needs to take necessary measures for obtaining possible assistance within the frameworks of international cooperation.

3.4. Protection from forced eviction

Over the years homeless persons willfully settled in the state owned and private buildings, what was stipulated by the occupation of the territories of Georgia, natural disasters and/or extremely poor socio-economic conditions. After the parliamentary elections of 2012 the cases of illegal settlement in the state owned and private buildings by the homeless and socially vulnerable persons became more frequent. Cases studies of the Public Defender of Georgia determined that occupation of such buildings was carried out by groups of several families, who had addressed the local government units with shelter requests several times already, but due to lack of adequate resources their requests were denied.

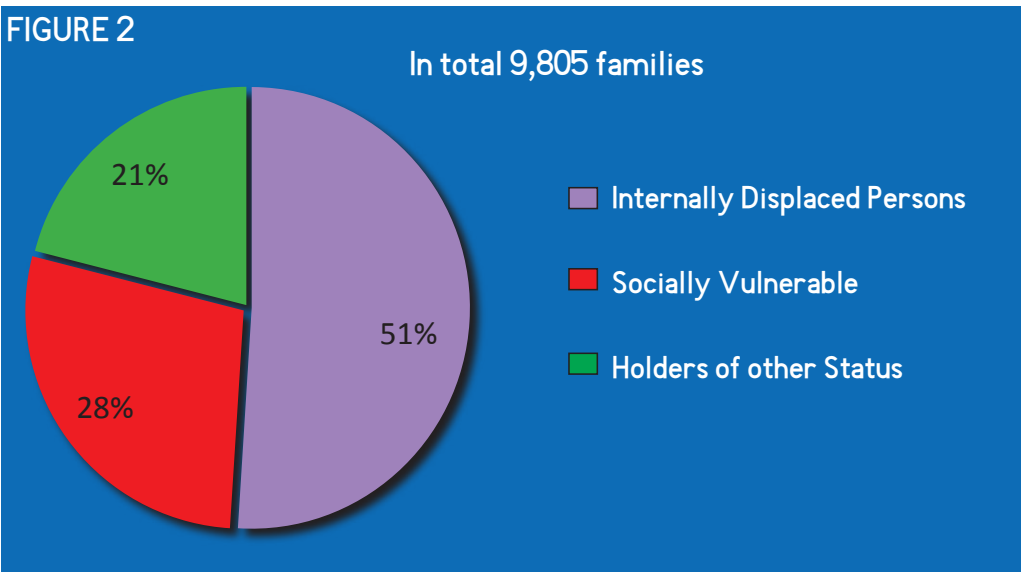
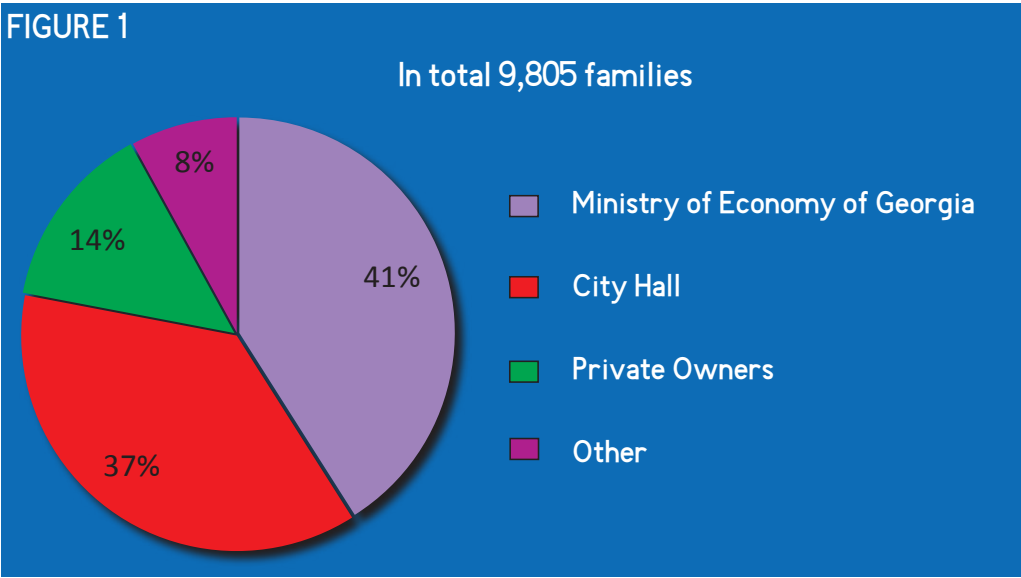
In order to prevent the willful settlement in the state owned objects and deprivation of property rights the government implemented relevant activities in two directions. In the first case, based on the application of the proprietor, the units of the Ministry of Internal Affairs of Georgia forcefully evicted the persons illegally occupying the object; in the second case, the mentioned persons were denied the registration in the common database of socially vulnerable families and receiving of social benefits. The latter will be further discussed in the following chapter, whereas in the given section we will emphasize the violations, revealed during the process of forced eviction.

In November 2014 the City Hall of Tbilisi hosted a meeting, attended by the representatives of

⁴⁵ Based on the available information, the mentioned housing is operating in Zugdidi since 2010; as of today the shelter accommodates 40 persons, although official detailed information has not been provided

⁴⁶ City Hall of Tbilisi City Municipality, 21 October 2014, Letter №2568135; City Hall of Kutaisi City Municipality, 19 September 2014, Letter №01-766

the Apparatus of Public Defender of Georgia, regarding the collection of data about the willfully occupied buildings in the capital city and possible solutions of the problems linked with the housing of the homeless families living there. Within the frameworks of the meeting, based on the official information presented by the Gamgeoba of Tbilisi, it was revealed that there are 401 objects Tbilisi city-wide, which have been willfully occupied by 9,805 families over the years, out of which 43.5% (4,170 families) have legalized the occupied property, whereas 57.5% (5,635 families) currently reside in the given buildings illegally. The figure below visualizes the statistical data about the owners of the objects, as well as the occupying families disaggregated by categories and quantity, provided during the given meeting.



Besides the capital city, the Autonomous Republic of Adjara represents another problematic region, where the cases of willful settlement in the state-owned objects have become more frequent. In particular, since October 2012 in the Autonomous Republic of Adjara, due to the frequent cases of willful settlement in the immovable property on the territories of former 25th and 53rd battalions of Batumi, based on the Resolution 402 of the Chairman of Government of Autonomous Republic of Adjara issued on 16 November 2012, “the governmental commission for investigating the cases of willful settlement in the property by the citizens of Georgia” has been created. Before the expiration of functionality in March 2013, the commission carried out activities in two directions. Firstly, based on the applications for housing provision, the common electronic database was created. On the other hand, the local commissions were set up in the cities of Batumi, Kobuleti, Khelvachauri, Keda, Khulo and Shuakhevi, responsible for addressing the housing problems of homeless persons, including those willfully settled in the buildings.

During its work on a special report, the Apparatus of the Public Defender of Georgia requested statistical data about the families willfully occupying the property on the territory of former 25th and 53rd battalions of Batumi from the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara. According to the information provided in October 2014, the information about the precise number of above mentioned families was not available at the ministry, due to the continuous willful settlement processes on the given territory⁴⁷. Although according to the data provided by the local commissions, among the homeless persons willfully occupying the property on the territories of military battalions, 224 families are registered in Shuakhevi Municipality, 223 in Khelvachauri and 237 in Batumi City Municipality⁴⁸. As for the municipalities of Keda, Kobuleti and Khulo, they did not provide the statistical data. According to the acts formulated by the representatives of local commissions, the residents point out the damage of the buildings caused by old age or natural disaster. Also, settlement in the buildings on the territory of former 25th and 53rd battalions of Batumi is justified by the fact that their former houses were located in the areas prone to landslides or lack of proper living space. It is unclear which activities were implemented by the respective agencies of the Autonomous Republic of Adjara to address the problem of willful settlement.

During the period of developing a special report, according to the decree issued by the Chairman of the Government of the Autonomous Republic of Adjara, operation of the commission created on 16 November 2012 was terminated; by the end of the same year, on 5 December 2014 “the joint governmental commission for investigating the cases of willful settlement in the immovable property owned by the Autonomous Republic of Adjara and the municipality by the citizens of Georgia” was created⁴⁹. Before the completion of the current report we did not possess any data about the activities implemented by the given commission.

The results of monitoring carried out by the representatives of the Public Defender of Georgia regarding the issue of forced eviction revealed that the illegally occupied objects are amortized due to obsolescence and/or are not intended for permanent residence (e.g. school, kindergarten, hospital, industrial object, etc.) Thus, in most cases the families cannot access minimum/core living conditions (including electricity, natural gas, drinking water, safe sanitary-hygienic measures, etc.) and live in dangerous, extremely difficult socio-economic conditions. The given statement is substantiated by data registered in the database of socially vulnerable families of the homeless persons according to the illegal occupation of property collected by the territorial unit of the LEPL Social Service Agency, in which the absolute majority of the registered families live below the poverty line and benefit from the respective social allowances.

47 Ministry of Health and Social Affairs of the Autonomous Republic of Adjara, 30 October 2014, Letter №0109/1571

48 City Hall of Batumi City, Letters №25/20996 and №25/12086; Gamgeoba of Shuakhevi Municipality, Letter №01-15/52; Gamgeoba of Khelvachauri Municipality, Letters №01-12/558 and №01-12/15

49 Decree 407 of the Chairmen of the Government of the Autonomous Republic of Adjara issued on 5 December 2014

The results of monitoring also revealed that during forced eviction, as a rule, the representatives of local government are not in place, while investigating the housing needs of the evicted persons is their direct responsibility⁵⁰. The given responsibility is imposed by the Article 18 of the “Law on Social Allowances” of Georgia, according to which the availability of shelters to the homeless persons is the competence of local self-governments. The Committee of Economic, Social and Cultural Rights defines the procedural aspects, which are essential to be carried out in order to guarantee protection of rights of the evicted homeless persons. According to the definition, one of the aspects of procedural protection linked with forced eviction is “the presence of state authorities or their representatives during the act of eviction, especially in those cases when the groups of individuals are being evicted.”⁵¹

Moreover, in several cases the Gamgeobas did not assess the housing needs of the evicted persons. Despite the fact that, based on the results of monitoring, the Public Defender of Georgia addressed the local Gamgeoba with a recommendation to investigate the issue of the housing needs of the persons willfully residing in the state objects and upon need provide adequate assistance, the Gamgeoba did not fulfil the recommendation⁵². In particular, as explained by the local government unit, due to the absence of resources necessary for providing housing to the mentioned persons, it considered investigation of the condition of the citizens inexpedient⁵³.

The Public Defender of Georgia considers that active involvement of local government in the processes of eviction is of critical importance, since it guarantees protection of the evicted person from homelessness. As per definition provided by the Committee of Economic, Social and Cultural rights “after eviction the person shall not be left homeless and his/her rights shall not be violated. In the case if evicted persons cannot provide the resources for survival, the participating states need to take measures for providing him/her with adequate alternate housing, settlement or allocation of fertile lands within the frameworks of available resources⁵⁴.

Based on the applications processed by the Public Defender of Georgia, several cases of providing evicted persons with temporary alternate housing were identified. In particular, when the local self-government unit of Tbilisi failed to provide shelter to the persons evicted from two state owned buildings, the Ministry of Labor, Health and Social Affairs of Georgia accommodated 16 families (out of evicted 64) in Kojori Orphanage – a branch office of LEPL State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking⁵⁵. Although within the given process the criteria for selecting families eligible for receiving alternate housing, as well as reasons of rejecting other applicants, are unclear⁵⁶.

The Public Defender of Georgia considers that in the above mentioned cases, the Ministry of Labor,

50 see the statement of the Public Defender of Georgia made on 9 August 2013: <http://www.ombudsman.ge/ge/news/1873-gancxadeba-saxelmwifo-sakutrebashi-arsebuli-qonebidan-socialurad-daucveli-moqalageebis-gamosaxle-bastan-dakavshirebit.page>

51 General comment №7 of the Committee of Economic, Social and Cultural Rights, paragraph 16

52 Recommendation №04-4/584 of the Public Defender of Georgia made to the Gamgeoba of Nadzaladevi district of City Hall of Tbilisi City on 1 August 2013

53 Gamgeoba of Nadzaladevi district of City Hall of Tbilisi City, 12 August 2013, Letter №06/85453-86

54 Same as above, paragraph 17

55 See the Resolution 211 issued by the Government of Georgia on 16 August 2013 “about adopting the social program “Social House”

56 See the public announcement of the Public Defender of Georgia made on 9 August 2013: <http://www.ombudsman.ge/ge/news/1873-gancxadeba-saxelmwifo-sakutrebashi-arsebuli-qonebidan-socialurad-daucveli-moqalageebis-gamosaxle-bastan-dakavshirebit.page>

Health and Social Protection of Georgia needed to provide information on the selection criteria, based on which the families eligible for receiving alternate housing were identified. In this particular direction, the transparency of the activities carried out by the ministry is essential and the response provided to the applicants need to be justified, so that they are able to produce evidence verifying their immediate need of shelter⁵⁷.

It is also remarkable, that the current legislation focuses solely on protecting the interests of the proprietor and during eviction does not envisage the guarantees for providing the adequate housing to the homeless and/or socially vulnerable person. For comparison, we can discuss the instruction adopted pursuant to the Decree 747 issued on 24 May 2007 by the Minister of Internal Affairs of Georgia, based on which the legislative bodies on a country level carried out the eviction procedures. As per the normative act, eviction procedures of a refugee or an internally displaced person should be conducted in coordination with the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees of Georgia and before receiving a written confirmation the legislative body is obliged to stop the eviction process⁵⁸. The purpose of stopping the eviction process is the assessment of the housing needs of a refugee or internally displaced person by the ministry. If the ministry identifies such need, it considers the eviction inexpedient and the legislative organ stops the eviction process.⁵⁹ Such legal mechanism is not accessible for socially vulnerable persons belonging to the homeless category. As a result, the risk of violating their rights to adequate housing is high.

As per definition provided by the Committee of Economic, Social and Cultural rights, despite the type of residence (illegal housing, misappropriated land and property), every person has to be provided with the living conditions of certain quality, which protect him/her from forced eviction, persecution and other types of jeopardy⁶⁰. These conditions envisage the legal mechanism, providing the guarantees for housing, land tenure and exploitation of immovable property; herewith, the processes of eviction are strictly under control⁶¹. Even under the circumstances of justified eviction, violation of international human rights caused by the process is inadmissible. Otherwise, legitimization of protection of one right at the expense of another is unacceptable.

The legislation prohibiting forced eviction is the crucial pillar of effectively defending the right to adequate housing. Therefore, the legislation should envisage legal guarantees, strictly controlling the eviction processes of the homeless persons, and in the case of justified eviction, protecting them from homelessness.

3.5. Inclusion of homeless persons in social programs

The current chapter addresses the systemic problems linked with the inclusion of homeless persons in social programs.

According to Article 4, item “k” of the “Law on Social Allowances” of Georgia, the social allowance system is a “combination of the activities funded, organized or coordinated by the state, directed towards improving the socio-economic conditions of the individuals with special needs, families

⁵⁷ Ibid

⁵⁸ Article 1, item 4 of the Decree 747 of the Minister of the Internal affairs of Georgia issued on 24 May 2007 “ about Adoption of the Rule of Restricting the Infringe or other kind of Suppression upon the Private Property”

⁵⁹ Same as above, paragraph 10

⁶⁰ General commentary №4 of the Committee of Economic, Social and Cultural Rights

⁶¹ Same as above, paragraph 10

living under the poverty line and homeless persons.” Based on the record, the legislation deliberately and lawfully puts the group of persons under distinct legal conditions and provides the high standards of their protection, since they are not able to provide the minimum resources necessary for living a decent life. Therefore, implementation of the right to social welfare of the vulnerable groups, including the homeless persons, significantly stipulates the social equity in the state.

State Program of Assistance for the Socially Vulnerable families is a major social program on a country level, since it is interlinked with the packages of social allowances of central and local governments. One of the major flaws of the given program is that homeless persons are not eligible to participate in it. In particular, according to the legislation, a family willing to become a program beneficiary should have a permanent place of residence⁶². Respectively, the most vulnerable category of the homeless persons – individuals without roof over their heads, who spend nights in the streets, building entrances, parks and other unplanned locations, are not eligible to benefit from the state program for socially vulnerable families, what leads to their social exclusion and indirect discrimination.

It is also noteworthy that the methodology for assessing the socio-economic conditions of the socially vulnerable families was created in 2005 and the given program inherently had the above mentioned flaw⁶³. The Public Defender of Georgia actively underlined the necessity of engaging the homeless persons in the program in its annual parliamentary reports and issued a number of recommendations in this regard⁶⁴. In 2010, in order to improve the document, the government adopted the updated methodology⁶⁵, which from 1 April 2015 will be replaced by a new assessment system adopted by the Government of Georgia by the end of 2014⁶⁶. Significantly enough, the inclusion of the most vulnerable category of homeless persons in the program was not provided under any circumstances and currently the given issue remains problematic.

As mentioned above, allowance packages envisaged by Georgian legislation are linked with the rating points assigned within the frameworks of state program for socially vulnerable families. Specially attention should be submitted to the above mentioned program “Social Housing in a Supportive Environment”, which was implemented in different cities of Georgia in 2009-2013 with financial support from the Swiss Agency for Development and Cooperation. One of the most significant flaws of the program is a mandatory criterion, based on which, the rating point of the beneficiary in the database of socially vulnerable families should not exceed 57,000. Therefore, it is obvious, that the homeless persons, who are not included in the program for the socially vulnerable families due to the existing flaw of the assessment methodology, cannot meet the mandatory criterion by default, which leads to their indirect discrimination.

As per definition provided by the committee of Economic, Social and Cultural Rights, implementation of the right to adequate housing without any kind of discrimination is an immediate responsibility of

62 Article №2, item “b” of the Resolution 126 issued by the government of Georgia on 24 April 2010 “about the reduction of poverty levels in the country and improvement of social security measures”

63 Resolution 126 of the Government of Georgia issued on 4 August 2005 “about adoption of methodology for assessing the socio-economic conditions of socially vulnerable families (households)”

64 see the parliamentary report on the second half of 2009 of the Public Defender of Georgia “about the legal Situation of Human Rights and Freedoms in Georgia”, chapter “the Right to Adequate Housing”, pg. 160-165; Also, the parliamentary report of 2012, chapter: same as above, pg. 324-329; also, parliamentary report of 2013, chapter: same as above, pg. 298-303

65 Resolution 93 of the Government of Georgia issued on 30 March 2010 “about adoption of methodology for assessing the socio-economic conditions of socially vulnerable families (households)”

66 Resolution 758 of the Government of Georgia issued on 31 December 2014 “about adoption of methodology for assessing the socio-economic conditions of socially vulnerable families (households)”

the state⁶⁷. The specific activities under responsibility of the government, which may be necessary for suppressing discrimination, are provided by the guiding principles of Limburg. According to the document: *“after joining the pact, the state should suppress de jure discrimination by abolishing any types of discriminative laws, regulations and practices (acts of validity and invalidity), influencing the implementation of the economic, social and cultural rights”*⁶⁸. Therefore, central as well as local government is responsible for implementation of activities for including the most vulnerable social group – homeless persons in the social programs.

The individuals illegally residing in state or privately owned objects represent another category of homeless persons, who, on the basis on the Resolution 115 issued by the Government of Georgia on 17 May 2013, may face complications linked with the inclusion in the state program for socially vulnerable families. The fourth section of a special report carefully examined infringements, occurring during the process of forced eviction of persons from the state-owned buildings. Below, we will discuss the rigid and regressive state social policy implemented after the inefficient program of subsidizing the given vulnerable groups.

On the basis of Resolution 454 issued by the Government of Georgia on 28 November 2012 “about implementation of activities aiming to provide social welfare for some family categories”, the Social Service Agency provided a one-time compensation of 6 month house rent to those families, who had willfully occupied state or privately owned objects and satisfied the criteria defined by the document (low income rate and a lack of housing). Thus, objective of the sub-legal normative act was to avoid the process of forced eviction of persons illegally living in state or privately owned property, by providing financial compensation. Although, given the instability of the allowance (after 6 months they would once again face the need of housing) the majority of homeless persons refused to receive the given allowance. The mentioned fact is substantiated by the statistical data provided by the unit, responsible for administration of allowances.

The Public Defender of Georgia requested the data from the Ministry of Labor, Health and Social Affairs of Georgia regarding the number of those families who benefited from the one-time social allowance as per the Regulation 454 issued by the Government of Georgia on 28 November 2012. According to the provided data, 2,302 applications for social allowance were registered with government, out of which 1,195 families were identified as eligible and were offered the allowance. 873 families addressed the agency with the request of social allowance, out of which three refused to accept further funding later. 103 families, still illegally residing in the state or privately owned property stopped receiving the funding. In the end, 767 remaining families fully benefited from 6 month allowance.⁶⁹ The given resolution was not continued from 2013, since the necessary financial means were not allocated in the budget.

The Public Defender of Georgia assumes that termination of social allowances for the vulnerable groups should not cause deterioration of their socio-economic conditions, since the state is responsible for implementation of progressive social policy. Its aim is to at least maintain existing standard. Legitimation of similar decision can be justified by two circumstances. First, when the need of social allowance is nullified, or second, when it is replaced with alternate and enhanced program. Over past years, based on the scope of evictions from state or privately owned property, one may conclude that the issue is still urgent and there is a significant need for implementation of a program providing the homeless persons with alternate housing. Therefore, termination of social

⁶⁷ General commentary №3, Paragraph 1 of the Committee of Economic, Social and Cultural Rights issued in 1990

⁶⁸ Limburg Principles about the implementation of an international pact on Economic, Social and Cultural Rights, paragraph 37

⁶⁹ Ministry of Labor, Health and Social Affairs of Georgia, Letter №01/78245, 24 September 2014

allowances as per Resolution 454 issued by the Government of Georgia on 28 November 2012 is negatively evaluated, unless replaced with another effective program.

One of the clear examples of regressive state policy implemented towards the persons illegally residing in a state owned objects is the exclusion of these individuals from the program for socially vulnerable families. In particular, according to the Article 5, item 5 of the normative act “the application for registration will not be accepted, if the applicant is unlawfully residing in a state owned building and according to his appeal to the agency, the legitimate proprietor does not approve this fact.” Therefore, after receiving the appeal of state unit, LEPL Social Service Agency does not review the applications of the individuals illegally residing in the state-owned object for registration in the database of socially vulnerable families. The preceding change was entered into force on 1 June 2013. Respectively if a socially vulnerable family was left homeless due to the specific reasons and willfully settled in a state-owned building, it will not be able to receive social allowance on this address.

The Public Defender of Georgia requested the information from the Ministry of Labor, Health and Social Affairs of Georgia regarding the objects within the boundaries of Tbilisi, where the homeless and socially vulnerable persons are refused to the right to get registered in the database, and due to the given restriction, several families had to leave the state-owned property. As per the data provided by the ministry, currently, capital-wide, there are 49 objects, the residents of which are refused to get registered in the database of vulnerable families on the basis of request of the Social Service Agency. Herewith, we were informed that the ministry does not maintain data about those families, who due to the operation of given mechanism, had to leave the property⁷⁰ and/or whether they started receiving social allowances⁷¹. Accordingly, it is not possible to determine whether adopting of such legislative regulation achieved its purpose (to eliminate the occupation of state-owned objects) and how many persons/families were affected by the given regulation.

The results of monitoring carried out in the state objects by the representatives of the Public Defender of Georgia reveal that the majority of the residents of these buildings are the homeless families living in severe socio-economic conditions. Respectively, termination of social benefits to the families illegally occupying state objects causes worsening of their social condition as well as increasing the levels of their exclusion. It is obvious, that the change in legislation essentially worsens the conditions of this vulnerable group and violates the principle of social state, based on which the government bears the responsibility to implement progressive social policy. As per definition provided by the Committee of Economic, Social and Cultural Rights, state shall take necessary steps for eventual and complete implementation of the rights recognized by the pact. Herewith, the government bears the responsibility to achieve the given objective timely and effectively.⁷² Regressive activities can be justified by two circumstances. First, when the need of social allowance is nullified, or second, when it is replaced with alternate and enhanced program.

Based on the above mentioned reasons, the Public Defender of Georgia considers that the regressive policy for preventing the willful occupation of state-owned objects by the citizens of Georgia unequivocally violates the rights to social welfare of homeless persons. Respectively, it is of crucial importance to change the discussed legislative regulation and take all alternate legal measures for protecting the state-owned property, effectively defending the legal interests of the proprietor as well as homeless persons.

⁷⁰ Ministry of Labor, Health and Social Affairs of Georgia, 24 September 2014, Letter №01/78245

⁷¹ LEPL Social Service Agency, 27 January 2015, Letter №04/5219

⁷² General Commentary №3, Paragraph 9 of the Committee of Economic, Social and Cultural Rights issued in 1991.

3.6. Temporary shelters/tents set up for homeless persons

On 12 December 2013 the Government of Georgia issued the Resolution 1946 “about the implementation of activities for assisting the homeless persons during winter of 2013-2014”. On the basis of the sub-legal normative act, in order to protect the dispossessed persons from homelessness and set up temporary shelters in the shortest time frame, the temporary inter agency commission working on the problems of dispossessed persons over the winter period of 2013-2014 was created. The task force set up temporary shelters in the form of tents in the cities of Tbilisi, Gori, Batumi and Kutaisi.

In 2014 the local government units were requested to provide data regarding the beneficiary statistics and detailed information about the operation of the shelter. Unfortunately, none of the units besides the City Hall of Tbilisi City Municipality provided the requested information to the Public Defender of Georgia. According to the information provided by the government of capital city, the tents located on Moskov Avenue in Tbilisi are intended for use by 240 persons and according to the latest data are inhabited by 180 persons⁷³.

Similarly to January 2014, in January 2015 the representatives of the Public Defender of Georgia carried out a monitoring of tents set up in Tbilisi. According to the acquired data, the majority of the beneficiaries of the tents are solitary persons, who, due to specific reasons, have cut all ties with their families and relatives and have to live in the streets. Different factors are observed when examining the reasons for homelessness of the persons living in tents, including the exclusion from the families caused by disability, old age and alcohol addiction. One of the main problems of the tent beneficiaries is the issue of inclusion in the program for socially vulnerable families and using the envisaged social benefits. Herewith, the persons living in tents suffer much higher levels of exclusion, than the families willfully living in state-owned property. This mainly indicates the opportunity for organizing internal livelihoods and maintaining the domestic lifestyle, which is not accessible for the tent beneficiaries. Therefore, the state service offered to the persons living in tents does not support their resocialization.

In order to improve the living conditions of the tent beneficiaries and solving the problems of dispossessed persons in a long term perspective, positive advances were made by the central and local governments in 2014. As already mentioned above, in 2014 the Government of Georgia developed basic standards for operating the shelter. Besides, as per the Resolution 1918 issued by the Government of Georgia on 24 October 2014 “about the urgent implementation of the activities for assisting the dispossessed persons in the Tbilisi City Municipality” the temporary interagency commission was abolished and the Tbilisi City Municipality was entrusted to create a temporary commission working on the problems of dispossessed persons. For improving the social services for the dispossessed persons, the given commission plans to build a shelter by 2015, which, after putting into exploitation, will replace the services for tent beneficiaries and assist the homeless persons living in Tbilisi.

The Public Defender of Georgia hopes that, similarly to the capital city, the tents for the homeless persons will be replaced in future by the stationary institutions in the regions as well, which will provide the needs-based assistance to the beneficiaries. The government needs to consider that the tent cannot be regarded as a long-term housing of homeless persons. Herewith, preserving availability of social services for the homeless persons, which to certain extent protects them from homelessness, is of crucial importance.

73 The City Hall of Tbilisi City Municipality, 21 October 2014, Letter №2568135

CONCLUSION

The Public Defender of Georgia welcomes the fact that the National Strategy for the Protection of Human Rights of 2014–2020 aims to implement the state responsibility on the basis of the Right to Adequate Housing and address the problems linked with homelessness; the strategy also envisages building of a shelter in the capital city and the implementation of individual activities by the central and local government units in this particular direction. Although, it is clear, that currently, the steps taken by the state are not sufficient for eliminating the problem of homelessness on a country level and it is essential to develop a state policy in this direction and actively work on its further implementation. The public Defender of Georgia hopes that the processes necessary for implementation of the Right to Adequate Housing will be irrevocable and above all, the national action plan will envisage specific activities for eliminating homelessness and guarantee the implementation of the Right to Adequate Housing.

For implementation of an effective legislative system providing legal protection to the homeless persons it is necessary to define the legal status of homeless persons, which will clearly specify the group of persons covered under the given definition. Besides, it is essential to define the responsibilities of central and local governments on legal level and specify their scope, as well as identify the mechanisms, procedures and timeframe for coordination. In regard to the maintenance of the databases of homeless persons, the purpose of the given responsibility and the activity package for its formation need to be clarified.

In order to fulfill the objectives of the National Strategy for the Protection of Human rights regarding the Right to Adequate housing, it is critical to develop a respective action plan and housing strategy, defining specific activities, resources, responsible units and timeframe for the implementation of set targets.

RECOMMENDATIONS:

To the Government of Georgia and Parliament of Georgia:

1. Modify and improve the definition of a notion of a homeless person, so that it covers different types of homelessness, which, according to the international standards, represent the subjects of the Right to Adequate Housing;
2. In regard to the homeless persons, specify the responsibilities of the central and local government and their purpose, including the mechanisms for coordination, procedures and timeframe;
3. On the legislative level, provide guarantees for protection of homeless persons from eviction, under which, in any particular case, the law enforcement unit organizes the eviction on the basis of cooperation with the local self-government. Before providing the alternate housing or shelter to the evicted person (when the given requirement is acknowledged by the Gamgeoba) the process of eviction shall be stopped;
4. Abolish the reservation of the Article 31 of the European Social Charter, protecting the Right to Adequate Housing.

Government of Georgia

1. In order to achieve the objectives based on the Right to Adequate Housing, develop an action plan and housing strategy under the National Strategy for the Protection of Human Rights (2014–2020), defining specific activities, responsible bodies and timeframe ensuring the achievement of set targets.
2. Estimate the necessary financial means for addressing the housing problem of homeless persons and gradually mobilize them in the state budget;
3. Implement the change in the Resolution 93 issued by the Government of Georgia on 30 March 2010 “about adoption of methodology for assessing the socio-economic conditions of socially vulnerable families (households)”, based on which the most vulnerable category of beneficiaries — persons without a roof over their heads, will be included in the program;
4. Abolish the change made in the Resolution 126 of the Government of Georgia issued on 24 April 2005 “about the reduction of poverty levels in the country and improvement of social security measures” under the Resolution 115 issued by the Government of Georgia on 17 May 2013.

Local self-governments and the Ministry of Economy and Sustainable Development of Georgia

1. On the basis of case-by-case investigation of facts of socially vulnerable, homeless families illegally occupying the state-own or municipal property and defining the scope of the problem, develop the plan/strategy for the purposes of resolving the existing problem, in a way of minimizing the risk of those families to stay homeless;
2. Improve the conditions of those objects in the shortest time frame, where the living conditions are extremely severe and have no basic infrastructure, including electricity, drinking water and sewerage, so that they comply with the minimum/core standards of the Right to Adequate Housing.

LEPL Social Service Agency of the Ministry of Labor, Health and Social Protection of Georgia

1. In order to reveal the scope of homelessness on a country level, carry out the monitoring of implementation of the Right to Adequate Housing and create a common database of homeless persons. The registered data will be used for developing the action plan for the strategy of eliminating homelessness.

Local Self-Governments

1. Regulate the methodology of registration the homeless persons in a database;
2. Regulate the methodology of compensating apartment rent to the homeless persons and planning the necessary activities for creating resources in the local budget in the given direction;
3. Maintain the database and ensure the availability of the given information to the LEPL Social Service Agency in order to monitor homelessness;
4. In the case of extension of “Social Housing in a Supporting Environment” program, modify the key criterion, based on which the homeless families without roof over their heads will have the opportunity to benefit from the given program;
5. In order to meet the obligations imposed by the Article 18 of the “Law on Social Allowances”, adequate financial means for creating the housing fund and/or implementation of other alternate project, ensuring the shelter provision to the homeless persons, need to be envisaged during development of local budget;
6. After the homeless shelters in Kutaisi and Tbilisi are put into exploitation, within the frameworks of “Social Housing in a Supporting Environment” program, the specific efforts need to be taken to develop the program of socio-economic rehabilitation of the beneficiaries, ensuring the transition of the shelters and resocialization of the homeless persons.