



THE RIGHT TO ADEQUATE HOUSING

the Analysis of Basic Challenges

EMC

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ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

EMC

Human Rights Education and Monitoring Center



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Table of Contents

Right to Adequate Housing (Overview of International Standards)	8
Introduction	9
Methodology	11
1. Historical Development of the View on Social Rights	12
2. Guarantees of Right to Adequate Housing in International Acts and Constitutions.....	14
2.1. Right to Adequate Housing in the International Documents	14
2.2. Right to Adequate Housing in Constitutions	17
3. The Content of the Right to Adequate Housing.....	19
3.1. The Concept and Component of the Right to Adequate Housing.....	19
3.2. Fundamental Principles for the Realization of the Right to Adequate Housing.....	21
4. Right to Adequate Housing and Related Rights (International Experience)	22
4.1. Right to Adequate Housing and Right to Life	23
4.2. Right to Adequate Housing and Right to Respect for Private and Family Life.....	24
4.3. Right to Adequate Housing and the Prohibition of Inhuman and Degrading Treatment	26
5. State Policy in Relation to Human Rights (the View of Constitutional Courts)	27
6. The Right to Adequate Housing with respect to Specific Groups.....	32
Findings	34

Forced Eviction and the Right to Adequate Housing	36
Introduction.....	37
Part I. International Standards for the Protection against Forced Eviction.....	38
Methodology.....	38
1. The Essence of Forced Eviction	40
1.1. The Definition of Home	40
1.2. The Definition of the Forced Eviction	41
1.3. International Instruments Regulating the Forced Eviction.....	43
2. Protection against Forced Eviction and the Role of the State.....	44
2.1. The Nature of the Legal Relations and the Role of the State.....	45
2.2. Vulnerable Groups and the Role of State	48
3. Standards for the Forced Eviction.....	50
3.1. State Duties Prior to the Execution of the Forced Evictions	50
3.2. State Obligations in the Process of Enforcement of Forced Eviction	64
3.3. State Duties after the Forced Eviction Procedures are Finalized	66
Findings.....	68
Part II. National Legislative Framework Regulating Evictions	71
Methodology.....	71
1. Regulating Eviction and Its Types in the National Legislation	72
2. The Decision on the Eviction.....	74
2.1. Eviction Based on the Court Decision	75
2.2. Eviction without Court Decision by the Authorized Person of the Ministry of Internal Affairs	77
2.3. Eviction in the Process of Demolition of Unlawful Construction.....	78

3. Procedure for the Enforcement of the Decision on Eviction	79
4. The Post-eviction Legal and Social Protection Guarantees	82
4.1. Legal Guarantees for the Protection of Right	82
4.2. State Obligation to Provide Alternative Housing.....	83
 Findings	 84
 Recommendations.....	 86
 The Right to Adequate Housing in the Context of the Needs of Persons with Disabilities (International Standards and Georgian Experience)	 88
 Introduction.....	 89
 Methodology.....	 91
 1. The Right to Adequate Housing of the Persons with Disabilities within International Standards.....	 92
1.1. The Essence of the Right to Adequate Housing in the Context of the Needs of Persons with Disabilities	93
1.2. Prevention of Homelessness of Persons with Disabilities within International Standards	104
 2. The Regulation of the Right to adequate Housing of Persons with Disabilities in Georgia	115
2.1. The Reflection of the Needs of Persons with Disabilities in Georgia’s Housing Regulation ...	115
2.2. Institutional Mechanisms for Implementing of the Right to Adequate Housing.....	121
2.3. Housing Services for Persons with Disabilities	124
 Findings	 132
 Recommendations.....	 135

Right to Adequate Housing

(Overview of International Standards)

Introduction

The right to adequate housing has a substantial impact on the enjoyment of other fundamental human rights and freedoms. The right is especially related to human dignity. The right to housing is an element of the right to adequate standard of living which is guaranteed at the international level in the fundamental documents, such as the Universal Declaration of Human Rights (UDHR)¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²

Realizing the right to adequate housing is of special importance due to the concept of housing, which, in turn, includes the inherent economic, social and cultural environment. The importance of housing is defined by objective and subjective factors which imply a space for individual “identity”, “self-determination”, “physical and moral integrity”, as well as “maintenance of relationships with others and a settled and secure place in the community”.³

Despite the important nature of the right to adequate housing, the challenges in the modern world are especially complex in relation to the enjoyment of the right, which is linked to the financialization of residential sector and the weakness of the social aspect of housing in state policies. According to the UN Special Rapporteur on the adequate housing, a significant shift in this area is linked to large-scale capital flow, which promoted the understanding of housing as a tool for trade and the guarantee for financial instruments. The concentration of significant financial resources in the area of housing has led to the transformation of this field into “means of accumulating wealth”. Against this background, the price of housing increases which limits access for the majority of the population. One manifestation of this is so-call “hedge cities”, where the capital is accumulated more and more intensively between those holding the ownership rights. According to the Special Rapporteur, the process also results in increased credit and bank liabilities and unparalleled scale of displacement and evictions due to credit agreements.⁴

According to the UN Special Rapporteur, after the financial crisis of 2008, the States could not understand their obligation to review policies and to take appropriate measures to achieve the goal of realizing the right to adequate housing for the persons with low income. They have restricted access to mortgages with the argument that the situation in the past was the result of people taking on “excess” financial responsibility.⁵ Also, some countries

1 Universal Declaration of Human Rights (UDHR), UN General Assembly, 217 A (III), Article 25(1) (10 December 1948).

2 International Covenant on Economic, Social and Cultural Rights (ICESCR), UN General Assembly, Article 11 (1966).

3 *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 82.

4 A/HRC/34/51, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, para. 5 (2017).

5 *Ibid*, para. 22.

have adopted the measure, so-called the “Golden Visa”, allowing foreign investors to receive citizenship in exchange for a certain amount of investment in property (For example, EUR 500,000 in Spain and Portugal).⁶

Thus, existing trends have either reduced or left no place for realizing the right to adequate housing.⁷ States have given up management functions in the area of housing. Namely, the financialization of the housing sector has taken out this area from the obligation of the state. In the view of the UN Special Rapporteur, “the state’s housing policy in most cases is accountable to financial institutions”, also the housing policy in most cases is affected by the interests of central banks and international financial institutions, which, as a rule, do not coincide with the obligations of the state in relation to adequate housing.⁸

Taking into consideration the scope of the problem, it is essential that the States pursue a policy that will be directed towards the realization of the right to adequate housing. The aim of this study is to review international standards of right to adequate housing, good practices and challenges related to the enjoyment of the right. As the need to protect the components of the right to adequate housing is additionally viewed in the category of other rights by the international and national constitutional courts and equivalent institutions, one of the most important aspects of this study is to show the indivisibility of human rights and freedoms in connection with the right to adequate housing. In this regard, in spite of diverse opinions, this document focuses on universal consensus, which includes separate components of the right to adequate housing as part of the court judgments on the number of legal issues.

This study consists of six parts. The first part reflects the historical process of development of the existing view on the importance of social rights, as the right to adequate housing takes one of the leading roles here. The second part shows the standards set by the international documents and the constitutions of other countries. The third part, by taking into consideration the previous parts, specifies and sums up the modern content of the right to adequate housing and presents the fundamental principles of its implementation. The fourth part examines the definitions of international or national courts under conditions where the document specifying the rights does not contain a record on the right to adequate housing. The fifth part of the document reviews important definitions of national constitutional control organs, which, in turn, creates the experience and practice of realizing the right to adequate housing. The sixth part focuses on the need for the state to consider the interests and needs of specific groups.

⁶ *Ibid*, para. 23.

⁷ *Ibid*, para. 1.

⁸ *Ibid*, para. 39.

Methodology

The following tools were used to research the right to adequate housing: the analysis of international standards; analysis of international experience and analysis of secondary sources.

Analysis of international standards

Analysis of international standards covered the study of international and regional normative instruments concerning the right to adequate housing or its individual components. Part of the documents studied within the scope of the study is recognized by Georgia as obligatory; however, for the purpose of fully determining the content of the right, the study has also included the acts that are not ratified by Georgia at this time. In order to fully understand the content of the housing rights, the study also analyzed the practice of Committees operating on the basis of relevant international legal acts, and studied the general comments elaborated by the Committees, which are an authoritative definition of the content of the right. For the purposes of determining the content of the right to housing, the study has also been reviewed and analyzed the practice of the European Court of Human Rights.

Analysis of international experience

In order to analyze international experience, the study examined the accommodation of the right to housing in the constitutions of different countries. In addition, in order to analyze the content and the legal framework of the right to housing in the legal systems of different countries, the document examines the practice of constitutional courts and equivalent institutions that have made significant precedents in the last decades in the determination of the right to housing and its content.

Analysis of secondary sources

In the framework of the study, analytical texts and political documents were reviewed, which concern the problematic nature of protection of the right to housing and on the one hand, aim to describe state challenges in relation to combatting homelessness and on the other – clarify the importance of protecting the right to housing and its resource for creating guarantees for basic human rights.

1. Historical Development of the View on Social Rights

The analysis of the historical development of view on social rights is essential for understanding the content and scope of the right to adequate housing,⁹ as the ongoing processes around the categories of these rights are largely reflected in the concept of the right to adequate housing.

Industrial revolution and urbanization created a basis for developing labor, welfare and equality rights.¹⁰ After the Second World War, it was an important step to adopt (1948) the Universal Declaration of Human Rights (UDHR), which made it clear that human rights and freedoms include civil, political, social, economic, and cultural rights. From the same period, the precedent of defining social rights in the national constitutions was created. Some researchers believe that the period of the Cold War separated political and civil rights and social and economic (rights), and moved them in an ideologically driven grounds, which was formed with an adoption of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) by the UN.¹¹ Such solution was determined by the perception that realization of social rights was based on the availability of material resources, which was considered to be a matter of political consensus (which at that time did not exist).¹²

The protection of social rights for the current period is one of the most important issues for human rights at both international and national levels (for social democratic, as well as liberal democratic political systems). The view of the UN has a leading role in the existing discussions, which establishes two principles of civil, political, economic, social and cultural rights: (1) indivisibility and (2) interdependence.¹³ This means a closer relationship between these groups of rights, which implies that it is impossible to utilize civil and political rights if social, economic and cultural rights are not protected; At the same time, “economic and social development requires enjoyment of political and civil liberties and participation in the process.”¹⁴ This logic was reflected in the actualization of social rights, which was very

9 In relation to the concept and the content of social rights it is noteworthy: International Covenant on the Economic, Social and Cultural Rights, which talks about social, economic and cultural rights; European Social Charter (ESC) refers to this list of rights as social rights; US terminology is also different, which combines the above mentioned rights into welfare rights. In this study, social rights are used in accordance with the European Social Charter and the tendentious approaches of the academic literature – economic, social and cultural rights are covered by the umbrella of social rights.

10 Kenna P, Housing Rights and Human Rights, FEANTSA, Brussels, 1 (2005).

11 *Ibid.*

12 Eristavi K., Housing and Freedom: limits and perspectives of activism fighting for the right to housing <https://emc.org.ge/2016/08/10/emc-113/#_ednref1> visited: 17.10.18.

13 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva (2014).

14 *Ibid.*

visible throughout Europe. In particular, the European Social Charter was renewed with the 1988 and 1995 protocols, and in 1996 the revised edition of the European Social Charter was adopted. Changes in the Charter reflected the rights, such as protection against poverty and social exclusion and the right to housing.

In this respect, the case law of the European Court of Human Rights is also important, which reads the components of social rights in the civil rights enshrined by the European Convention on Human Rights, as the group of civil and political rights is not free from the social consequences.

Development of similar vision on civil, political, social, economic and cultural rights at the national level is related to greater challenges and non-uniform approach; however, in recent decades active constitutionalization of social rights, as well as the special role of the constitutional authorities, can be observed.¹⁵ The issue is more complex considering, on the one hand, the issue of constitutional guarantees and on the other, how the constitutional courts or equivalent institutions perceive their role in realizing these rights. In the first case, some constitutions, when taking into consideration the social rights, use such formulation that indicates the state support, and not the obligation to protect (for example, Italy); There is also the case where the constitution does not fully list the social rights, but indicates the principle of social state and come from its influence it notes various rights in the Constitution (eg, the Federal Republic of Germany); There is also a view on the establishment of social rights guidelines (for example, India).¹⁶ In relation to constitutional justice, if the vast majority of Indian and American systems view the social and economic rights in the context of civil and political rights, the experience of the United States and Ireland is quite different in this respect, and the Canadian practice is distinguished by its medium vision.¹⁷ In the context of social rights jurisprudence, it is worth noting South Africa, where the judicial practice on the content of the right to adequate housing is very well-developed.¹⁸

15 Langford M., *The Justiciability of Social Rights: From Practice to Theory*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 3 (2008).

16 *Rights in Economic and Social Life*, in *Comparative Constitutionalism: Cases and Materials*, Eds. Dorsen N., Rosenfeld M., Sajo A. & Baer S., Second Edition, Thompson Reuters, 1353-1354 (2010).

17 Langford M., *The Justiciability of Social Rights: From Practice to Theory*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 9 (2008).

18 The Constitution of South Africa is referred to as a “transformational” constitution, because of the broader guarantees of social rights. This term was used by Karl Klare to mark the situation when transitional constitutionalism covers a wide range of social changes and at the same time excludes a violent political process. see.: Williams L. A., *The Right to Housing in South Africa: An Evolving Jurisprudence*, *Columbia Human Rights Law Review*, 45.3:732, 2014, 816. Cited: Klare K., *Legal Culture and Transformative Constitutionalism*, 14 *SAJHR* 1, 150 (1998).

Thus, beyond the theoretical perspectives, the recent practice – the experience of international or national law – has demonstrated a close relationship between social rights and civil and political rights; As the result, the borderline between civil, political, social and economic rights had become fragile, which had questioned and later overcame the view of strict hierarchy between them.¹⁹

2. Guarantees of Right to Adequate Housing in International Acts and Constitutions

2.1. Right to Adequate Housing in the International Documents

The right to adequate housing is guaranteed in various international acts. These include international treaties and agreements as well as political and program documents. The right to adequate housing in legal acts is not separated and is read as a component of the right to an adequate standard of living.

Universal Declaration of Human Rights (UDHR). In terms of right to housing, Article 25(1) of the Universal Declaration of Human Rights (UDHR) notes: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

International Covenant on Economic, Social and Cultural Rights (ICESCR). In relation to the right to housing, International Covenant on Economic, Social and Cultural Rights (ICESCR) is of a great importance. Article 11(1) refers to right to adequate standard of living and recognizes right to housing as one of its components (“The States 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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”). The Committee on Economic, Social and Cultural Rights (CESCR) monitors the fulfillment of the obligations set by the Covenant, and has elaborated several general comments on the right to housing.

¹⁹ Evangelista G. F., Prevention, Homelessness Strategies and Housing Rights in Europe, in A report on Criminalization of Homelessness in Europe, Ed. Jones S., 163-164 <<http://housingrightswatch.org/sites/default/files/11.%20Chapter%208.pdf>> visited: 17.10.18.

European Social Charter (ESC). Article 31 of the Council of Europe's European Social Charter (Revised Edition) provides the state's obligation to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view of its gradual elimination; to make the price of housing accessible to those without adequate resources. The European Committee of Social Rights as a Charter monitoring institution makes decisions and conclusions on the implementation of the state obligations.

EU Charter of Fundamental Rights. The EU Charter of Fundamental Rights is worth mentioning in relation to EU legislation. It does not directly indicate the right to adequate housing; however, Article 34(3) of Charter discusses the concept of "housing assistance". In particular, the document notes that "In order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources..."

In addition to these international instruments, protection of the right to housing is also included in other international legal documents in the context of specific groups:

Convention on the Rights of Persons with Disabilities (CRPD). UN Convention on the Rights of Persons with Disabilities (CRPD) indicates the right to an adequate standard of living (Article 28).

Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The UN Convention on the Elimination of All Forms of Racial Discrimination (ICERD)²⁰ Article 5(e) notes: "states Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: e) Economic, social and cultural rights, in particular: 3. The right to housing".

Convention on the Rights of the Child (CRC). Article 27 of the UN Convention on the Rights of the Child (CRC) refers to the right of the child to enjoy the right to an adequate standard of living.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). According to Article 14(2) of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²¹ states shall ensure to women the right "To

20 Ratified by the Georgian Parliament, with the Ordinance N1899; 16.04.1999.

21 Ratified by the Georgian Parliament, with the Ordinance N 561; 22.09.1994.

enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”.

Convention on the Status of Refugees. The UN Convention on the Status of Refugees²² indicates in Article 21 “in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”.

Convention on the Protection of All Migrant Workers and their Families. The UN Convention on the Rights of All Migrant Workers and Their Families in Article 43(1) indicates that migrants should not be discriminated against in terms of access to housing.

Convention on Indigenous and Tribal Peoples. The 169th Convention of the International Labor Organization (ILO) on the Indigenous and Tribal population refers to the obligation of the States to take all possible measures to eliminate discrimination of the representatives of the said peoples and other workers, including in the sphere of housing.²³

The EU Racial Equality Directive (2000/43 / EC) refers to the exclusion of discrimination in access to housing,²⁴ in particular, this is noted in Article 3(1). The right is also implicitly covered by Gender Equal Access to Goods and Services Directive 2004/113/EC.²⁵

Limburg Principles (1986) and **Maastricht Guidelines (1997)** are also worth mentioning, which indicate the requirements for effective implementation of social and economic rights, their nature and access to remedy after the rights are violated.

One of the principles of the **Recommendation of the Committee of Ministers to member states on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship**²⁶ is the right to satisfy the minimum requirements, which includes the right to food, clothing, shelter and basic medical care.

22 Georgia joined with the Ordinance of the Georgian Parliament N1996 –IIS; 28.05.1999.

23 Indigenous and Tribal Peoples Convention (No. 169), Article 20.2 (1989).

24 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive 2000/43/EC).

25 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Equal Access to Goods and Services Directive 2004/113/EC).

26 Recommendation No. R (2000) 3 of the Committee of Ministers to member states on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship, Adopted by the Committee of Ministers on 19 January 2000.

The Recommendation No. 155 of the International Labor Organization (ILO) on **Worker's Housing** aims at promoting the development of national policies, which envisage construction of housing and has a goal to provide adequate and dignifying living place and appropriate living environment for the workers and their families.²⁷

2.2. Right to Adequate Housing in Constitutions

Approximately half of the constitutions of different countries either generally or specifically reinforce the state's commitment in relation to the right to housing. From the constitutions of the EU member states, Portugal, Spain, Italy, Greece, Slovenia, Belgium, the Netherlands and Poland guarantee the right to housing in the constitution.²⁸

In relation to the right to adequate housing, the following country constitutions are important to note:

Spanish Constitution (Article 47): "All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the necessary conditions and establish appropriate standards in order to make this right effective, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies."

Columbian Constitution (Article 51): „All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.”

Dutch Constitution (Article 22(2)) "It shall be the concern of the authorities to provide sufficient living accommodation."

Polish Constitution (Article 75) "1. Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at the acquisition of a home by each citizen. 2. Protection of the rights of tenants shall be established by statute."

²⁷ Workers' Housing Recommendation (No. 115), para. 2 (1961).

²⁸ For envisaging right to adequate housing in the legislation of the EU countries see: Housing Rights in Europe <<http://www.housingrightswatch.org/>> visited: 17.10.18.

Portugal's Constitution (Article 65): „1. Everyone has the right for himself and his family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy. 2. In order to ensure the right to housing, the state is charged of: a) Programming and implementing a housing policy that is incorporated into general town and country planning instruments and supported by urbanization plans that guarantee the existence of an adequate network of transport and social facilities; b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing; c) Stimulating both private construction, subject to the general interest, and access to owned or rented housing; d) Encouraging and supporting local community and popular initiatives that work towards the resolution of the respective housing problems and foster the formation of housing and self-building cooperatives. 3. The state shall adopt a policy that works towards the establishment of a rental system which is compatible with family incomes and provides access to individual housing...”

Greek Constitution (Article 21(4)): “The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.”

Azerbaijani Constitution (Article 43): “the right to housing. I. Nobody might be deprived of his/her home. II. The state assists in the construction of living premises, takes special measures for realization of right for home.”

South African Constitution (Article 26): Everyone has the right to have access to adequate housing. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. No one may be evicted from their home, or have their home demolished, without an order of the court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions..²⁹

Slovenian Constitution (Article 78): „Proper Housing. The state shall create opportunities for citizens to obtain proper housing.”

Armenian Constitution (Article 86): “The main objectives of state policy. The main objectives of state policy in the economic, social, and cultural spheres shall be:... 3) To foster housing construction..³⁰

29 In relation to the right to housing, South African Constitution considers children to be subjects to special protection. To be more concrete, Article 28 talks about every child's right to shelter.

30 As of 6 December 2015. It is noteworthy, that before the amendment of the Constitution such formulation of the right to housing has existed “the main objectives of the state in economic, social and cultural spheres are: 3) to promote housing construction and contribute to the improvement of the living conditions of every citizen.” (Article 48). Also, Article 34 of the Constitution indicated that “all persons, as well as their family members, have a right to an adequate standard of living, as in his, which include the right to housing, as well as improvement of living conditions. The state takes appropriate measures to ensure rights realization of all citizens”.

3. The Content of the Right to Adequate Housing

3.1. The Concept and Component of the Right to Adequate Housing

The general comments elaborated by the Committee on Economic, Social and Cultural Rights (hereinafter “Committee”) formulate guidelines for the protection and progressive realization of right to adequate housing.³¹ The Committee’s view excludes a narrow definition of the right to adequate housing, as it does not equal to (however, it does include) having a shelter; From a general point of view, adequate housing means living at any place in “safe, peaceful and dignified conditions”.³² In addition, the right to adequate housing must be systematically defined along with the basic values referred to in the Preamble of the Covenant, such as human dignity, equality³³ and indivisibility.

Right to adequate housing, as considered by the Covenant includes the following components:

Legal security of tenure. The said component considers the state obligation that notwithstanding the type of tenure (including informal settlement, the occupation of land or property), all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.³⁴

Availability of services, materials, facilities and infrastructure. An adequate house contains access to certain facilities essential for health, security, comfort and nutrition. „All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.“³⁵

Affordability. In the said component the committee defines the state responsibility towards a) individuals who have access to housing, and b) those who do not have access to housing.

31 General Comment available here:

<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11> visited: 17.10.18.

32 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 7 (1991).

33 The concept of the housing includes: “Ensuring every person access to the right, despite their income and access to resources”. See, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 7 (1991).

34 *Ibid*, para. 8.

35 *Ibid*.

a) In the first case, steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. Financial costs associated with housing should not threaten the attainment of other basic needs. (b) In the second case, states parties should establish housing subsidies, as well as forms of housing finance which adequately reflect housing needs. In countries where natural materials were used for building houses, steps should be taken by States parties to ensure the availability of such materials.³⁶

Habitability. This component deals with adequate space; physical safety. Also health hazard infections and protection from natural threats, such as cold, damp, heat, rain, wind. In order to ensure habitable housing, in the perspective of the committee, WHO approach should be applied, according to which housing constitutes “environmental factor”, since, inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.³⁷

Accessibility. Committee distinguishes priority groups entitled to realization of the right: elderly, children, the persons with disabilities, HIV-positive individuals, persons with persistent medical problems, persons with psycho-social needs, victims of natural disasters, people living in disaster-prone areas and other groups. Both the legal regulation and policy should take fully into account the special housing needs of these groups. Increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.³⁸

Location. Housing should not be located on polluted sites nor in immediate proximity to pollution sources that threaten the health of the inhabitants; also, adequate housing should have such location, which allows access to employment options, health-care services, schools, childcare centers and other social facilities.³⁹

Cultural adequacy. Tendencies geared towards development or modernization in the housing sphere should appropriately enable the expression of cultural identity and diversity of housing.⁴⁰

According to the basic international standards, protecting the right to adequate housing entails the existence of material and procedural protection mechanisms. In this regard, it is im-

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

portant for the states to consider minimum guarantees of rights protection: 1) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; 2) legal procedures seeking compensation following an illegal eviction; 3) opportunity to submit complaints against illegal actions carried out or supported by landlords; 4) allegations of any form of discrimination in the allocation and availability of access to housing; 5) complaints against landlords concerning unhealthy or inadequate housing conditions.⁴¹

For understanding the content of adequate housing, it is important to consider the perspectives of international and regional instruments that establish the standard of protection of the components of the residential space. For example, the European Committee on Social Rights (hereinafter “European Committee”) in the case of *European Center for Roma Rights v. Portugal*⁴² stated that the concept of an adequate housing means housing which is safe, in terms of sanitation and health care.⁴³ This means that common benefits such as water, electricity, sanitation, and possibility of placing garbage in the appropriate place have to be accessible.⁴⁴ The Committee focuses particularly on the water component and points out that the right to adequate housing includes having access to fresh water, which should be placed at a reasonable distance.⁴⁵

3.2. Fundamental Principles for the Realization of the Right to Adequate Housing

Similarly to rights protected by the International Covenant on Economic, Social and Cultural Rights, the right to adequate housing/ realization of the right should be based on two basic principles: (a) Equality; (B) Progressive realization of the right.

The fundamental principle of the right to adequate housing – non-discrimination is derived from the Second Article of the Covenant, which implies the immediate obligation of States to ensure that the exercise of the right is not based on any discriminatory grounds.⁴⁶ With respect to the housing, discrimination may take several forms: (1) supply – the situation where

41 *Ibid*, para. 17.

42 *European Roma Rights Centre (ERRC) v Portugal*, Complaint no. 61/2010, Decision on Merits, ECSR (30 June 2011).

43 *Ibid*, para. 31.

44 *Ibid*.

45 *Ibid*, para. 36.

46 Ringelheim J. & Bernard N., *Discrimination Discrimination in Housing*, European Network of Legal Experts in the non-discrimination field, European Commission, 50-51 (2013)

<http://ec.europa.eu/justice/discrimination/files/la_discrimination_dans_le_logement_final_en.pdf> visited: 17.10.18.

the housing is not appropriate for specific groups. This may be related to finances, family structure, health status, age or cultural differences.⁴⁷ (2) Allocation – In this case, the specific groups cannot utilize existing homes, because the owners refuse to transfer the residence to an individual due to specific grounds. (3) Occupation – In this situation, the person is deprived of an opportunity to utilize the housing or the conditions are deteriorating.⁴⁸

The principle of progressive realization of the right to adequate housing means that the States must ensure the maximum realization of the right to adequate housing in light of the existing resources. This concept is obligatory for states. It recognizes that realization of the right might not be ensured on the short-term basis,⁴⁹ but at the same time, it implies the obligation of State to ensure sustainable progress on the path towards full realization of the right to adequate housing.

4. Right to Adequate Housing and Related Rights (International Experience)

The essential importance of the right to adequate housing is the result of the social consequences of this right, which includes both social, and civil and political rights. For example, the right of adequate housing is closely related to equality and right to life.⁵⁰ The right to adequate housing is the prerequisite for the protection of health,⁵¹ social security,⁵² right to education,⁵³ the right to privacy,⁵⁴ and the protection of labor rights.⁵⁵ For example, the European Court of Human Rights views protection from industrial pollution under the civil

47 *Ibid.*, 6.

48 *Ibid.*

49 General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), Committee on Economic, Social and Cultural Rights, para. 9 (1990).

50 A/HRC/34/51, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, para. 11 (2017).

51 On the Georgian context of the right to adequate living in relation to right to health see, Non-recognition, Inaction and Repression in Exchange for Accommodation, Human Rights Education and Monitoring Center (EMC), Tbilisi, 17-24 (2014).

52 On the Georgian context of the right to adequate housing in relation to social security see, Non-recognition, Inaction and Repression in Exchange for Accommodation, Human Rights Education and Monitoring Center (EMC), Tbilisi, 28-35 (2014).

53 On the Georgian context of the right to adequate housing in relation to right to education see, Non-recognition, Inaction and Repression in Exchange for Accommodation, Human Rights Education and Monitoring Center (EMC), Tbilisi, 24-28 (2014).

54 On the Georgian context of the right to adequate housing in relation to right to private life see, Non-recognition, Inaction and Repression in Exchange for Accommodation, Human Rights Education and Monitoring Center (EMC), Tbilisi, 41-42 (2014).

55 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 9 (2014).

right to respect for family life,⁵⁶ in some case protection from homelessness is also included here.⁵⁷ In the scientific literature, there are also cases when the United Nations Committee Against Torture and Inhumane Treatment identified the incomppliance of the demolition of the house. Also, the US Court banned the arrest of a homeless person for spending the night in public spaces.⁵⁸

4.1. Right to Adequate Housing and Right to Life

According to the modern interpretations, there is a significant interrelation between the right to adequate living and the right to life. The UN Special Rapporteur's report unequivocally expresses that adequate housing, dignity, security and life are "essentially the same".⁵⁹ "It is impossible to distinguish the right to life from the right to a safe living, and the right to a safe living can only be possible in a dignified, safe environment, free from violence".⁶⁰

According to the Human Rights Committee's explanation, the right to life should not be narrowly interpreted and its protection requires positive action from the state.⁶¹ In this section, the Committee points to the commitment of the state to reduce the death rate of minors and to increase the life expectancy.⁶² Later, the Committee is direct in relation to including right to the adequate living into the right to life. Namely, in 1999, the Committee pointed out in a periodic review that homelessness causes serious health problems, including death. As a way to deal with this serious problem, the Committee sees the need for positive measures to be taken by the States.⁶³

The Human Rights Committee is currently working on a renewed comment on the right to life in order to make the explanations relevant to modern challenges.⁶⁴ It strengthens the view of a strong connection between the right to life and the right to housing and determines that states have an obligation to resolve and respond to the conditions directly threatening hu-

56 *López Ostra v. Spain* App. no. 16798/90 (ECtHR, 09 December 1994).

57 *Botta v. Italy* App. no. 21439/93 (ECtHR, 24 February 1998).

58 Langford M., *The Justiciability of Social Rights: From Practice to Theory*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 4 (2008).

59 A/71/310, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (2016).

60 *Ibid*, para. 27.

61 General Comment No. 6: Article 6 (Right to Life), UN Human Rights Committee (HRC), paras. 1-5 (1982).

62 See, para. 5.

63 CCPR/C/79/Add.105, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, para. 12 (1999).

64 Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life <<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>> visited: 17.10.18.

man life or the dignified realization of the right to life.⁶⁵ In the committee's view, the reaction on general terms implies the state focus on hunger, poverty and homelessness.⁶⁶ However, at the same time, the Committee points to the existence of short-term and long-term objectives and the short-term objectives include a person's access to food, water, shelter and etc.⁶⁷

4.2. Right to Adequate Housing and Right to Respect for Private and Family Life

In view of the European Court, issues related to the right to housing are in certain cases covered by the Article 8 of the European Convention on Human Rights (hereinafter "Convention"), which implies the right to respect for private and family life. According to the European Court, it is essential to assess the following issues in relation to housing rights under Article 8 of the Convention: (1) whether housing issues affect private life and (2) what are the person's needs and condition.⁶⁸ Prior to assessing these issues, it is important to settle the issue of whether the specific space could be interpreted as a living space. Under the interpretation of the European Court, the residence is an autonomous category and it is possible to view the appropriate space as housing according to several alternative criteria: (1) a person resides there on a permanent basis or (2) a person has a sufficient and continuous link to the housing.⁶⁹

The European Court shares the opinion that, in the implementation of social rights (including while discussing housing issues under Article 8 of the Convention), there is a wide margin of appreciation, although the court also sees the risk of apparent misconduct. Consequently, the European Court has elaborated criteria on the extent of the European Court's intervention in such matters:

- (1) With respect to the right of housing as in other social and economic rights, the State enjoys a wide margin of appreciation.⁷⁰ However, the European Court also notes the fact that the authorities may "make mistakes" in assessment.⁷¹

65 General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life, Human Rights Committee, Advance Unedited Version (2018).

66 *Ibid*, para. 30.

67 *Ibid*.

68 *Marzari v Italy* App. no. 36448/97 (ECtHR, 4 May 1999), Decision as to the Admissibility.

69 Roagna I., Protecting the Right to Respect for Private and Family Life under the European Convention on Human Rights, Council of Europe human rights handbooks, Council of Europe, Strasbourg, 93 (2012).

70 *Buckley V. The United Kingdom* App. no. 20348/92 (ECtHR, 29 September 1996), para. 75; *Čosić V. Croatia* App. no. 28261/06 (ECtHR, 15 January 2009), para. 20; *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 148.

71 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 92.

- (2) The scope of state discretion is more narrow when the right on the opposite side is of “fundamental” or “personal” nature. Such category of rights is included in Article 8, which concern rights of “central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community”.⁷²
- (3) The scope of state discretion also means assessing procedural efficiency,⁷³ how fair was the decision-making process and how well the interests protected by Article 8 were taken into consideration.⁷⁴
- (4) Loss of housing is the most radical form of interference in the right to respect for housing.⁷⁵ In such a scale of right’s violation, it is the right of every human being to have the proportionality of the interference judged by an independent court. This is also obligatory even in cases where, according to the domestic legislation, the right to ownership has been terminated.⁷⁶ Also, at the initial stage, it is possible that determination of the form and intensity of interference could be in the government’s discretion, but the final decision on whether or not the proposed action should be accepted is made by the court.⁷⁷ The scale of the assessment should be based on the standards set forth in Article 8 of the Convention.⁷⁸
- (5) In the view of the European Court, when assessing the proportionality of the eviction is important to determine whether the occupation of the housing was legal.⁷⁹ However, this does not mean that if the specific space is illegally occupied, the decision will always be taken against the inhabitant who occupied the space.
- (6) The Court standard is particularly high when the case affects the vulnerable groups.⁸⁰ Considering these criteria, in the view of the European Court, refusal to provide ad-

72 *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 82.

73 *McCann V. The United Kingdom* App. no. 19009/04 (ECtHR, 13 May 2008), para. 49.

74 *Buckley V. The United Kingdom* App. no. 20348/92 (ECtHR, 29 September 1996), para. 76; *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 92; *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 147.

75 *Yevgeniy Zakharov V. Russia* App. no. 66610/10 (ECtHR, 14 March 2017).

76 *Ibid*, para. 34; *Kay and Others v. the United Kingdom* App. no. 37341/06 (ECtHR, 21 September 2010), para. 68; *Orlic V. Croatia* App. no. 48833/07 (ECtHR, 21 June 2011), para. 65.

77 *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 147.

78 *Yevgeniy Zakharov V. Russia* App. no. 66610/10 (ECtHR, 14 March 2017), para. 34; *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 147.

79 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 102.

80 *Ibid*, para. 98; *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 84.

equate housing for people with acute illness is an act with a special influence on the personal life of a person.⁸¹ More specifically, the Court has determined that Article 8 guarantees the State's obligation to provide a person with disability with appropriate social housing. Thus, the Court reiterated its definition that, in addition to the negative, the State has positive obligations which are inseparable for the purpose of respecting private life.⁸²

The European Court also saw the positive obligation of the State in relation to the various elements of the housing. According to the abovementioned, the State has an obligation to protect against the smell and other disturbing impacts from the waste-treatment plant, toxic emissions from the chemical factories, the pollution from the stainless steel factory, the noise from the pubs and nightclubs.⁸³

4.3. Right to Adequate Housing and the Prohibition of Inhuman and Degrading Treatment

In the context of the right to adequate housing in relation to the prohibition of inhuman and degrading treatment, the 2015⁸⁴ decision of the ECtHR⁸⁵ is noteworthy, in which the court defined the eviction of a shelter-seeker from the housing center as a violation of Article 3 (prohibition of inhumane and degrading treatment). The case concerned the asylum seekers, who according to the national laws were refused asylum and even before being expelled they were not given an opportunity to utilize the shelter– „they remained without any means of subsistence and with no accommodation despite the very cold weather for nearly three more weeks until their return to Serbia was organized via a charitable organization...“⁸⁶

The court explained that the Belgian State did not consider the applicant's vulnerability – exposing the applicants to conditions of extreme poverty, having left them out on the streets with no resources, no access to sanitary facilities, and no means of providing for their essential needs fall within the scope of Article 3 of the Convention and amounted to degrading treatment. In the view of the court, the state's treatment has failed to respect the applicant's

81 *Marzari v Italy* App. no. 36448/97 (ECtHR, 4 May 1999), Decision as to the Admissibility.

82 *Ibid.*

83 *Geurra v Italy* EHRR (1998), 357; *Lopez-Ostra v Spain* EHRR (1991), 319; *Moreno-Gomez v Spain* App. no. 4143/02 (ECtHR, 16 November 2004); *Fadeyeva v Russia* App. no. 55723/00 (ECtHR, 9 June 2005).

84 *V.M. and Others v. Belgium* App. no. 60125/11 (ECtHR, 7 July 2015).

85 However, the case was handed over to the Grand Chamber, which did not see the applicant's continued interest in the case and dismissed the application. *V.M. and Others v. Belgium* App. no. 60125/11 (ECtHR, 17 November 2016).

86 *V.M. and Others v. Belgium* App. no. 60125/11 (ECtHR, 7 July 2015), para. 50.

dignity and “this situation undoubtedly aroused in them feelings of fear, anguish or inferiority capable of inducing desperation”.⁸⁷

In the case of *Moldovan and others v. Romania*, the European Court of Human Rights concluded that the applicants’ living conditions and the state official’s racial discriminatory approach to their needs were a violation of the right to human dignity, which constituted “inhumane treatment” envisaged by Article 3 of the Convention.⁸⁸

5. State Policy in Relation to Human Rights (the View of Constitutional Courts⁸⁹)

The obligation of the States to realize the right to adequate housing is defined by international treaties and agreements on the one hand and on the other hand by national legislation and constitutional provisions. Thus, the definitions of the national Constitutional Court or equivalent institutions are of particular importance in relation to the content of the right to adequate housing. In this process, it is essential to determine the test the court is using when assessing the possibility of violation of the right and how it articulates when assessing the constitutionality of the particular norm.

South African Constitutional Definition

Article 26 of the Constitution of South Africa notes that: “(1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of the court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.” The content of the provision is important as it is based on the International Covenant on Economic, Social and Cultural Rights.

One of the earliest cases of the right to adequate housing, as the right judged by the court, was *Grootboom* case.⁹⁰ According to the factual circumstances of the case, persons living in an informal settlement, the majority of which were children, moved to private property. As

⁸⁷ *Ibid*, para. 162.

⁸⁸ *Moldovan and others v. Romania* App. nos. 41138/98 and 64320/01 (ECtHR, 12 July 2005).

⁸⁹ In the present study, the notion of the Constitutional Court covers the Constitutional Court carrying out the constitutional justice, as well as other equivalent institutions.

⁹⁰ *Government of the Republic of South Africa and Others v Grootboom and Others*, CCT11-00 (2000).

a result of their eviction, their property was almost destroyed. Consequently, the evicted persons requested the authorities to provide temporary adequate housing.

In the present case, the Court explains that civil, political, social and economic rights are closely linked to each other, which implies their indivisibility.⁹¹ According to the court's perspective, „there can be no doubt that human dignity, freedom and equality, the foundational values of our society, is denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in the constitution“.⁹² Thus, the South African Constitutional Court explains that the indivisibility of rights is the leading vision of the human rights-oriented society, and realization of minimum standards of social and economic rights gives the possibility to people with relevant needs to be involved and benefit from the civil and political right. The impossibility of providing them with minimum needs leads to the public seclusion of relevant individuals, which undermines the idea of realizing the principle of democracy.

The Court also discussed the State's positive obligation and determined the State's obligation to ensure the protection of rights of persons who live in poverty or homelessness.⁹³ International Covenant on Economic, Social and Cultural Rights “is of significance in understanding the positive obligations”, especially considering that party to the Covenant is the relevant state.⁹⁴

For the definition of progressive realization of the right to housing, an issue of particular importance is a minimum core component, a standard set by the Committee on Economic, Social and Cultural Rights. In the perspective of the Court, assessing the protection of said standard shall include the following characteristics: average income, employment indicator, access to land and property.

The court defined the following concepts: (a) “within available resources.” (b) “reasonable legislative and other measures”, (c) “progressive realization of the right”. According to the general perspective of the court, these criteria create an obligation for the state to elaborate “comprehensive” and “workable” policy plan.⁹⁵

(a) The obligation of the state to take the adequate measures is related to state actions within its available resources.⁹⁶

91 *Ibid*, para. 23.

92 *Ibid*.

93 *Ibid*, para. 24.

94 In this regard, especially important are Articles 2(1) and 11(1) of the Covenant. *Government of the Republic of South Africa and Others v Grootboom and Others*, CCT11-00 (2000), para. 27.

95 *Ibid*, para. 38.

96 *Ibid*, para. 46.

(b) In relation to reasonable legislative and other measures, the court assessment is based on territorial organizations and sharing of the management functions. Court observes that the issue of realization of the right to adequate housing must be determined on the national government, provincial government and local government levels. It does not give priority to any of these levels or does not put the whole responsibility on the one sphere of the government.⁹⁷ It is essential that the allocation on functions to be clear.⁹⁸

The scope of reasoning of the court does not mean that only the financial criteria will be evaluated.⁹⁹ It is necessary to understand the issue in a complex and systemic manner. With regard to the legislative and other measures, it means the unified approach of the legislative and executive power, which is expressed by the enforcement of the policy by the authorities, established by the legislation. This should be reasonable in terms of its content and the possibility of implementation.¹⁰⁰ The court shall specify detailed information and criteria about the characteristics of the program, in particular, indicating that the program should be “balanced and convenient”, and its provisions should be tailored to the housing crisis as well as to short, medium and long-term needs.¹⁰¹ The Court emphasizes the importance of short-term needs and indicates that ignoring the issues of people with urgent needs excludes the realization of the right.¹⁰²

(c) In relation to the progressive realization of the right, the Court shares the explanations of the Committee and indicates that progressive realization implies appropriate steps: to identify the legal, administrative, practical, financial difficulties and where possible, ensure their elimination; In addition, besides the qualitative characteristics, quantitative measurements should also be taken into consideration. In particular, it is important to reduce the problems not only for the greater number of people but also for different groups.¹⁰³

Indian Constitutional Definition

The Constitution of India does not recognize the right to adequate housing, but the adequate standard of living is indicated in the state policy program chapter. The right to adequate housing is protected within the constitutional jurisdiction – the Supreme Court of India has read it in Article 21 of the Constitution of India (Protection of Life and Private Freedom).¹⁰⁴

97 *Ibid*, para. 39.

98 *Ibid*, para. 39.

99 *Ibid*, para. 41.

100 *Ibid*, para. 42.

101 *Ibid*, para. 43.

102 *Ibid*, para. 44.

103 *Ibid*, para. 45.

104 *Chameli Singh & Ors. v. State of U.P. & Anr.* (1996) 2 SCC 549.

This provision indicates that no one can be deprived of life and personal liberty, except for the procedures prescribed by law.

With respect to the right to life and adequate living conditions, it is worth mentioning *Maneka Gandhi v. Union of India*,¹⁰⁵ in which the court explains that the right to life includes the right to live in a dignified environment.¹⁰⁶ This vision was also developed in the case *Francis Coralie v. Union Territory of Delhi*,¹⁰⁷ where the Court has expanded its reasoning and indicated that proper nutrition, clothing and shelter are the basic needs for living.¹⁰⁸

In Shantistar case,¹⁰⁹ the legislation regulating the construction issues would not have been applied to a specific land and construction if the developer would, at the same time, be responsible for providing a “relatively weaker sections of the society” with housing. A matter of dispute in the case was the extent to which the relevant developers who had the obligation to build houses for the “relatively weaker section of the society” fulfilled their responsibility. As the Court notes, although the term derives from the constitution (formulation of Article 46 of the Constitution), there is no relevant definition and that the State’s responsibility to take on this issue means resolving the ambiguity, which is on the agenda due to the fact that there were is no specific definition.¹¹⁰ The court noted that the interpretation of the term is state responsibility. The rationale of this approach was seen by the court that the number of the recipients was gradually rising and there was a danger that the relevant persons would have false expectations. The Court also notes that in determining the notion of “weak sectors of the society” the specific amount of money should be determined, which will be a minimum income in order for those families to fall under the scope of the “weak sector”.¹¹¹ In addition, the court pointed out that the authorities should control the issue of implementing the responsibilities. The Court also offers certain criteria in this regard – to perform the obligation in the appropriate time, to exclude the use of appropriate schemes by unauthorized persons and etc.¹¹² Thus, under conditions where state policy is being planned to realize the right to adequate housing, it is essential to take care of its implementation, however, in assessing such policies, the court sees its role in only indicating possible criteria. In addition, the Court actively speaks of the importance of effective monitoring of such schemes.

105 *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

106 Housing Rights Legislation, Review of International and National Legal Instruments, United Nations Human Settlements Programme (UN-HABITAT) Office of the High Commissioner for Human Rights (OHCHR), Nairobi, 94 (2002).

107 *Francis Coralie v. Union Territory of Delhi*, AIR (1981) S.C.R. 746.

108 Housing Rights Legislation, Review of International and National Legal Instruments, United Nations Human Settlements Programme (UN-HABITAT) Office of the High Commissioner for Human Rights (OHCHR), Nairobi, 94-95 (2002).

109 *Shantistar Builders v. Narayan Khimalal Totame, Civil Appeal No. 2598/1989* (1990) 1SCC 520.

110 *Ibid*, para. 12.

111 *Ibid*, para. 15.

112 *Ibid*.

In *Shantistar* case, the Court made a significant clarification on the shelter issue. The Court observed that the goal of providing shelter is not only the protection of the person's body but also the prerequisite for development in various directions.¹¹³

In 1991, Indian Supreme Court discussed a PIL case, in which it noted that it is impossible not to discuss the violation of fundamental rights, when the case concerns those "those individuals who live in slavery in such helpless condition where they do not have appropriate or adequate shelter/roof over the head, to protect themselves from rain and sun".¹¹⁴

The Supreme Court of India shared its viewpoint in other decisions and explained that the right to shelter "gives more importance" to right to life.¹¹⁵ In the Court's view, the right to live in an organized society is ensured when the person is given the means of development and growth, which, in turn, is the goal of each person. The Court considers that any civil, political, social or cultural right which is included in the Declaration of Human Rights requires a basis which is formed when the person's fundamental rights are realized. In the Court's view, these are right to food, water, adequate environment, education, medical care and shelter.¹¹⁶

The court clarifies the concept of housing in detail and emphasizes its substantive importance, and it concludes that the goal of this right is a person as well as the whole community. The existence of such a housing that provides the opportunity to the person to increase the physical, mental, intellectual and spiritual development is decisive for the court.¹¹⁷ The Court reiterated the general content of the comment of the Committee on Economic, Social and Cultural Rights in relation to the fact that housing does not mean just the existence of the shelter. It also implies appropriate infrastructure and this is a prerequisite for human development. The existence of permanent shelter for the Supreme Court of India is a prerequisite for democracy, therefore it is both individual and public good. In particular, the existence of shelter is the component that the person is the responsible citizen and equal participant of democratic processes.¹¹⁸ According to the Indian Court, the main aim of this process is to ensure human dignity as a constitutional value – "absence of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to life itself."¹¹⁹

113 *Ibid.*, para. 9.

114 *Bandhua Mukti Morcha v. Union Of India & Others*, on 16 December (1983), para. 67.

115 *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors* (1996).

116 *Chameli Singh & Ors. v. State of U.P. & Anr.* (1996) 2 SCC 549, para. 8.

117 *Ibid.*

118 *Ibid.*

119 *Ibid.*

US Constitutional Definition

The US Supreme Court narrowly assessed the issue of social and economic rights, but this policy has changed since 1972.¹²⁰ With regard to the previous practice, it is worth mentioning the 1969 case, *Shapiro v. Thompson*.¹²¹ The case concerned social welfare benefits, but it is important to consider the case because the existence of social welfare gives the recipient the possibility of having food and shelter necessary for survival.

According to the factual circumstances of the case, a person in California could not be eligible to receive social benefits if he/she was a new resident of the area and at least 6 months have not passed after receiving the residence. The court sees this process as part of the emigration policy. In spite of this, in the Court's perspective, "detering migration using poor people is constitutionally impermissible".¹²² Thus, it is essential that the state-run policy does not consider social vulnerability as a means to achieve legitimate goals.

6. The Right to Adequate Housing with respect to Specific Groups

The issue of interests of vulnerable groups is especially problematic in the realization of the right to adequate housing. The special needs and difficulties faced by the vulnerable groups intensify the State's commitment to a certain degree. In this regard, special care is provided to persons with disabilities, children, women, homeless people, internally displaced persons, migrants, indigenous peoples.

The challenges faced by these groups are of different scope. They also differ in their vulnerability factors. For example, most of the constructions do not take into account the needs of persons with disabilities, which is a major contributing factor for limiting an access to the property and different institutions. In terms of legal requirements, legal component of the ownership is especially problematic for those persons who have intellectual and psychological needs.¹²³

120 Langford M., *The Justiciability of Social Rights: From Practice to Theory*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 6 (2008).

121 *Shapiro v. Thompson*, 394 U. S. 618 (1969).

122 *Shapiro v. Thompson*, 394 U. S. 618, 629 (1969).

123 *The Right to Adequate Housing*, Fact Sheet No. 21/Rev.1, Geneva, 23 (2014).

Various factors influence the right to adequate housing in relation to women. In the case of women's homeless, limited access to property rights, which limits their economic and personal autonomy, is important to note.¹²⁴

The living conditions also have a special impact on the child's well-being and subsequent realization of their rights. On the one hand, children have special needs, and on the other hand, their emotional state calls for considerable care and attention. For example, the effect of eviction for the child is equivalent to the state of war.¹²⁵ The right to adequate housing with respect to children is unconditionally related to living in sanitary and hygienic conditions, as well as the absence of water problem. Particularly problematic are the situations where the water source is at a long distance.¹²⁶

Planning the appropriate policy towards homeless people is an important task for the state. The empirical study of homelessness and the planning and development of response policies and programs is complicated by the fact that there is no uniform approach¹²⁷ in relation to the definition of homelessness.¹²⁸

Violation of the right to adequate housing is particularly acute in case of internally displaced persons and migrants. As a rule, these individuals are, at the same time, victims of discrimination on several grounds, which makes it more difficult for them to enjoy different rights.¹²⁹

It is also an important challenge for the states to protect the rights of indigenous peoples.¹³⁰ These groups, as a rule, reside in the agricultural regions, but the tendency is that they are moving to cities and in most cases, their living conditions do not meet the standards, including in terms of cultural incompatibility.

124 *Ibid*, 18.

125 *Ibid*, 20.

126 *Ibid*.

127 The tendencies of narrow and broad interpretation of homelessness are important to note. A narrow definition only refers to the existence of shelter. However, it can be said that such definition can no longer be justified, as the Committee's explanation clearly states that the content of the right to adequate housing goes beyond the necessity to have a roof over the head. A broader definition of homelessness includes such issues as: adequate housing, homelessness risks, duration of homelessness and minimization of its effects.

128 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 22 (2014).

129 *Ibid*, 24.

130 *Ibid*, 27-28.

Findings

- Despite the great importance of the right to housing, the challenges in the realization of the right to adequate housing in the modern world are especially complex, which is linked to the financialization of housing sector and the weakness of the social content of the state politics. The existing tendencies have reduced the space for the realization of the right to adequate housing, and as a result, access to housing has been restricted to a large part of the population with low and middle income. The existing challenges, in turn, have increased the role and importance of the right to housing as an instrument, which has been reflected in the recent tendencies of the content of the right, including the establishment of significant practices by the constitutional courts of different countries;
- The content of the right to adequate housing is quite wide and it is not limited to having a shelter; Adequate housing means the living in a “safe, peaceful and dignified conditions”. Components of the right to a adequate housing are: the existence of legal protection mechanisms for ownership of the housing area; access to services, materials, equipment and infrastructure; ensuring access to housing, for are persons who have access, as well as the persons who don’t have access to housing; ensuring suitability of the residential area. Specifically, the appropriate area should be safe, protected from health-threatening infections and natural threats such as cold, damp, heat, rain, wind; The location of the residence must be adequate, in particular, providing adequate access to employment, medical services, schools, child care centers, etc. Cultural adequacy should be ensured;
- The right to adequate housing requires the States to safeguard the following main principles: (1) non-discrimination, which implies the exclusion of an undesirable approach in access to housing, as well as in the process of allocation and possession; (2) Progressive realization, which implies a progressive realization of the right in which the States must operate with the maximum effort within their capacity. This concept is obligatory for the state, to ensure sustainable progress on the path of full realization of these rights;
- The components of adequate housing are essentially related to the utilization of civil and political rights and are connected and overlapped with the number of rights. In particular, according to authoritative definitions of the content of human rights, adequate housing, dignity, security and life is „essentially the same“. According to the Human Rights Committee, the right to life should not be interpreted in a narrow manner, which requires positive actions from the state. In view of the Committee, protection of the right to life essentially includes the state’s focus on homelessness;

- The concept of housing is also included in the right to respect for private and family life, which is an autonomous category. In assessing the adequate housing issues in relation to the right to respect for personal and family life it is important to note that the state has a significant discretion in this process. However, in the perspective of the European Court, the scope of state discretion is narrower when the opposite right is of a “fundamental” or “personal” nature to the individual;
- Violation of the right to adequate housing is also directly related to the inhuman and degrading treatment, as far as the violation of the right to a housing may be equivalent to the violation of the right to dignity.

Forced Eviction and the Right to Adequate Housing

Introduction

The proper safeguarding of the right to adequate housing, which implies the protection of the households from living in the life-threatening or health-threatening environment, overcrowded settlements or other conditions which are not in compliance with the human rights, *inter alia*, the right to dignity,¹³¹ poses a significant challenge for numerous countries. The threat of violation of the right to adequate housing, as well as other fundamental rights is especially ascending in the process of carrying out such policy, which permits the forced evictions of households. The issues related to the forced evictions were particularly visible during the 2008 economic crisis,¹³² which put on the agenda the necessity of taking into account the human rights-based approach in the policy of eviction.¹³³

Taking into consideration the experience of international and national courts, it is clear, that the issue of forced eviction is covered not only by the category of the social rights, but its contents are reflected in various civil and political rights. The European Court of Human Rights (hereinafter “European Court”, “ECtHR”) has stated, that the protection of civil and political rights is not possible without taking into account their social consequences.¹³⁴ For instance, in accordance with the case-law of the European Court, the forced eviction may be the equivalent to the violation of the right to be protected against inhuman and degrading treatment,¹³⁵ the right to respect for private and family life,¹³⁶ as well as the right to a fair trial. Under the latest definitions of human rights, the connection between the right to adequate housing with the right to life and the right to dignity is also obvious.¹³⁷

The violation of the right to adequate housing is a significant problem in Georgia, which is connected with, on the one hand, the structural factors resulting in the homelessness and,

131 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 1 (2014).

132 Part of the studies indicate, that not in every country the financial crisis has not led to the increased number of evictions, which was the result of the political decisions (Greece, Spain, Ireland), see, The Second Overview of Housing Exclusion in Europe 2017, 85-86 (21 March 2017) <<http://www.feantsaresearch.org/en/report/2017/03/21/the-second-overview-of-housing-exclusion-in-europe-2017>> visited: 17.10.2018

133 Françoise Tulkens, The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty, Academy of European Law Distinguished Lectures of the Academy, AEL 2013/8, 1 (2013).

134 *Ibid*, 5.

135 *V.M. and Others v. Belgium* App. no. 60125/11 (ECtHR, 17 November 2016) (However, this case was transmitted to the Grand Chamber for the examination, which did not perceive the continuing interest of the applicant towards the case and stroke out the application).

136 *Yordanova and Others v. Bulgaria* App. no. 25446/06 (ECtHR, 24 April 2012); *Stanková v. Slovakia* App. no. 7205/02 (ECtHR, 9 October 2007).

137 A/71/310, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (2016).

on the other hand, the lack of state policy for combating homelessness.¹³⁸ The issue of the forced eviction is posed as a significant and large-scale challenge is our reality, which especially damages the poorest households of the population and leaves them without any kind of support from the state, without housing and in extreme economic vulnerability.

Despite the existence of the internationally recognized basic protection standards, which are considered as mandatory for Georgia, the national legislation and policies view the process of forced eviction as a mechanism for the execution of the lawful decision and does not assess the issues regarding the violation of housing rights of the persons subject to the forced evictions or their predictable state after the enforcement of the forced evictions. Therefore, the legislation regulating the enforcement of the evictions does not, in fact, acknowledge the correspondence of the forced eviction with the right to adequate housing and thus, excludes the mechanisms for the protection of the latter right.

The social challenge¹³⁹ related to the forced eviction requires a complex political solution. In that regard, it is fundamental that the public authorities act at the level of the prevention of forced evictions, as well as in the process of evictions and mitigate the negative effects following the evictions, which should take into consideration the interests of the vulnerable groups in a highly sensitive manner.

Part I. International Standards for the Protection against Forced Eviction

Methodology

The research aims at analyzing the conditions and the scope of the forced eviction from the perspective of the international human rights standards. For this purpose, the following instruments were used during the research: analysis of international standards, analysis of international practice and analysis of the literature and secondary sources.

138 „Homelessness – Analysis of State Policies“, Human Rights Education and Monitoring Center (EMC), 53-55, (2016) <<https://emc.org.ge/en/products/kvleva-usakhlkaroba-sakhelmtsifo-politikis-analizi>> visited: 17.10.2018

139 According to the United Nations Human Settlement Programme, around one billion people live in inadequate housing worldwide. Among them, about 100 million persons are homeless, see, The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, (2014) <<https://www.un.org/ruleoflaw/files/FactSheet21en.pdf>>; As a result of the Eurozone crisis of 2008 and 2010, 23 percent of the households are under the poverty risk, see, Anna Kahlmeter, Olof Backman & Lars Brannstrom, Housing Evictions and Economic Hardship: A Prospective Study, European Sociological Review, Vol. 34, No. 1, 106–119 (2018); According to Eurostat, the residences of approximately 15 % of the population are not decent (for instance, living space is not covered; the floor and walls are damp, etc.), see, Eurostat, Quality of life: Material conditions: Housing conditions <<http://ec.europa.eu/eurostat/web/gdp-and-beyond/quality-of-life/data>> visited: 17.10.2018

Analysis of International Standards

The international legal instruments, which concern the housing rights issues, were analyzed in order to identify the concept of forced eviction, its conditions and scope. In this regard, the special emphasis was made on the International Covenant on Economic, Social and Cultural Rights (ICESC) and the European Social Charter (ESC), which present the most important sources for the determination of the basis of the essence of forced eviction. Besides, the General Comments of the respective Committees and the practice established by them were analyzed for the purpose of understanding the content of the above mentioned international instruments. The study of the international standards also included the experience of the European Court of Human Rights (ECtHR), which qualifies the certain components of the right to adequate housing, especially, the cases of the forced eviction as the elements of civil and political rights.

Analysis of International Practice

The analysis of the international practice, which concerns the study of such judicial practice, which has been developed by the national constitutional courts or equivalent institutions at the different times, is presented as one of the instruments for the research. The study examines the authoritative interpretations of the courts that have a significant role in establishing the standards for the housing rights, *inter alia*, forced eviction and in setting the modern human rights approaches with regard to the application of this mechanism.

Analysis of the Literature and Secondary Sources

The research also examines the academic literature related to the forced eviction, as well as the policy documents of the international organizations working on the issues of adequate housing and the standards evaluated in the framework of their research activities, which ensures the issues of the forced evictions and defining of the importance of the human rights – based approach during the policy-making process to become even more obvious.

The present research does not study the different standards for the forced eviction in the light of the grounds¹⁴⁰ of the eviction. Furthermore, the document does not cover the standards

140 According to the United Nations Guidelines, the forced evictions might be a result of various circumstances, for instance, urban and rural development projects (construction of dams and roads); industrial activities, such as extraction of minerals; disaster prevention; urban planning; megaprojects; large-scale land acquisitions; privatization of houses and land; lack of security of tenure on land or house; slum clearance; defaulting on rent and mortgage payment; domestic violence; conflicts (ethnic) and armed clashes, using the demolition of houses as a weapon of war, etc., see, Forced Evictions, Fact Sheet No. 25/Rev.1, United Nations, New York and Geneva, 3 (2014).

for the forced eviction caused by the development-based projects due to the especially specific nature of such cases.

The research consists of three parts. The first part covers the essence of the forced eviction. The second part of the research outlines the role of the state and reflects the nature of the legal relations and the interests of the vulnerable groups. The third part covers the international standards related to the forced eviction, which consists of the phases before eviction, during the eviction and after the eviction has taken place.

1. The Essence of Forced Eviction

1.1. The Definition of Home

The identification of the essence of home is important for analyzing the standards for the forced eviction. The concept of housing, which implies the essential social, civil, cultural and political dimensions of this space, causes the intensity of the forced eviction as a measure of the interference.

According to the European Court, the definition of “home” is an autonomous concept, which means that the Court is not guided by the description of the housing set by the national legislation.¹⁴¹ In accordance with the interpretation of the European Court, the main criterion for the concept of home is the existence of the “sufficient” and “continuous” connection with the “concrete space”.¹⁴² Furthermore, the basic criterion for qualification of the space as a residence is the element of the permanent living in a particular space.¹⁴³ The above mentioned components are applied even in the cases when the issue of the lawfulness of the occupation of the particular space is presented.¹⁴⁴ However, the determination of the lawfulness of the occupation of the residential area is important (but not decisive) during the evaluation of the proportionality of the forced eviction.¹⁴⁵ In accordance with the analysis of the European Committee on Social Rights¹⁴⁶ (hereinafter “the European Committee”), the unlawful occu-

141 *Yevgeniy Zakharov V. Russia* App. no. 66610/10 (ECtHR, 14 March 2017), para. 30.

142 *Ibid*; *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 141.

143 Ivana Roagna, *Protecting the Right to Respect for Private and Family Life under the European Convention on Human Rights*, Council of Europe human rights handbooks, Council of Europe, Strasbourg, 93 (2012).

144 *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 141.

145 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 102.

146 The European Committee on Social Rights (ECSR) is the monitoring authority for the fulfillment of the obligations under the European Social Charter (ESC).

pation of the relevant space might be a legitimate basis for the eviction.¹⁴⁷ However, in view of the European Committee, the assessment of the unlawful occupation of the space should not be based on the unjustified broad criteria.¹⁴⁸

In the case of *Yevgeniy Zakharov v. Russia*,¹⁴⁹ the European Court stated, that the fact, that the applicant was registered in his former wife's house, is not enough for the qualification of the accommodation as a place of residence.¹⁵⁰ The fact, according to which the applicant has lived in the house of the partner for 10 years, was considered as a basis for the qualification of the accommodation as a place of residence.¹⁵¹ Furthermore, in the case of *Bagdonavicius and Others v. Russia*,¹⁵² the European Court assessed the forced eviction of the persons and the demolition of their houses as the disproportionate involvement in the right. The only basis of the ruling for the forced eviction by the domestic court was the fact, that the permits for construction have not existed and the land was illegally occupied.¹⁵³ With the perspective of the European Court, the national court should take into consideration the fact of living in a particular place for a long period of time.¹⁵⁴

Thus, according to the international standards, before deciding on the forced eviction cases, the national courts are obliged to assess whether the particular space is regarded as a place of residence for the person, who is the subject to the eviction. Additionally, the interpretation of the courts shall not solely be based on the definition set by the national legislation and it shall take into account the international standards and criteria.

1.2. The Definition of the Forced Eviction

Forced eviction implies the process when a person or a group of people are removed from their place of residence against their will. There is no uniform definition of forced eviction in international legal systems. Thus, its contents are different in accordance with the international instruments/definitions, as well as national legislation. Nevertheless, it is possible to

147 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR, para. 88 (5 December 2007).

148 *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013, Decision on the Merits, ECSR, para. 135 (1 December 2015).

149 *Yevgeniy Zakharov V. Russia* App. no. 66610/10 (ECtHR, 14 March 2017).

150 *Ibid.*, para. 32.

151 *Ibid.*

152 *Bagdonavicius and Others v. Russia* App. no. 19841/06 (ECtHR, 11 September 2016).

153 The demolition of homes and the forced eviction of residents of Roma origin breached their right to respect for their private and family life, press release 323, 2-3 (11.10.2016).

154 *Ibid.*, 2.

underline the several main sources and definitions, which could set the main characteristics of the notion of the forced eviction.

The Comments of the Committee on Economic, Social and Cultural Rights (hereinafter “the Committee”)¹⁵⁵ are important sources for the conceptualization of the essence of forced eviction and explanation of the content of the International Covenant on Economic, Social and Cultural Rights (ICESCR). In accordance with the perspective of the Committee, the forced eviction means the permanent or temporary removal of the particular persons, families and/or community groups from the houses or lands without their desire, relevant legal or other protection or accessibility to such protection.¹⁵⁶ When defining the essence of the forced eviction, the United Nations Guideline shares the definition of the Committee; however, at the same time it is more detailed and indicates, that the separate existence of the following circumstances presents the basis for the qualification of the act as forced eviction; namely: (1) when the temporary or permanent eviction from the housing and/or land is being carried out; (2) when the forced eviction is being carried out against the will of the relevant persons, with or without the use of force;¹⁵⁷ (3) the forced eviction might not be connected with neither the provision with the alternative housing and relocation, nor the adequate compensation and/or access to the productive land;¹⁵⁸ (4) the relevant legal and other types of protection is not ensured or in the case of their existence, the access to them is not guaranteed, which, *inter alia*, covers the right to challenge either the decision on the forced eviction or the process of the eviction.¹⁵⁹ Under such explanation of the definition of the forced eviction, this concept acquires the wide content.

Furthermore, under the explanation of the Committee, the decision of the forced eviction adopted by either the administrative agency or the court in accordance with merely the law, does not exclude the possibility of the violation of the right to adequate housing or any other right. In particular, the international legal system requires that even in the case when the eviction is carried out in accordance with the legislation, a particular case should be managed in compliance with human rights standards and should be based on the principles of reasonableness and proportionality.¹⁶⁰

155 The Committee on Economic, Social and Cultural Rights (CESCR) monitors the fulfillment of the obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

156 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 3 (1997).

157 Forced Evictions, Fact Sheet No. 25/Rev.1, United Nations, New York and Geneva, 3 (2014).

158 *Ibid.*

159 *Ibid.*

160 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 14 (1997).

1.3. International Instruments Regulating the Forced Eviction

The international instruments do not explicitly imply the protection against forced eviction; however, the various rights enhanced by these documents include such safeguards. Insofar as the protection from the forced eviction is primarily considered as the element of the right to adequate housing, it is important to review the international instruments and policy documents, which create the basis for the protection of this right. Among the international instruments, the International Covenant on Economic, Social and Cultural Right (ICESCR) should be mentioned in that regard.¹⁶¹ Additionally, the General Comment No. 7 of the Committee on Economic, Social and Cultural Rights is important in addressing the international standards towards the forced eviction.¹⁶²

Among the international instruments, some guarantees from the forced eviction are derived from the Universal Declaration of Human Rights (UDHR)¹⁶³ and the International Covenant on Civil and Political Rights (ICCPR).¹⁶⁴ The part of the international instruments consider the protection of the housing rights in accordance with their aims and in the context of the specific groups – such as, Convention on the Rights of Persons with Disabilities (CRPD),¹⁶⁵ Convention on the Elimination of All Forms of Racial Discrimination (ICERD),¹⁶⁶ Convention on the Rights of the Child (CRC),¹⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁶⁸ Convention Relating to the Status of Refugees,¹⁶⁹ Convention on the Protection of the Rights of All Migrant Workers and Members of their Families¹⁷⁰ and Indigenous and Tribal Peoples Convention.¹⁷¹

In addition to the above mentioned international instruments, the regional documents, such as the European Social Charter (ESC)¹⁷² and the Charter of Fundamental Rights of the European

161 International Covenant on Economic, Social and Cultural Rights (ICESCR), UN, Art. 11 (1966).

162 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 2 (1997).

163 Universal Declaration of Human Rights (UDHR), UN General Assembly, 217 A (III), Article 25 (1948).

164 International Covenant on Civil and Political Rights (ICCPR), UN, Article 17.1 (1966).

165 Convention on the Rights of Persons with Disabilities (CRPD), UN, Article 28 (2006).

166 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), UN, Article 5.e, The instrument is ratified under the N 1899 Resolution (dated 16.04.1999) of the Parliament of Georgia.

167 Convention on the Rights of the Child (CRC), UN, Article 27 (1989).

168 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), UN, Article 14.2 (1979). The instrument is ratified under the N 561 Resolution (dated 22.09.1994) of the Parliament of Georgia.

169 Convention Relating to the Status of Refugees, UN, Article 21 (1951).

170 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, UN, Article 43 (1990).

171 Indigenous and Tribal Peoples Convention, (No. 169), Art. 20(2) (1989).

172 European Social Charter (Revised) (ESC), Council of Europe (CoE), Article 31 (1996).

Union¹⁷³ are noteworthy. The EU Directive on Racial Equality (2000/43 / EC)¹⁷⁴ suggests to the elimination of the discrimination towards the right to adequate housing across the EU. The same issue is covered by the Gender Equal Access to Goods and Services Directive (2004/113/EC).¹⁷⁵

Thus, the importance of the protection against forced eviction is underlined by the set of normative and non-normative international documents concerning the adequate housing issues. The ratification of the above mentioned instruments establishes the different scale obligations for the state; however, in all instances, the national legislation regulating the forced eviction, as well as each individual decision shall comply with the international human rights standards.

2. Protection against Forced Eviction and the Role of the State

The responsibility of the state towards the protection of the human rights recognizes three main dimensions: (1) to respect the human rights; (2) to protect the human rights; (3) to fulfill human rights.¹⁷⁶ The component regarding respecting the human rights purports the prohibition of such acts of the state, that violates the essence of that right. The component concerning the protection of the right is limited by the protection from the violations by the third persons, while the component on the fulfillment of the right should be interpreted as the action of the state, which creates the relevant basis for the realization of the right.¹⁷⁷

173 Article 34 of the Charter of the Fundamental Rights of the European Union (the right to adequate housing is not directly indicated in the document, however, Article 34, paragraph 3 concerns the concept of the housing assistance).

174 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive 2000/43/EC), Art. 3 (1) h).

175 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Equal Access to Goods and Services Directive 2004/113/EC). The Limburg Principles (1986) and the Maastricht Guidelines (1997), which indicate the demands regarding the implementation of social and economic rights, its nature and mechanisms following the breach of the rights, are important in the process of reflecting the standards for the right to adequate housing and forced eviction in the context of the latter right. Furthermore, the Second Principle of the Recommendation of the Council of Europe on the Rights to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship provides for the right to satisfy the minimum requirements, which covers the rights to food, clothing, shelter and basic medical care. In addition, the N 115 Recommendation (on Workers' Housing) of the International Labour Organization (ILO) aims at supporting the development of such national policy (within the general policy of housing) that provides for the adequate and decent housing accommodation and living environment for workers and their family members. For the better reflection of the issue of the forced evictions, it is important to consider the 1976 Vancouver Declaration on Human Settlements and 1998 Resolution of General Assembly (43/181) on the Global Strategy for Shelter to the Year 2000, see, Recommendation No. R (2000) 3 of the Committee of Ministers to member states on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship, Adopted by the Committee of Ministers on 19 January 2000; Workers' Housing Recommendation, 1961 (No. 115), para. 2.

176 Françoise Tulkens, *The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty*, Academy of European Law Distinguished Lectures of the Academy, AEL 2013/8, 5 (2013); QUB Budget Analysis Project Budgeting for Economic and Social Rights: A Human Rights Framework, QUB School of Law, Belfast, 31-46 (2010).

177 A/HRC/34/51, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 2017, para. 13.

The legislative regulations, as well as the programmatic directions protecting against the forced evictions, involve both active and passive participation of the country. The degree of state participation may vary depending on the subjects involved in the legal relations resulted in the eviction (primary legal relations). Two critical issues are emerging in that regard: (a) in what extent do the obligations of the state change when the primary legal relation has a private nature; (b) how should the state respond to the needs of vulnerable groups during the forced eviction. The posed questions should be regarded as particularly important, as in most of the cases the violations of the right are resulted by the inadequate assessment of the two above mentioned issues by the state.

2.1. The Nature of the Legal Relations and the Role of the State

In the circumstances, where the basis of the eviction is a dispute between the private persons,¹⁷⁸ it is important to determine the scope of the interference and responsibility of the state with regard to the prevention of the forced eviction, which implies keeping of fair and reasonable balance between the right to property and the right to adequate housing.

The practice of the ECtHR is noteworthy with regard to the collision between the right to property and the right to adequate housing (which is reflected, *inter alia*, into the rights protected by the European Convention on Human Rights and Fundamental Freedoms (ECHR)). In the framework of the analysis of such cases, it is important to note the perspective of the European Court, which can be interpreted as some kind of reservation – according to the court, the issue of housing is “the prime social need”. The above mentioned issue is covered by one of the powers of the legislative organ, which means that the regulations relevant with regard to this sphere should not be set entirely by “market forces”.¹⁷⁹ The European Court has developed various views concerning this principle. For instance, in several cases, the ECtHR has reviewed the temporal/urgent legislative policy of Italy, which regulated the control of the rent, the extension of the rental agreements and the suspension/postponement of the execution of the decisions on eviction.¹⁸⁰ According to the applicants, such policy violated the right to property (Article 1 of the Protocol No. 1 of the Convention). The state has suggested that the legitimate aim of such regulation is a derived from the fact, that the term of a large part of the rental contracts were going to be expired and if the forced eviction was used as a

178 It is noteworthy, that the highest rate of evictions in European countries is resulted from such legal relations. Sten-Åke Stenberg, Lia van Doorn & Susanne Gerull, Locked out in Europe: A Comparative Analysis of Evictions Due to Rent Arrears in Germany, the Netherlands and Sweden, *European Journal of Homelessness*, Vol. 5, No. 2 (2011).

179 *James And Others V. The United Kingdom* App. no. 8793/79 (ECtHR, 21 February 1986), para. 47.

180 *Spadea and Scalabrino V. Italy* App. no. 12868/87 (ECtHR, 28 September 1995), para. 18; *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 20.

measure, it would cause “social tension”, that itself would jeopardize the public order.¹⁸¹ The Court found the aim legitimate, but taking into account the factual circumstances of the case, the issue of proportionality was scrutinized differently. For instance, the policy carried out by Italy was qualified as proportionate in the case of *Spadea and Scalabrino v. Italy*, as the Court considered that the interference of the state was not beyond the limits of the margin of appreciation, which itself was set by Article 1 of the Protocol No. 1.¹⁸² Thus, it was underlined, that the interference kept the fair balance between, on the one hand, the interest of the community and, on the other hand, the right to property of the individual.¹⁸³ The Court came to the opposite conclusion in the case of *Scollo v. Italy*.¹⁸⁴

The issue concerning the postponement of the eviction in the framework of the private legal dispute is also regarded as challenging. For instance, in the case of *Pibernik v. Croatia*,¹⁸⁵ the European Court of Human Rights found the violation of the right to a fair trial and the right to property. According to the factual circumstances of the case, in 1995, the person broke into the flat. In 2000, the Court made the decision on the eviction of the above mentioned person; however, the execution of the eviction has not been carried out until 2003.¹⁸⁶ One of the main arguments presented by the Government was connected with the fact, that although the request of the applicant was legitimate, its execution was not urgent.¹⁸⁷ The European Court of Human Rights did not accept the position of the Government, according to which, the motions on the postponement, as well as the workload of the Court, formed the legitimate basis of the postponement of the eviction.¹⁸⁸ In accordance with the viewpoint of the European Court, the right to a fair trial concerns the state obligation to ensure the decision-making by the relevant system in due time; however, the above mentioned requirement has not been met in the case and, therefore, the violation of the right has been found.¹⁸⁹ Furthermore, the Court reiterated, that the existence of the special circumstances might be a justification for non-execution of the decision by the state, which has not been presented in the aforementioned case.¹⁹⁰ In addition, taking into account the prolonged procedures of the eviction, the violation of the right to property was also found in the case of *Fossi and Mignolli v. Italy*.¹⁹¹

181 *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 30.

182 *Spadea and Scalabrino V. Italy* App. no. 12868/87 (ECtHR, 28 September 1995), para. 40.

183 *Ibid*, para. 33.

184 *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 40.

185 *Pibernik V. Croatia* App. no. 75139/01 (ECtHR, 4 March 2004).

186 *Ibid*, paras. 7-46.

187 *Ibid*, para. 52.

188 *Ibid*, para. 57.

189 *Ibid*, para. 58.

190 *Ibid*, para. 70.

191 *Fossi and Mignolli V. Italy* App. no. 48171/99 (ECtHR, 4 March 2004).

In parallel with the practice of the European Court of Human rights, the case-law developed by the national courts should be noted, which enhances the assumption what the right to property is not superior over the right to adequate housing in all cases. The interpretation of the South African Constitutional Court is noteworthy in this regard. Furthermore, in the framework of the analysis of this interpretation, the sharp context should be underlined. In accordance with the interpretation of the Court, during the collision between the rights, the right to property, defined by the Constitution, shall be interpreted in the context of social obligations. The aforementioned is based on the social state principle enshrined in the preamble of the Constitution, as well as the provisions of the Constitution with regard to the social and economic rights.¹⁹² In accordance with the Court's view, it is important to move away from "a static, typically private-law conceptualist view of the constitution" to the "dynamic, typically public-law view" of the Constitution, which means the perception of the basic law as the "instrument for social change and transformation" of the basic law.¹⁹³ With the perspective of the Court, when the ownership right is confronted with the "genuine despair of people in dire need of accommodation",¹⁹⁴ the right to property should not be granted the unconditional priority.¹⁹⁵

It is important to consider the case examined by the same court, dated 2012,¹⁹⁶ which explained that in times of collision between the property rights and the right to adequate housing, the predetermined hierarchy of one of the right is excluded. According to the factual circumstances of the case, the issues of the excessive and unfair lease tax and the termination of the relevant agreement were transplanted into the context of the right to adequate housing by the tenants. In the above case, the lease tax had been raised about three times and after the tenants challenged this decision by the appeal before the court, the landlord company applied to the court to issue the eviction order towards them. In this case, the Constitutional Court stated that, first of all, "the unfair practices" set by the South African legislation between the private persons should be avoided and only after that the decision on the eviction should be possible to make.¹⁹⁷

192 *Port Elizabeth Municipality v. Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC), paras. 15-16 (1 October 2004).

193 *First National Bank of SA Limited t/a Wesbank v. Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited t/a Wesbank v. Minister of Finance* (CCT19/01) [2002] ZACC 5; 2002 (4) SA 768; 2002 (7) BCLR 702, para. 52 (1 October 2004).

194 *Port Elizabeth Municipality v. Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004).

195 *Ibid.*, para. 23.

196 *Maphango and Others v. Aengus Lifestyle Properties (Pty) Ltd* (CCT57/11) (CC) [2012] ZACC 2; 2012 (3) SA 531 (CC); 2012 (5) BCLR 449 (CC) (13 March 2012).

197 *Ibid.*

Furthermore, the legislative restriction of the arbitrary eviction presents as the important practice. Namely, in the majority of European countries, the legislation prohibits such conducts of the proprietor that is directed towards the actual eviction of the occupant. The conducts may be reflected in cutting off the electricity, closure of the apartment and other similar actions.¹⁹⁸

Taking into consideration the above mentioned circumstances, it is clear that the elimination of the forced eviction should be a subject to the special attention of the state. In that regard, the state is bound by the international legal standards in all cases, even if the eviction is a result of the legal relations between the private parties.¹⁹⁹

2.2. Vulnerable Groups and the Role of State

The role of the state is even more fundamental towards the vulnerable groups, as the effect of the eviction is particularly visible in the cases of women,²⁰⁰ children, persons with disabilities,²⁰¹ elderly,²⁰² indigenous people, ethnic or other minorities.²⁰³

International experience, as well as the national practices, makes it clear, that in some cases for some degree of discretionary (though the subject to the progressive realization and non-discrimination) policy of the state transforms into its obligation (for instance, with regard to the provision with the alternative housing). In 2012, in the case of *Yordanova and oth-*

198 Sten-Åke Stenberg, Lia van Doorn & Susanne Gerull, Locked out in Europe: A Comparative Analysis of Evictions Due to Rent Arrears in Germany, the Netherlands and Sweden, *European Journal of Homelessness*, Vol. 5, No. 2, 40 (2011).

199 For the legal connection between the subject and object to eviction in the context of state obligations, see, *Forced Evictions*, Fact Sheet No. 25/Rev.1, United Nations, New York and Geneva, 3 (2014).

200 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 International Covenant on Economic, Social and Cultural Rights), Committee on Economic, Social and Cultural Rights, (2005); General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 2 (1997); E/CN.4/2004/48, Report of the special Rapporteur on adequate housing as a component of the right to an adequate standard of living, main focus: Forced evictions, 60th Session CHR (2004); *Bangladesh Society for Enforcement of Human Rights and Others v. Bangladesh*, 53 DLR (2001); CommDH(2009)5, Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing, Strasbourg, 20 (30 June 2009).

201 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, (1995).

202 General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons, Committee on Economic, Social and Cultural Rights, para. 33 (1995). For instance, According to the Committee, “national policies should help elderly persons to continue to live in their own homes as long as possible, through the restoration, development and improvement of homes and their adaptation to the ability of those persons to gain access to and use them”.

203 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 10 (1997).

ers v. Bulgaria,²⁰⁴ the European Court of Human Rights stated, that the existence of the “less privileged status” of the relevant persons is a substantial factor during the decision-making process towards them. If the eviction is inevitable, the above mentioned factor should be taken into primary consideration during the decision-making on the time, modalities and alternative shelter (if possible).²⁰⁵ In accordance with the references of the European Court of Human Rights, the vulnerability of Roma people and travelers should be taken into consideration during the general planning around this issue, as well as during deciding on the case.²⁰⁶ The ECtHR is explicit towards the positive obligation of the state when the Roma people are the subjects to forced eviction.²⁰⁷

International experience demonstrates that the women’s rights are of a special importance in the cases of forced eviction.²⁰⁸ In particular, the women victims of violence, women victims of forced evictions, women in conflict situations, migrant women and women living under poverty should be the subjects of the essential attention of the state.²⁰⁹ In that regard, the practice of the European countries should be taken into account, according to which, the majority of countries consider the eviction of the perpetrators of domestic violence and allowing the victim to stay on in the residence.²¹⁰

In terms of understanding the phenomenon of forced eviction, the issue of the protection of children is essential, which implies the obligation of states to have a special policy in this direction. For example, the targeted preventive measures in Denmark resulted in the low number of cases of actual evictions of the households with children.²¹¹

Thus, every person, who is the subject to the evictions, has the right to be protected against forced eviction; however, the role of the state is essential in the cases, when it comes to the forced eviction of the vulnerable groups.

204 *Yordanova and Others v. Bulgaria*, App. no. 25446/06 (24 April 2012).

205 *Ibid*, para. 133.

206 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 98; *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 84.

207 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 96.

208 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 2 (1997); E/CN.4/2004/48, Report of the special Rapporteur on adequate housing as a component of the right to an adequate standard of living, main focus: Forced evictions, 60th Session CHR (2004); *Bangladesh Society for Enforcement of Human Rights and Others v. Bangladesh*, 53 DLR (2001).

209 CommDH(2009)5, Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing, Strasbourg, 20 (30 June 2009).

210 The Second Overview of Housing Exclusion in Europe 2017, 91 (21 March 2017) <<http://www.feantsaresearch.org/en/report/2017/03/21/the-second-overview-of-housing-exclusion-in-europe-2017>> visited: 17.10.2018

211 *Ibid*, 92.

3. Standards for the Forced Eviction

3.1. State Duties Prior to the Execution of the Forced Evictions

3.1.1. Prevention of Homelessness in the Process of the Forced Eviction

It is essential that the states pay significant attention to prevention of the (forced) evictions so that the negative effect on the enjoyment of fundamental rights is eliminated or reduced. Realization of preventive policy implies the rejection of eviction, and in case of eviction taking place – the provision with an alternative housing or a relevant means of support.

The issue of state financial resources is an important dimension for the realization of the right to decent housing, as in certain circumstances eviction preventive measures implicate fewer financial expenses than the provision of the homeless with shelter and appropriate conditions.²¹²

Eviction preventive measures may be general or concrete. In the case of general prevention, the state policy is directly related to the elimination of factors leading to forced eviction, which signifies state policy headed to the progressive realization of the right to decent housing.²¹³

Alternatively, eviction preventive measures are categorized into three groups: the first group unites such measures, which are created by the welfare system and encompass access to housing benefits.²¹⁴ The second group unites measures, which aim at protection of those persons, who are facing eviction. The third group measures target those without appropriate housing (homeless persons).²¹⁵ Under all of these circumstances, it is crucial that the interests of the vulnerable are considered.²¹⁶

212 Sten-Åke Stenberg, Lia van Doorn & Susanne Gerull, Locked out in Europe: A Comparative Analysis of Evictions Due to Rent Arrears in Germany, the Netherlands and Sweden, *European Journal of Homelessness*, Vol. 5, No. 2, 52 (2011).

213 For instance, European Federation of National Organisations Working with the Homeless categorizes several groups of triggers for eviction: poverty, unemployment, lack of housing (structural grounds); legal systems, social welfare system, availability of support services, system of housing allocation, coordination and integration of services (systemic/institutional grounds); family composition and status, lack of social bonds (interpersonal grounds); factors related to economic, employment and minority status (personal grounds). For details regarding the differentiation between social causes and housing market causes of homelessness, see Elsinga M., *Changing Housing Systems and Their Potential Impact on Homelessness*, *European Journal of Homelessness*, Vol. 9, No. 1, 15 (2015).

214 Pilot project – Promoting protection of the right to housing – Homelessness prevention in the context of evictions, VT/2013/056, European Union, 10 (2016).

215 *Ibid*; Gerull S, *Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries*, *European Journal of Homelessness*, Vol. 8, No. 2, 144 (2014).

216 For instance, minors, women, persons who had left prison. For details, see: Denmark: Sustainable ways of preventing homelessness, European Commission, 11 (2013).

The present research aligns with both methods of classifying preventive policy due to their overlapping nature. Considering the said formulations, the present research will predominantly refer to concrete issues of prevention, as evaluation of broader policies has a different scope and requires the application of specific methodological approaches. Additionally, the analysis and standards pertain to the second group of preventive policy (according to the second set of classifications).

Support Measures for Persons Facing the Forced Evictions

It is significant, that states foresee the services of consultation for the persons facing the forced eviction, which on the one hand, has to identify ways to better organize income of the subject to eviction, and on the other hand, has to assess what kind of services are available for supporting the beneficiary in these circumstances.

European Court states that “social welfare authorities” have to provide adequate support for those in need, which includes assistance in finding a possible solution, among others, provision of comprehensive information about the available alternatives (e.g. social assistance, access to social housing).²¹⁷

For purposes of forced eviction prevention, the best practice is the availability of services of “personal assistance”,²¹⁸ for instance, involvement of social workers in the process. In European countries, this represents an established practice and providers of this service may be both local self-government and government authorities, and non-governmental organizations.²¹⁹ Involvement of social workers may be a significant contribution, as based on empirical data, “It happens quite often than not paying rent is a secondary effect of a problem rooted elsewhere”.²²⁰ For instance, in Denmark (local self-government) and in Great Britain services are provided, in the framework of which respective persons receive consultation about payment of debts. In Finland, social workers arrange contact between parties, with institutions providing social services, and even relatives, in an effort to “create a network of co-operation”.²²¹

217 *Wallová Et Walla C. République Tchèque* App. no. 23848/04 (ECtHR, 9 October 2007), para. 74; Françoise Tulkens, *The European Convention on Human Rights and the Economic Crisis: The Issue of Poverty*, *Academy of European Law Distinguished Lectures of the Academy*, AEL 2013/8, 10 (2013).

218 Gerull S, *Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries*, *European Journal of Homelessness*, Vol. 8. No. 2, 148 (2014).

219 *Ibid*, 148-149.

220 Gerull S, *Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries*, *European Journal of Homelessness*, Vol. 8. No. 2, 148-149 (2014) cited: Spásy A., *Azylových Domů N. & Azylových Domů S. Homelessness Prevention Strategies (Czech Republic)* (2004).

221 Gerull S, *Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries*, *European Journal of Homelessness*, Vol. 8. No. 2, 148 (2014).

Examples of a similar mechanism, although indicating a higher degree of state responsibility, are services and policies, which foresee the formulation of new and efficient scheduling of loan payments.²²² It has to be noted that similar programs operate across European countries, for instance, in Denmark, France, Portugal, Great Britain, North Ireland.²²³ In France, there are special funds, which are used for rent and the precondition for participation in the scheme is objective failure to fulfill financial obligations foreseen by an alternative agreement. Similar service is available in Portugal provided that the person meets certain conditions.²²⁴

Coordination between the State Authorities

Timely execution of its obligation by the state weighs heavily in terms of prevention. As forced eviction is a complex issue and requires the involvement of different branches of government, an effective system of communication and coordination is decisive.

In relation to coordination of authorities, the case *FEANTSA v. France* needs to be noted.²²⁵ According to factual circumstances of the case, the law relating to the process of the forced eviction foresaw involvement of court and obligation of enforcement officers to inform respective state bodies about possible termination of the contract (with a letter registration of which has to be communicated to the landlord), which on its part was taking measures to ensure that that persons facing eviction were not left without housing – this included involvement of services of housing, assistance funds and social services in the process of eviction. The committee confirmed the problem of improper implementation of the law on homelessness prevention during the process of eviction, which was essentially conditioned by ineffective coordination between responsible agencies.

Coordinated work is best practice across European countries. As a rule, the initiator of the communication is the court,²²⁶ housing organizations (e.g. in Denmark), the executive (e.g. in Finland); In turn, the targets are local bodies.²²⁷ Based on a common model, notification obligation arises during the court proceedings (e.g. in Austria, Belgium, Germany, Swe-

222 Pilot project – Promoting protection of the right to housing – Homelessness prevention in the context of evictions, VT/2013/056, European Union, 10-11 (2016).

223 Gerull S, Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries, *European Journal of Homelessness*, Vol. 8. No. 2, 147-148 (2014).

224 *Ibid*, 146.

225 *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR (5 December 2007).

226 Pilot project – Promoting protection of the right to housing – Homelessness prevention in the context of evictions, VT/2013/056, European Union, 11 (2016).

227 Gerull S, Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries, *European Journal of Homelessness*, Vol. 8. No. 2, 144-146 (2014).

den²²⁸), however, the obligation of notification is not limited to this stage only (e.g. in Germany²²⁹ and Sweden²³⁰). From the perspective of consequences, the process may entail visits of relevant services of local bodies to persons facing eviction, the inquiry into their situation and taking measures for the provision of alternative housing.

Considering best practices and international experience, it can be noted that cooperation is one important component of an effective preventive policy, which cannot be denied on the basis of restricted resources.

Consultation with the Persons Facing Eviction

Involvement of persons facing eviction in the decision-making process related to eviction is crucial. According to the European Court, on certain occasions, one of the grounds for finding a violation can be the failure to conduct genuine consultations.²³¹ The committee interpretation is similar, based on which states have to conduct consultations with relevant persons prior to eviction, which aims at “consideration of possible rehousing options”, so that the use of force is avoided or reduced.²³² According to the Committee, the obligation of a “genuine consultation” is a necessary precondition for eviction,²³³ which can reduce both personal and material damage inflicted on the person facing eviction. For instance, according to the jurisprudence of the South African Constitutional Court, violation of a right will be in place if the process was not accompanied by “appropriate discussions or...mediation procedure”.²³⁴

The Scope of the Obligation to Provide Alternative Housing

In case there are risks that the person facing forced eviction will be left without appropriate housing, it is important that the state within the available resources, takes action that persons

228 *Ibid*; Pilot project – Promoting protection of the right to housing – Homelessness prevention in the context of evictions, VT/2013/056, European Union, 11 (2016).

229 (1) Initiation of court proceedings; (2) determination of the eviction date by an enforcement officer; see: Gerull S, Evictions Due to Rent Arrears: A Comparative Analysis of Evictions in Fourteen Countries, *European Journal of Homelessness*, Vol. 8. No. 2, 145 (2014).

230 (1) Sending of a relevant notice by the owner; (2) determination of the eviction date by an enforcement officer, see: *Ibid*, 144-146.

231 The demolition of homes and the forced eviction of residents of Roma origin breached their right to respect for their private and family life, press release 323 (11.10.2016).

232 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 13 (1997).

233 *Ibid*, para. 15.

234 *Port Elizabeth Municipality v. Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC), para. 39-47 (1 October 2004).

will have access to the appropriate housing within a reasonable time period. According to international standards, for public authority this is not an obligation of absolute nature, however, the situation will be different, when the persons facing eviction belong to vulnerable groups of society.

Important sources of interpretation on the issue are the Committee and European Committee. According to the Committee, protection from forced eviction and consequent realization of the right to decent housing means that evictions should not render individuals homeless.²³⁵ The state must take all relevant measures, to ensure that adequate alternative housing, resettlement or access to productive land, is provided.²³⁶ This standard implies that the government acts within available resources, use of which is assessed based on criteria of “adequacy” and “reasonableness”. Namely, following factors are considered: (1) the extent to which the measures taken were deliberate, concrete; (2) whether discriminatory treatment is ruled out; (3) whether the discretion to allocate available resources is in accordance with international human rights standards; (4) whether the State party adopted the option that least restricts Covenant rights; (5) the time frames in which the steps were taken; (6) whether the steps had taken into account the interest of disadvantaged groups and whether they were prioritized.²³⁷

Based on the standard of the European Committee, even when eviction conforms to the law, authorities must adopt measures to re-house or financially assist the persons concerned.²³⁸ The European Committee in the case *FEANTSA v. France*²³⁹ concluded, that paragraph 2 of article 32 of the Social Charter was violated, which foresees obligation of states, to reduce homelessness and take preventive measures for gradual elimination of it. In the case, violation was found based on a set of reasons, among others it was conditioned by the absence of those measures, which would ensure re-housing of the evicted persons. According to the views adopted by the Committee, the legislation would not be in breach of the Social Char-

235 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 17 (1997).

236 Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with regard to communication No. 5/2015, Committee on Economic, Social and Cultural Rights, para. 15.2.

237 An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant”, ICESCR, E/C.12/2007/1, para. 8 (10 May 2007).

238 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR, para. 88 (5 December 2007). These prerequisites are of fundamental nature, for instance, non-observance of these was held by the Committee to be a violation of paragraph 2 of article 32 in 2004 in a case against Italy (*European Roma Rights Centre (ERRC) v. Italy*, Collective Complaint No. 27/2004, Decision on the Merits, ECSR paras. 41-42 (7 December 2005)).

239 *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR (5 December 2007).

ter; provided that the relevant provisions contained guarantees ensuring “stable and accessible rehousing options” before eviction took place.²⁴⁰ Therefore, it is essential that the legislation foresees the possibility for rehousing in case of eviction. In turn, this possibility has to be sufficiently accessible, so that inclusion of the guarantee in the legislation is not formal.

The doctrine of “pressing social need” is essential in assessing the issues related to the provision of alternative housing in the context of human rights. Furthermore, for the court, it is an important factor to consider that the opposing party in the eviction dispute is the public authority. For instance, in the case *Stanková V. Slovakia*²⁴¹ considered by the European Court, the applicant lived with her son and parents in the municipal property. The tenant was the applicant’s parent, after whose death the authorities refused to let the applicant stay and rendered a decision on forced eviction.²⁴² The European Court of Human Rights found a violation, as the applicant was not provided with alternative housing in parallel to the eviction.²⁴³ The Court did not accept the government’s arguments, that the applicant did not have direct legal title to use the flat, that his eviction had to be anticipated and that the applicant had the possibility of living in her son’s flat (in a different city).²⁴⁴ According to the European Court, the state action had a legitimate aim (to protect municipal property); however, the component of necessity was important, which had to be reflected in the “pressing social need”.²⁴⁵ Therefore, it is essential for the court, that eviction takes place in the presence of a “pressing social need”, which will depend upon factual circumstances of a specific case. In turn, the assessment has to be “acceptable” and shall rely on “relevant facts”. In the present case, the European Court held that “pressing social need” was absent.²⁴⁶ The Court shared the arguments articulated by the Constitutional Court of Slovakia, that in assessing the state action, nature and purpose of the local self-government, among others administration of public housing had to be considered. Therefore, it was the responsibility of the city government to solve the problem of housing.²⁴⁷

Decisions of domestic courts also relate to the issue of providing alternative housing. For instance, the Highest Court of Bangladesh stated that forced eviction (in the specific case),

240 *Ibid*, para. 88.

241 *Stanková V. Slovakia* App. no. 7205/02 (ECtHR, 9 October 2007).

242 *Ibid*, paras. 5-29.

243 *Ibid*, para. 60.

244 *Ibid*, para. 56.

245 *Ibid*, para. 58. In the case *Connors V. The United Kingdom* ECHR refers to pressing social need as criterion for assessing proportionality of the means for achieving a legitimate aim. *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 81.

246 *Stanková V. Slovakia* App. no. 7205/02 (ECtHR, 9 October 2007), para. 58. In the case *Connors V. The United Kingdom* ECHR refers to pressing social need as criterion for assessing proportionality of the means for achieving a legitimate aim. *Connors V. The United Kingdom* App. no. 66746/01 (ECtHR, 27 May 2004), para. 81.

247 *Stanková V. Slovakia* App. no. 7205/02 (ECtHR, 9 October 2007), para. 61.

when in parallel alternative housing was not available, did not conform with human rights and fundamental constitutional standards (right to life, right to dignity, equality before the law).²⁴⁸ According to the statement of the same court, the process of eviction of groups shall not be initiated simultaneously and the process has to be gradual.²⁴⁹

The experience of South Africa and the case *Port Elizabeth Municipality v. Various Occupiers* have to be also noted.²⁵⁰ In the case 68 persons faced eviction (including 23 children), who lived in wooden homes located on private land.²⁵¹ Local population requested from the municipal government to evict these persons, in turn, the municipal government addressed the court to issue an eviction order. The first instance court issued an eviction order, but the decision issued was overturned by the appellate court. It has to be underlined, that the authorities had offered an alternative housing to victims of eviction; however, they refused the offer because believed that the place was not sufficiently safe. This argument became one of the grounds for the appellate court to overturn the eviction order issued by the first instance court.²⁵² In the case, the court explained that the court in rendering a decision on eviction has to consider whether the public authority had taken measures to ensure alternative housing. Namely, “the court shall refuse to issue an eviction order before it is convinced that there is a reasonable alternative, even a temporary one, which would then lead to formal inclusion in a housing program.”²⁵³ Apart from the requirement to offer alternative housing, the court established the standard of “adequacy” of housing, which has to be considered by municipal bodies prior to eviction procedures.

When the persons facing eviction are vulnerable, the provision of alternative housing becomes a state obligation, evidenced by international treaties, also relevant practice. For instance, based on the opinion of the European Committee of Social Rights, the updated Charter²⁵⁴ is directed towards prevention of homelessness, to reduce the outstanding burden on personal security and well-being of an individual.²⁵⁵ Such importance is even reinforced in cases when children are

248 *ASK v. Government of Bangladesh*, Supreme Court of Bangladesh Writ No. 3034 (1999).

249 Byrne I. & Hossain S., *South Asia: Economic and Social Rights Case Law of Bangladesh, Nepal, Pakistan and Sri Lanka*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 140 (2008).

250 *Port Elizabeth Municipality v. Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004).

251 *Ibid*, para. 1.

252 *Ibid*, para. 5.

253 *Ibid*, para. 28.

254 European Social Charter (Revised) (ESC), Council of Europe (CoE), Article 31.2 (1996).

255 *European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the Merits, ECSR, para. 18 (7 December 2005); *Defence for Children International (DCI) v. The Netherlands*, Collective Complaint No. 47/2008, ECSR, para. 61 (20 October 2009).

evicted. According to the Committee, prevention of homelessness with regard to children means that the state has to provide shelter to children for as long as they are in their jurisdiction.²⁵⁶ This approach is conditioned by the fact that eviction would place the children in a situation of “extreme helplessness.”²⁵⁷ Accordingly, if the approach is not considered when the state issues a decision on eviction, this will at any event mean that the best interests of a child are not taken into account,²⁵⁸ which would run counter to the respect for human dignity.²⁵⁹

Similarly, the Committee on Social, Economic and Cultural Rights also points to the requirement of strong guarantees of protection. The committee established that the state obligation to provide alternative housing is in place, including in the situations when the forced eviction is a result of a dispute between private parties. For instance, in the view of the Committee, Spain violated the right to decent housing, when it evicted a family with toddlers (one-year and three years old) from a rented room without offering alternative housing. The vulnerability of the family was caused by the fact that the welfare allowance was terminated and the family was not able to pay the rent. The Committee established a violation, despite the fact that the decision on eviction was rendered in full compliance with the law.²⁶⁰

According to the Committee, despite the fact that the legal dispute was based on the rental agreement between private parties, the state had the obligation to ensure that the eviction did not violate the requirements of article 11 of the Covenant.²⁶¹ “Thus, although the Covenant primarily establishes rights and obligations between the State and individuals, the scope of the provisions of the Covenant extends to relations between individuals.”²⁶²

The practice of the European Court of Human Rights needs to be noted, too. The court finds a violation in case of an eviction of a family; among others with due regard to the fact, that a member of the family had disability,²⁶³ and deems it equivalent to inhuman and degrading treatment.²⁶⁴ According to factual circumstances of a case, the family was evicted from a

256 *Defence for Children International (DCI) v. The Netherlands*, Collective Complaint No.47/2008, ECSR, para. 61 (20 October 2009).

257 *Ibid*, para. 63.

258 *Ibid*, para. 61.

259 *Ibid*, para. 64.

260 Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights with regard to communication No. 5/2015, Committee on Economic, Social and Cultural Rights, para. 12.3.

261 *Ibid*, para. 14.1.

262 *Ibid*, para. 14.2.

263 *V.M. and Others v. Belgium* App. no. 60125/11 (ECtHR, 7 July 2015), para. 8.

264 However, this case was relinquished to the Grand Chamber, which did not recognize the continuing interest of the applicant and struck out the application *V.M. and Others v. Belgium*, ECtHR, App. no. 60125/11 (17 November 2016).

residence center for asylum seekers living in extreme poverty. The case concerned asylum seekers, who were denied asylum in accordance with law and at the same time were not given the possibility to access it before they left the country – “they remained without any means of subsistence and with no accommodation despite the very cold weather for nearly three more weeks until their return to Serbia was organized via a charitable organization”.²⁶⁵ In the Court’s view, Belgium paid undue regard to challenges faced by vulnerable groups – persons in extreme poverty were left without shelter when there was no expectation that they would be in the position to satisfy their basic needs. According to the court, the treatment had reached the threshold of severity required by article 3 of the Convention. In the court’s view, the treatment of the applicants by the state failed to respect their dignity and “this situation undoubtedly aroused in them feelings of fear, anguish or inferiority capable of inducing desperation.”²⁶⁶ Thus, in assessing the provision of alternative housing, the court finds it essential to ascertain the vulnerability of the applicants in the case. For instance, the fact that victims of eviction are asylum seekers already indicates the group’s vulnerable position; however, their needs and correspondent state obligations are even greater when children and persons with disability are involved in the case. Considering the outcome of the case, it is clear that eviction of families, whose member is a person with disability, triggers the state obligation to provide alternative housing, even if the state obligation towards these families is of temporary nature. Domestic courts share the view that the vulnerability of persons facing eviction requires special treatment. For instance, according to the court of Argentina, in case victims of eviction are children, the state is obliged to provide alternative housing.²⁶⁷

3.1.2. The Decision on Forced Eviction

Guarantees in the Decision-making Process

According to the European Court of Human Rights, in view of the radical nature of eviction²⁶⁸ and interference of this magnitude, any person should in principle be able to have the proportionality of the measure determined by an independent tribunal.²⁶⁹ According to the Court, while at the initial stage it may be held to be the discretion of the Government to define the scope and intensity of interference, the final evaluation of whether the interference is necessary remains subject to review by the Court.²⁷⁰ Based on the jurisprudence

265 *V.M. and Others v. Belgium*, ECtHR, App. no. 60125/11, para. 50 (7 July 2015).

266 *Ibid*, para. 162.

267 Courtis C., Argentina: Some Promising Signs, in in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 176 (2008).

268 *Yevgeniy Zakharov V. Russia* App. no. 66610/10 (ECtHR, 14 March 2017).

269 *McCann V. The United Kingdom* App. no. 19009/04 (ECtHR, 13 May 2008), para. 50.

270 *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 147.

of the Court, the state enjoys a wide margin of appreciation in cases relating to the right to housing, as well as social and economic rights in general.²⁷¹ However, the European Court does not disregard the fact that there may have been a “manifest error”²⁷² of appreciation by the national authorities.

In the view of the European Committee, it is admissible to render a decision without the involvement of a domestic court, however, this shall have the legislative basis, based on which the scope of the discretion granted to the decision-making body is reasonable and adequate. These criteria are not satisfied with ambiguous criteria, such as public order and safety, public health etc. The European Committee discussed the problem of granting broad powers to national authorities in more details in the case *ERRC v. France*.²⁷³ According to factual circumstances of the case, the prefect had the right to serve the victim of eviction with the notice to quit. The prefect was allowed to do this (a) if the victim of eviction violated requirements of legislation (expiration of the term for lawful stay) or (b) based upon the initiative of the owner of relevant premises.²⁷⁴ Apart from this alternative precondition, a cumulative ground for eviction was that the occupation of the site for the measure to be applied had to jeopardize public health, safety or order. According to the position of the Government, the right to decent housing, in this case, was not violated, as the discretion of the prefect applied in exceptional cases.²⁷⁵ The European Committee had to assess the scope of discretion. In the committee’s view, criteria of eviction shall not be “disproportionately/unjustifiably broad,” in addition legislative safeguards have to provide sufficient protection for the rights of relevant persons. The said standards also apply to situations when the residential area is occupied unlawfully.²⁷⁶

Overbroad discretions of national authorities in the process of eviction were held to be unconstitutional in Argentina. According to the decision of the Court, such regulation violated the right to fair trial. The regulation allowed the authorities of the city to accelerate initiation of eviction procedures when certain conditions were met.²⁷⁷

271 *Buckley V. The United Kingdom* App. no. 20348/92 (ECtHR, 29 September 1996), para. 75; *Čosić V. Croatia* App. no. 28261/06 (ECtHR, 15 January 2009), para. 20; *Winterstein and Others V. France* App. no. 27013/07 (ECtHR, 17 October 2013), para. 148.

272 *Chapman V. The United Kingdom* App. no. 27238/95 (ECtHR, 18 January 2001), para. 92.

273 *European Roma Rights Centre (ERRC) v. France*, Collective Complaint No. 51/2008, Decision on the Merits, ECSR (19 October 2009).

274 *Ibid*, para. 19.

275 *Ibid*, para. 66.

276 *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, Decision on the Merits, ECSR, para. 51 (18 October 2006); *European Roma Rights Centre (ERRC) v. France*, Collective Complaint No. 51/2008, Decision on the Merits, ECSR, para. 62 (19 October 2009).

277 Courtis C., *Argentina: Some Promising Signs*, in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Ed. Langford M., Cambridge University Press, 176 (2008).

Thus, according to international standards, it is permitted that executive bodies are involved in the decision-making process in relation to eviction or render the decision themselves (based on the standard pursued by the Committee). However, in case a decision is made without the involvement of judicial bodies, the scope of discretion is rather narrow, which has several dimensions. Resolution of the issue by non-judicial bodies has to be an exceptional case and the scope of discretion has to be strict and concrete; the possibility to render a decision without the involvement of judicial bodies and through an accelerated procedure has to be ruled out. Additionally, in any case, there shall exist avenues to defend rights through court, which implies the possibility of the court to assess the proportionality of the eviction decision.

Standards for Suspending Execution of Decisions

Protection of the right to housing under certain circumstances implies the possibility of suspending the eviction process, which has to be decided by the state. The state may apply the measure of suspension as part of the general policy or a step taken in relation to specific circumstances of a case, which has to be temporary and aim at protection of human rights and freedoms.

In turn, in any event, use of the measure of suspension leads to the collision of the right to decent housing and right to property. Analysis of the jurisprudence of the European Court of Human Rights is important for assessing the standard to be used by the state in relation to suspension measures. For instance, the court considered the compatibility of the Italian government's policy with the right to property. State policy was related to control of rent, the statutory extension of the residential lease agreement and the postponement or suspension of evictions.²⁷⁸ These regulations were not absolute, namely recourse to relevant bodies could lead to forced eviction through police in so-called priority cases. The state indicated that the legitimate aim of enacting these regulations was the protection of public order (at that period large-scale enforcement of all evictions could have led to "social tension").²⁷⁹ In various cases the court shared the state's position that the suspension had a legitimate aim, however, drawing from individual cases, the court's position on necessity and proportionality of implemented policy and measures differed. For instance, in the case *Spadea and Scalabrino V. Italy*, the decision of national authorities was held to be proportionate and the court explained that the interference struck the fair balance between, on the one hand, public interest

278 *Spadea and Scalabrino V. Italy* App. no. 12868/87 (ECtHR, 28 September 1995), para. 18; *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 20.

279 *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 30.

and on the other hand, individual's right to property.²⁸⁰ In contrast, in the case *Scollo V. Italy*, according to the Court, the state's decision on suspension of eviction of certain families was disproportionate. Namely, the state did not consider the applicant's need to occupy his flat – he was a diabetic and had a status of a 71% disabled person. Despite the fact that these facts were indicated only later, the Court believed that the state action was not proportionate.²⁸¹ Accordingly, the Court found a violation of the right to property.²⁸² Therefore, itself the state policy of suspension and postponement of evictions has to be proportionate substantiated and has to leave room for considering interests of all parties affected.

The state policy of postponement and suspension of forced evictions has to differentiate those individual cases when the state did not or could not implement a forced eviction. In this regard, the case *Société Cofinfo v. France*²⁸³ has to be noted. In the case, an applicant claimed that right to property (Protocol 1 article 1) and the right to fair trial (article 6 of the Convention) were violated, as the decision on eviction was not enforced. More specifically, the case concerned execution of a decision on the eviction of squatters (62 persons, including 29 children) from private property. The state denied forceful eviction through police three times.²⁸⁴ Based on the state position, in relevant cases, there was no necessity for forced eviction or it was essential to protect public order (eviction of 62 persons without alternative housing was not permitted).²⁸⁵

The European Court underlined the significant margin of appreciation of the state on issues of social and economic policy. The court discussed illusory nature of the right to fair trial, in case the rendered decision cannot be executed, however, indicated that there are exceptions – when there is strict necessity to uphold public order.²⁸⁶ According to the court's view, the state responsibility did not arise in the case, as there was a “serious risk” of violating public peace.²⁸⁷ The court paid particular attention to the circumstance that the applicant received compensation through the decision of a domestic court, which cannot be held to represent an equivalent of property rights (in these circumstances the aim of protecting public order is a significant argument on the side of the state). At the same time, it was important for the court that for two years before the squatters occupied private property, the owner had not

280 *Spadea and Scalabrino V. Italy* App. no. 12868/87 (ECtHR, 28 September 1995), para. 33.

281 *Scollo V. Italy* App. no. 19133/91 (ECtHR, 28 September 1995), para. 38.

282 *Ibid.*, para. 40.

283 *Société Cofinfo v. France* App. no. 23516/08 (ECtHR, 12 October 2010).

284 Refusal to grant police assistance to enforce an eviction order against families occupying commercial premises did not breach the owner's right of access to a court, press release no. 811 (29.10.2010).

285 *Ibid.*

286 *Ibid.*

287 *Ibid.*

had “any plan to develop the premises”. Thus, the European Court established that the state’s refusal to forcefully evict did not violate the Convention as it did so for considerations of social and public order interests and that the views of the applicant in relation to violation of the right to property and the fair trial were manifestly unsubstantiated.²⁸⁸

In contrast to this case, in the case considered in 2005 *Matheus v. France*²⁸⁹ the court gave a different evaluation to the fact that the state did not enforce eviction and found the violation of the right to property. According to factual circumstances of the case, the applicant tenant did not pay rent. The domestic court rendered a decision, based on which tenants had to leave the flat, and in case of non-execution of the decision by police, the applicant had to be compensated. The applicant could not recover possession of the property through police action and accordingly, was granted compensation. In parallel, the applicant was made to sell the flat to the tenants.²⁹⁰ In this case, the Court found a violation of the right to a fair trial based on the argument that the court decision was not enforced “throughout an excessively long period”, which caused ambiguity in terms of enjoyment of his property.²⁹¹ It is important that a public interest was not an issue in the case. In this case, the court stated the case was a form of “private justice” and accordingly found a violation of the right to property.²⁹²

Thus, the policy of suspending eviction process for a reasonable time frame or other concrete measures may be grounded in public interest. However, it is important that such policy is proportionate and is not absolute – stakeholders should have the possibility to pursue legal processes corresponding to their individual interests. In the concrete case of suspending eviction, along with the right to decent housing and other fundamental rights, it is important that the state ensures the use of suspension mechanism with safeguards against the risk of “private justice”. In individual cases, the decision on suspension of eviction may also be related to the involvement of vulnerable groups in the case.

It is significant that the suspension mechanism to protect the right to decent housing (and related rights) exists not only on the domestic level. Suspension of eviction has been applied in the jurisprudence of the European Court of Human Rights. When the Court saw the risk that victims of eviction would be left without alternative housing or means of support in the case *A.M.B. and Others v. Spain*,²⁹³ it used an interim measure (in accordance with rule 39 of the rules of Court)

288 *Ibid.*

289 *Matheus v. France* App. no. 62740/00 (ECtHR, 31 May 2005).

290 Press release issued by the Registrar: chamber judgments concerning France, Greece and Turkey, 166 (31.3.2005) <<http://hudoc.echr.coe.int/eng-press?i=003-1302921-1361936>>

291 *Ibid.*

292 *Ibid.*

293 *A.M.B. and Others v. Spain* App. no. 77842/12 (ECtHR, 28 January 2014).

and suspended enforcement of eviction decision against the applicant.²⁹⁴ According to factual circumstances of a case, the applicant unlawfully occupied the property of Madrid housing institute. The basis of the Court's decision was the failure to offer alternative housing and the absence of social assistance services. The court terminated the interim measure²⁹⁵ after the government stated that in case eviction was undertaken it would act immediately so that the applicant with her children would not be left without means of support.²⁹⁶ Based on the same logic the court did not decide to suspend eviction of hundreds of migrants from a camp in the case against France.²⁹⁷ The court was satisfied with the measures taken by the French Government, namely: (1) information campaign was in place for several months, which provided information to relevant persons about their rights; (2) arrangements had been made with regard to emergency accommodation.²⁹⁸ The court noted that the measures were sufficient especially in terms of consideration of interests of vulnerable groups.²⁹⁹

The said practice illustrates that the European Court does not leave to government discretion the situations, in which risks of remaining without alternative accommodation or means of support are real or when victims of eviction have not been provided with appropriate information. The degree of vulnerability of persons subject to eviction is a significant factor in the analysis.

3.1.3. Reasonableness of the Notification Time in Cases of Forced Evictions

The adequacy of eviction procedures is also related to the right of victims of eviction to have information about the planned measure in due time before eviction takes place so that they are given sufficient time for seeking a solution and the possibility to use legal remedies.

The practice of individual states regarding reasonable deadlines for notification differs. For instance, based on analysis of domestic legislation by United Nations Human Settlements Programme (UN-HABITAT) and Office of the United Nations High Commissioner for Human Rights (OHCHR), the 30-day eviction notice was presented as the best practice.³⁰⁰

294 Press Country Profile: Spain, 7 (2018) <https://www.echr.coe.int/Documents/CP_Spain_ENG.pdf> visited: 17.10.2017

295 Application about illegal occupation of a building belonging to the Madrid Housing Institute was premature, Press Release (20.02.2014).

296 *Ibid.*

297 The Court will not be requiring the application of interim measures in the case of migrants evicted from a camp in Calais, taking the view that the safeguards afforded by the French authorities are satisfactory, press release, ECtHR 195 (02.07.2014).

298 *Ibid.*

299 *Ibid.*

300 Housing Rights Legislation, Review of International and National Legal Instruments, United Nations Human Settlements Programme (UN-HABITAT) & Office of the High Commissioner for Human Rights (OHCHR), Nairobi, 2002, 46.

Slightly later, the European Committee³⁰¹ discussed the same issue and in case of eviction from a place of residence³⁰² held a minimum 2-month notice foreseen in the French legislation to be reasonable.³⁰³

3.2. State Obligations in the Process of Enforcement of Forced Eviction

3.2.1. Institutions Involved in the Eviction Enforcement Process

With regard to the observance of standards related to eviction process, it is important to consider who carries out the eviction. Furthermore, as a prerequisite for this procedure, agents acting under the authority of the State or private persons shall not be allowed to proceed with eviction without appropriate legislative safeguards (based on human rights approaches).³⁰⁴ According to international standards, representatives of state shall be present during an eviction (particularly when a group of people is affected), as well as identification of persons carrying out the eviction has to be possible.³⁰⁵

In terms of the agents who carry out the measure, evictions by police have to be noted. European Committee in the case *ERRC v. France*³⁰⁶ draws attention to this form and states that the legislative regulation, which permits police intervention on the basis of protection of public goods (law and order, hygiene or public peace and safety) without any need for a ruling by the administrative court or for the landowner's explicit agreement is problematic. According to the Committee, there are empirical data beyond theoretical concerns that indicate that in such circumstances risks of abuse of power are realized.³⁰⁷ In the Committee's view, if domestic legislation is not targeted at the prevention of such risks, this may violate the Social Charter.³⁰⁸ Thus, based on the European Committee, the involvement of police forces in the process of eviction does not necessarily convey a violation; however, the existence of such a

301 *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR (5 December 2007).

302 *Ibid*, para. 89.

303 France, The Civil Enforcement Procedure [Reform] Act, No. 91-650 (9 July 1991).

304 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 9 (1997).

305 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 5-6 (2014).

306 *European Roma Rights Centre (ERRC) v. France*, Collective Complaint No. 51/2008, Decision on the Merits, ECSR (19 October 2009).

307 *Ibid*, para. 69.

308 European Social Charter, paragraph 2 of article 32; *European Roma Rights Centre (ERRC) v. France*, Collective Complaint No. 51/2008, Decision on the Merits, ECSR, paras. 71-72 (19 October 2009).

mechanism entails the serious risk of violent acts,³⁰⁹ the realization of which on certain occasions takes a systemic form. Accordingly, it is essential that legislative regulation ensures against risks of abuse of power in the process of eviction carried out by police forces.

According to domestic experience, as a rule, forced eviction is carried out by enforcement officers, which can be an authorized private person. However, as it has already been noted, it is essential, that the state undertakes the supervisory role over the protection of rights in the process of forced evictions and ensures the presence of relevant representatives. For instance, in England and Wales, there is a court enforcement mechanism composed of the following bodies: (1) High Court Enforcement Officers and (2) County Court Bailiffs. Enforcement officers are private persons (who are registered as enforcement officers in the registry), appointed by court. The scope of their activities, as a rule, is not limited to one domain and relates to extensive social and environmental issues.³¹⁰ For instance, mass-scale strategic eviction related to government infrastructural plans.³¹¹ Court bailiffs are civil servants, who based on a relevant order are authorized to enter premises with the use of force and transfer those to owners of the property. Their activities compared to enforcement officers are more long-term³¹² and relate to individual cases.³¹³

Thus, regardless of which institution carries out the eviction, it is necessary that the procedure is based on law, and that state representatives attend the process of eviction. Enforcement officers are involved in the process of eviction, including court enforcement officers and police, however, in the latter case, legislative framework and safeguard mechanisms, which eliminate risks of abuse by police, are necessary.

3.2.2. Conditions for Enforcing the Forced Evictions

Certain conditions have to be satisfied in the process of enforcement of eviction decisions. The issues of physical survival of individuals, also risks of destroying their belongings, may arise. According to UN guidelines, evictions must not take place in inclement weather, at night. It is also important that forced evictions are not carried out during the winter peri-

309 For instance, see: Undermining Rights Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea, Amnesty International (2010), <<https://www.amnestyusa.org/wp-content/uploads/2017/04/asa340012010eng.pdf>> visited:17.10.2018.

310 Alexander George Baker, 'The Machinery of Eviction: Bailiffs, Power, Resistance, and Eviction Enforcement Practices in England and Wales' (PhD thesis, Newcastle University, January 2017), 6.

311 *Ibid.*

312 Alexander George Baker, *Bailiffs at the Door: Work, Power, and Resistance in Eviction Enforcement*, in: Geographies of Forced Eviction, Brickell K., Fernández Arrigoitia M., Vasudevan A. (Eds), Palgrave Macmillan, London, 145-166 (2017).

313 Alexander George Baker, 'The Machinery of Eviction: Bailiffs, Power, Resistance, and Eviction Enforcement Practices in England and Wales' (PhD thesis, Newcastle University, January 2017), 6.

od.³¹⁴ An exception from this rule can be made when victims of eviction consent to it. European Committee has on a number of occasions discussed this issue. For instance, in the case *FEANTSA v. France*,³¹⁵ according to the Building and Housing Code,³¹⁶ despite rendering a decision on eviction and setting a deadline for its enforcement, none of the court orders on eviction can be enforced starting from November 15 to March, except when victims of eviction are transferred to alternative accommodation, which among others requires that families are not split and their needs are satisfied.³¹⁷ In the view of the European Committee, the prohibition of eviction from November to March (though not absolute) set by French law conformed to requirements foreseen by international standards.³¹⁸

Accordingly, considering serious psychological and social effect and essential impact on human rights and freedoms associated with eviction, international standards define conditions for proceeding with the eviction.

3.3. State Duties after the Forced Eviction Procedures are Finalized

According to international legal standards, the state is bound by certain obligations also after the eviction has taken place. Accordingly, state policy (government or legislative) shall cover periods after the eviction has been enforced with regard to short-term and long-term purposes.

After eviction takes place, effective legal remedies have to exist for people affected by forced evictions.³¹⁹ This mechanism among others has to ensure compensation for damaging personal belongings.³²⁰ In case of need, legal aid has to be provided to persons who initiate legal

314 For instance, see: *European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the Merits, ECSR, para. 41 (7 December 2005).

315 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR, (5 December 2007).

316 France, The Building and Housing Code.

317 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the Merits, ECSR, para. 29 (5 December 2007).

318 *Ibid*, para. 89.

319 The Second Overview of Housing Exclusion in Europe 2017, 110 (21 March 2017) <<http://www.feantsaresearch.org/en/report/2017/03/21/the-second-overview-of-housing-exclusion-in-europe-2017>>; visited: 17.10.2018. The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 6 (2014).

320 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 5 (2014). Regarding the problem see Turkmenistan Events of 2017, available at: <<https://www.hrw.org/world-report/2018/country-chapters/turkmenistan>>; “They Took Everything from Me”: Forced Evictions, Unlawful Expropriations, and House Demolitions in Azerbaijan’s Capital (2012), available at: <<https://www.hrw.org/report/2012/02/29/they-took-everything-me/forced-evictions-unlawful-expropriations-and-house>>; “They Pushed Down the Houses”: Forced Evictions and Insecure Land Tenure for Luanda’s Urban Poor (2007), available at: <<https://www.hrw.org/report/2007/05/15/they-pushed-down-houses/forced-evictions-and-insecure-land-tenure-luandas-urban>>.

disputes.³²¹ State long-term obligations entail monitoring of several issues after the eviction. According to international standards, in case eviction is carried out, it is essential that the following issues are supervised: needs of evictees after the eviction, both personal and related to environment; the impact of the eviction on the livelihood of the community, including additional expenses; quality and sustainability of services; the issue of legal aid in connection with the right to housing, etc.³²²

It is obvious that the realization of the right to decent housing is a complex issue, which requires that the state implements a prudential policy adapted to actual context. In view of international consensus that housing is an essential social dimension, and that it has a serious effect on the use of civil and political rights, it is important that the state policy takes measures of adequate scale to address challenges in this regard, which first and foremost has to be reflected in preventive policy including preventive measures against forced evictions. Furthermore, states have to ensure observance of standards that will not endanger individual rights and freedoms at any stage of eviction (decision-making, enforcement of eviction and post-eviction period).

321 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 6 (2014).

322 Forced Evictions, Fact Sheet No. 25/Rev.1, United Nations, New York and Geneva, 36 (2014).

Findings

The general scope of protection from eviction is defined by the following international standards:

- State shall realize the right to decent housing progressively, within available resources. As the housing is a “primary social need”, the authority of the legislative body in this sphere has to be used to an extent that “market forces” do not fully establish the rules;
- Protection from forced eviction is not exclusively a domain of social rights – according to the European Court of Human Rights (ECtHR), the scope of protection of civil and political rights is not devoid of the social dimension. This precludes identification of appropriate standards of protection against forced eviction as a component of social welfare only;
- Forced eviction has a high intensity impact on the dignity and privacy of a person. Therefore, it is essential that states establish clear standards of protection from forced eviction which will conform to human rights and freedoms. In view of best practices, despite disputes between private persons an owner’s action aimed at the factual realization of eviction (e.g. termination of electricity service, locking of a flat etc.) shall be prohibited. Furthermore, criteria of eviction in case of unlawful occupation of property shall not be “unjustifiably/extremely” broad, while legislative regulations have to provide “sufficient protection” to the rights of relevant persons;
- In deciding on eviction domestic courts have to assess, whether the premises in question represent home. “Home” is an autonomous concept, which is not subject to classifications under domestic law. The essential criterion for assessing whether a particular premise constitutes a “home” is the existence of “sufficient” and “continuous” links with a “specific place”. Particular premises may be held to constitute “home” even in cases when the legality of initial possession of it is disputed.

Before the decision on eviction is enforced the following issues have to be considered:

- A significant instrument in the fight against forced evictions and on the other hand a state obligation is implementation of the preventive policy and measures, which entails the existence of preventive approaches of concrete and general nature, which among others is reflected in the existence of support services;

- According to international standards, it is important that before the decision on eviction is made state authorities work in coordination in the framework of unified homelessness management system;
- According to international practice, persons facing eviction have to be involved in the relevant decision-making process. The purpose of this is to “consider all acceptable alternatives”; so that use of force is prevented or reduced. Mediation may play an important role in the prevention of eviction in this process;
- According to international standards, the provision of alternative housing is tightly related to the right to decent housing. This implies state responsibility to take all appropriate measures to ensure decent alternative accommodation, resettlement or access to productive land. This obligation is not absolute – namely, fulfillment of the right by the state implies state action within available resources. The issue of whether the state has rationally used available resources will be assessed with the standards of “adequacy” or “reasonableness”;
- According to international standards, the state is afforded the narrow margin of appreciation with regard to the provision of alternative housing if the person is evicted from state property. In this case, the necessity of eviction shall be recognized if the decision satisfies the criterion of “pressing social need”;
- According to international experience, provision of alternative housing becomes a state obligation, if among the evictees are minors or persons with disability;
- The scope of discretion is particularly narrow when the decision on eviction is made by non-judicial bodies, and such decisions are an exception. Furthermore, the scope of exceptions has to be particularly strict and concrete, to preclude arbitrariness. Furthermore, in any event, there shall exist avenues of judicial protection of the right;
- International standard foresees the obligation to inform the persons facing eviction during a reasonable notice period;
- International experience permits non-execution of the court decision by the government, which has to be based on maintaining public order and be subject to reasonable time limits,;
- Furthermore, the process has to be sufficiently flexible to consider the interests of all persons involved.

The following issues have to be considered at the stage of enforcement of evictions:

- State representatives have to attend the eviction procedures (particularly when a group of persons is evicted) and enforcement officers need to be identifiable;
- According to international practice, the involvement of police forces in the process of eviction does not automatically convey a violation; however, the existence of such a mechanism entails serious risks of violent acts. Accordingly, it is important to provide for appropriate safeguards on the legislative level;
- Evictions must not take place in inclement weather, at night, also during the winter period.

After enforcement of eviction, it is essential that:

- State policy exists (either government or legislative), which will cover measures targeted at the welfare of evictees both in the short and long-term perspective and will include continuing state monitoring over the needs of evictees;
- Effective legal remedies have to be provided in case of evictions, among others it has to include the possibility to obtain damages;
- In case of a legal dispute and a relevant need, it is important that legal aid is provided to evictees.

Part II. National Legislative Framework Regulating Evictions

Methodology

This study aims to analyze the national legislation regulating evictions in the context of adequate housing, which implies the evaluation of eviction legislation in compliance with international standards and identification of legislative problems which leads to violation of housing rights or creates such risks for the households subjected to eviction. In particular, the study analyzes the normative base, operating in the existing legal system, which regulates evictions, *inter alia*, study will examine in detail, the grounds for eviction, regulation of the enforcement of the eviction process and the state role and responsibilities post-eviction, in relation to creating relevant guarantees for the evicted households. This study considers the legislation regulating the demolition of the housing as eviction, which is not the case in the national legislation (according to which the demolition is not considered eviction); however in reality demolition includes the eviction component that is why it is the focus of this research.

The following instruments were used in the framework of the study: Analysis of national legislation, requesting public information and processing secondary sources. **Analysis of national legislation** aimed at studying existing legislative reality and assessing its compliance with internationally recognized basic standards. **Requesting public information** aimed at obtaining official information from the relevant responsible persons/organs on the policy conducted under the existing legislative framework. **The use of secondary sources** included studying national research and reports, including annual and special reports of the Public Defender.

The study, based on its limits, does not examine the eviction prevention policy or measures, which is an important component for the reduction of the use of eviction measures and protection of the right to housing.³²³ Additionally, it is important to note that the study will examine the general legislative framework of eviction and not focus on its specific regimes, which implies different grounds and standards of eviction with different groups (eg IDPs, eco-migrants, persons evicted as a result of expropriation). It should also be noted that a significant obstacle in the research process was the lack of information from the responsible public bodies, which hindered the research team's access to the statistical or other relevant

323 However, EMC 2016 research „Homelessness – State Policy Analysis” shows that the state does not have a policy against homelessness, which also implies that there is no prevention policy. Available here: <<https://emc.org.ge/ka/products/kvleva-usakhlkaroba-sakhelmtsifo-politikis-analizi>>

information about the existing eviction policy.³²⁴ In addition, another obstacle of the study was the lack of research or analytical documents on eviction issues in the context of Georgia.

1. Regulating Eviction and Its Types in the National Legislation

Eviction,³²⁵ as a measure of high intensity intervention, creates risks of violation of human rights and freedoms, which is particularly problematic when evictions result in homelessness. Accordingly, regardless of the type of legal relationship leading to eviction, it should be subject of special regulation by the government, which will aim to reduce the need for eviction measures and set such measures as a last resort. In case of the need of such extreme measures the decision-making process on eviction, enforcement of eviction and further stages post-eviction should be in line with the goals of protecting the human dignity and right to housing.

However, the study of the national legislative framework demonstrates that the eviction regulatory legislation contains extremely poor guarantees of rights protection and does not reflect internationally recognized basic human rights standards.

There is no uniform concept of eviction in the national legislation. Moreover, the only normative document that defines the eviction is the order of the Minister of Internal Affairs. The court order defines eviction as physically removing the individual and the persons thereof from the occupying the possession unlawfully, taking into consideration proportionality principle and safety precautions and other measures that will ensure the protection of the

324 Note:

1. Human Rights Education and Monitoring Center (EMC) has repeatedly addressed LEPL National Bureau of Enforcement and requested information about the number of forced evictions, number of evicted persons/families, timeframes of evictions, statistical information about evicting persons from the only housing. Correspondence of Human Rights Education and Monitoring Center EMC Ng 01/531/2017 of December 11, 2017; Correspondence of Human Rights Education and Monitoring Center (EMC) Ng 01/415/2018 of August, 7 2018). The National Bureau of Enforcement did not provide public information to EMC in any of the cases.

2. EMC had requested information from the Tbilisi City Court on reviewing the case on solicitation of an item from illegal possession, on the taken decision and other relevant issues (Correspondence of Human Rights Education and Monitoring Center (EMC) of December 13, 2017, Ng 01/533/2017). However, the information was not provided as the court does not process such information (Correspondence of Tbilisi City Court N2-04259 / 2212624 of December 14, 2017).

3. Information about the evictions conducted by the Ministry of Internal Affairs has been requested from the Ministry of Internal Affairs, however only a few regional divisions have provided information, which does not allow the possibility to provide the full picture of the issue (December 11, 2017, correspondence Ng 01/530/2017 of the Human Rights Education and Monitoring Center (EMC)).

325 Analysis of the legislative framework regulating eviction, for describing forced evictions uses the term “eviction”, which is the term recognized by the national legislation, which implies the term “forced eviction” recognized by the international legal system.

right of lawful possession and does not lead to person's torture, inhuman or degrading treatment.³²⁶

On the one hand the abovementioned definition of the eviction, and on the other hand, the content of the regulation of the eviction show that evictions are a guarantee of property rights under the national law and aim at restoring the lawful possession. The definition of the eviction and the associated regulation does not concern the nature of the eviction, as the measure of last resort. However, the definition indicates the "principle of proportionality" which is primarily a mechanism for protection against torture, inhuman or degrading treatment in the process of securing property rights. However, if we define the principle of proportionality more broadly, it may indicate on the possibility of reasonable and fair balance between the right to property and the right to adequate housing (and / or other relevant rights) on the legal level. Although the regulation of making the decision on eviction or its enforcement shows that the legislative framework does not provide for the opportunity to utilize the principle of proportionality at the institutional or procedural level. As a result, the national legislation sees the eviction issue only in the context of property rights and its main objective is to restore the owner's property rights, which leaves the content of the right to adequate housing and protection of persons subjected to eviction beyond the adequate regulation, which makes the existing regulation contrary to basic international standards.

National legislation considers eviction as one of the measures to enforce a lawful decision, which implies the termination of the actual possession of the dwelling to ensure the lawful owner's interest. Accordingly, when deciding on the eviction, as well as when the eviction is enforced, the authorized body only discusses the lawfulness of the property right and leaves out such issues as risk of homelessness in case of eviction, special needs of vulnerable groups – people with disabilities, children, the elderly and other groups, the issue of eviction from the only dwelling, the necessity to offer alternative housing and other guarantees of rights protection, which would make it possible to avoid the violation of right to adequate housing. Thus, the eviction decision-making process and execution of the eviction itself is problematic,³²⁷ which leaves out the component of the right to adequate housing, as it stops reasoning on the need of eviction after deciding on the legal grounds of ownership.

The national legislation recognizes several forms of eviction. Before 2016, the legislation envisaged the so-called "Police Eviction" institute, which authorized the relevant organs of

326 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 "On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property", Article 2.

327 Civil Code of Georgia, Article 172.1; Criminal Code Article 160; Order No. 75 of the Minister of Internal Affairs of March 1, 2016 "On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property", Article 2.

the Ministry of Internal Affairs to evict unlawful tenants based on the assignment of the individual holding the property rights/ lawful owners.³²⁸ However, after the cancellation of the said regulation, the court is considered to be the sole organ deciding on the eviction issue, nevertheless the abolition of “police evictions”, which in a way was a positive step, unfortunately, did not result in additional legislative amendments to improve the national legislation regulating the eviction and bring it closer to international standards.

In parallel with the abolition of the “Police Eviction” regulatory act, the Ministry of Internal Affairs was still granted the right to terminate illegal possession of the immovable property in case of criminal offense, through eviction,³²⁹ which could be executed against concrete individuals in case they unlawfully occupy immovable property in possession with another person.

Additionally, except for the forms of eviction directly provided by law, the national legal system provides for a factual eviction through demolition of a residential building constructed without a permit, which is not considered to be eviction according to the legislation. In spite of this, for the purpose of this study, the process of demolition of the residential building, which results in evicting the persons from the dwelling, is considered to be one of the forms of eviction.

2. The Decision on the Eviction

The decision-making procedure for the eviction, considering its possible consequences and the risk of intensive interventions in human rights, should include human rights protection mechanisms, which implies appropriate normative, institutional and procedural guarantees for the maximum protection of the right to housing. The decision on the eviction of households creates risks of not only a possible violation of the right to housing but also other fundamental rights which increases the responsibility of the state to take the appropriate decision with extreme accuracy, taking into consideration the interests of the parties. This implies the responsibility of the state to develop and implement fair and human rights oriented legislation on eviction related decisions, which will reduce the risk of violation of the rights and will effectively balance the interests and needs of the parties.

According to the United Nations Covenant on Economic, Social and Cultural Rights (hereafter “the Covenant”), it is important that the eviction process does not cause homelessness

328 Civil Code of Georgia, Article 172.3. (Note: Currently the said norm is no longer valid).

329 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 “On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property”, Article 2.

of persons subjected to eviction, which obliges the state to use all appropriate mechanisms to ensure that persons will not be left homeless as the result of eviction, including by means of providing alternative housing.³³⁰ In the process of deciding on eviction, it is of particular importance to consider the special needs of vulnerable groups, including persons with disabilities, children, elderly, women, as these groups suffer more from negative consequences of forced eviction.³³¹

2.1. Eviction Based on the Court Decision

From 2016, after the cancellation of so-called “police eviction”, the court was recognized as the only organ deciding on the eviction, as a result, the legal basis of eviction became only the court decision. The abolition of the “police eviction” mechanism resulted in amendments, including – deferment of payment of court costs,³³² the decrease of time limits on procedural actions³³³ and time limits on deciding on the matter.³³⁴ Moreover, the new amendments also provided for the possibility for immediate enforcement of a decision.³³⁵

Considering the problematic nature of the “police eviction” mechanism, its full replacement by the judicial system should be assessed as a positive legislative step. However, this change, based on its formal and mechanical nature, did not have a substantial impact on improved decision-making standards for eviction and did not qualitatively reform the eviction institute. As a result of the reform, the determination of the court as the only decision-making authority, could not provide protection and taking into consideration the interests of persons at risk of violation of the rights post-eviction. An analysis of the content of the reform shows that the legislative amendments have been carried out from the perspective of protecting the interests of lawful owners/property holders and do not aim to subject the issue of protection of the right to adequate housing to the court review and create appropriate protection measures for this purpose.

According to the standard set out in the Covenant, establishing the fact of unlawful tenure cannot be the only ground for deciding on eviction, which means that, when making a decision on eviction, the competent authority has to evaluate and assess the risks of rights

330 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 16 (1997).

331 *Ibid*, para.10.

332 Civil Procedure Code of Georgia, Article 48.2.

333 *Ibid*, Article 59.3.

334 *Ibid*, Article 391.6; Article 401.3.

335 *Ibid*, Article 268 (e)¹

violation and interests of the parties.³³⁶ However, contrary to the established international standard, in accordance with the national legislation, the dispute over the issue of eviction begins on the basis of a vindication claim by the lawful owner by filing a lawsuit in the civil court,³³⁷ where the only matter of dispute is the decision on the lawful possession of the immovable property.³³⁸ Although the court is practically deciding on the issue of the household eviction, lawfulness and relevance of eviction is not a matter of dispute, and consequently, a matter of court's judgment and assessment, since the only and practically automatic ground for such a decision is the issue of lawful possession of the property. Such a process makes it impossible to assess the relevance of eviction and potential risks of violation of the rights of the parties, as well as to take into consideration the right to adequate housing in the decision-making process.

In addition to the fact that the court does not discuss the appropriateness of the evictions, the decision-making procedure of the court is also problematic, which is a substantial drawback of the decision-making process. In particular, the procedure for reviewing the case in the court is based on the adversarial system, which in turn excludes the participation of the state (local government) as an organ responsible for protecting the right to housing. This is particularly problematic if eviction leads to homelessness. As a result, such framework of discussing the matter in the court leaves out protection guarantees for the persons who could be potentially subject to homelessness and does not give them the opportunity to have their right to housing protected.

As a result, all the essential and key issues which should be the basis for the eviction decision-making process are left beyond the court trial process. In its judgment, the court does not assess and does not determine the adequacy and the proportionality of the eviction, as well as its necessity and appropriateness, deferring the eviction, the needs of persons in danger of being evicted and the states counter obligations, as well as possible harm after the eviction, and issues of its irreversibility. While discussing the issue of eviction, the Court also does not study the information about the special needs of family members and does not discuss the timing of eviction. Furthermore, the applicable law envisaged the immediate enforcement of the decision, which implies the implementation of the eviction procedure upon the decision of the first instance court, even if the decision is appealed or even if it is altered.³³⁹

336 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 8.a (1991).

337 Note: Demand for Putting an End to the Disturbance [of Ownership].

338 Civil Code of Georgia, Article 172.1.

339 Civil Procedure Code of Georgia, Article 268 (e)¹.

Regulating the eviction norms under the procedural legislation and discussing it as the matter of private law dispute also creates a possibility for making a decision without the participation of the persons subjected to the eviction.³⁴⁰

Thus, the decision-making procedure for eviction completely excludes the possibility of the court to discuss the right to housing and consider the issue of proportionality and appropriateness of an eviction as a measure. This is related not only to the institutional and procedural drawbacks of the regulation of the issue of eviction but also the inadequate understanding of the goals and the nature of the eviction institute by the national legislation. The acting law considers eviction as one of the enforcement measures, which makes the eviction institute a consequent measure of the decision on the lawful ownership and fully excludes the reasoning on the eviction results and / or the state's consequent obligations. For example, the local self-government bodies, who, according to the legislation, are obliged to provide the homeless with the shelter, are fully missing from this process.³⁴¹

2.2. Eviction without Court Decision by the Authorized Person of the Ministry of Internal Affairs

After the abolition of the so-called “police eviction”, the Minister of Internal Affairs adopted a decree “on approval of the rule on eviction of individual or persons thereof illegally occupying the housing unit/apartment and/or other property”, which establishes the rules and grounds of eviction in case of unlawfully taking the item into one's possession.³⁴² The above mentioned procedure is one of the forms of eviction processes conducted by the Ministry of Internal Affairs, which is used in the cases defined by the legislation. The order makes it possible to evict the family / person from the home by an authorized body of the Ministry of Internal Affairs in order to prevent a criminal offense and it applies to all cases of unlawful tenure, where the person has no legal basis on the item from the moment of possession.³⁴³

In this case, sufficient grounds for the eviction of a person / family is to initiate a criminal investigation and to prove the reasonable assumption about the unlawful possession of the dwelling,³⁴⁴ resulting in the eviction of the person before the investigation is completed and

340 *Ibid*, Article 229.

341 Local Self-government Code, Article 16.

342 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 “On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property”.

343 *Ibid*, Article 1; Criminal Code of Georgia, Article 160.

344 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 “On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property”, Article 4.3.

the relevant sentence is determined.³⁴⁵ In this case, similarly on the basis of the court decision, the eviction is conducted after the determination of the lawfulness of ownership and it is sufficient to determine the applicant's legitimate possession / lawful ownership. Consequently, in such case, the basis for the eviction is the reasonable assumption of a criminal offense by a person.

In addition, it is important to note that the decision-making process does not include the involvement of relevant authorities in order to investigate such issues, as the risk of family staying homeless after the eviction or special needs of the family members.

In the present case, it should be stated that eviction is the procedure for preventive measure for the alleged criminal offense, which is carried out before the investigation is over. This procedure does not envisage prevention of violation of the right to adequate housing for the unlawful tenants and the legislation sees this eviction mechanism from the perspective of property rights, which does not in itself take into account the right to housing of persons subject to eviction.

2.3. Eviction in the Process of Demolition of Unlawful Construction

According to the national legal system, demolition of the dwelling without the appropriate construction permit, which in practice is followed by the eviction of persons living there, is not recognized as eviction, which is problematic, as it excludes the guarantees of the national system, which should be recognized for the persons subjected to eviction.

According to the applicable legislation, the construction of the property without the permit in the territory in possession of third persons is considered to be a construction offense.³⁴⁶ Whereas the land where the building is located owned by the state or municipality, the local self-government is carrying out the proceedings.³⁴⁷ Consequently, the executive bodies of the local self-government, in the territory of the state or municipality, may be entitled to issue an instruction on the demolition of the housing for the violation of the rules of construction without the permit, which includes the eviction procedure in its content. In case of non-fulfillment of the demolition after the issuance of the instruction, the relevant agency

³⁴⁵ Criminal code of Georgia, Article 160.1. Note: Penalty measures for a criminal offense is a fine or a correctional work up to two years, as well as house arrest from 6 months to one year or up to two years of imprisonment.

³⁴⁶ Product Safety and Free Movement Code, Article 25.

³⁴⁷ *Ibid*, Article 25.3.

shall make a decision on the compulsory demolition,³⁴⁸ which is followed by the eviction procedure.

Although in this case administrative proceedings are conducted by the local government, which is also responsible for protecting the right to adequate housing and has exclusive responsibility to provide shelter to homeless persons, it recognizes the person living in the unlawfully constructed dwelling only as a perpetrator and only operates in the framework of imposing liability as defined by the law.³⁴⁹ In this case, the actual eviction is considered to be a preventive measure of administrative offense, and it ignores the adequate housing rights and, consequently, expels the state from the process, as a subject responsible for it.³⁵⁰

In the decision-making process during the administrative proceedings, local authorities do not study the needs of the people subjected to eviction and the risk of their homelessness, the need for alternative housing and the scope of the state's immediate and urgent actions. Consequently, in the decision-making process on the demolition of the unlawfully constructed housing, with the complete neglect of the right to adequate housing, the state leaves out the issue of provision of alternative housing, adequate protection of interests of persons with special needs and vulnerable groups, without assessment and reaction. This form of eviction, including non-recognition of the procedure as eviction, completely ignores the national and international standards of eviction.

3. Procedure for the Enforcement of the Decision on Eviction

Eviction, as the forced enforcement procedure, must be conducted in accordance with appropriate standards, which according to the standard set by the Covenant, implies direct consultations with persons subjected to eviction, prior notification within the adequate and reasonable period of time, which will minimize the possible violation of the right to adequate housing.³⁵¹ The international standard unequivocally establishes the need for protecting especially vulnerable groups – women, children, elderly, and persons with disabilities in the process of enforcing the eviction, which implies the existence of exceptional protective regulations.³⁵²

348 Law of Georgia “on Enforcement Proceedings”, Article 25.9.g.

349 Product Safety and Free Movement Code, Article 25.4.

350 Correspondence N17-01173591446 of Tbilisi Municipality City Hall, 25.12.2017.

351 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 14 (1991).

352 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 10 (1997).

The unconditionally important issue is the process of prior notification and provision of information on eviction, as well as the determination of a reasonable time for voluntary execution of the decision on eviction, which is of great importance if there is an opportunity for the family to search for alternative housing.³⁵³ According to the existing regulations, the legislation does not define the specific time frame for the voluntary demolition of the unlawfully contracted dwelling. The National Bureau of Enforcement sends a notice to the party before the eviction process on the basis of a court decision and gives 10 days for the voluntary demolition.³⁵⁴ Ministry of Internal Affairs gives 5 days prior notice in cases of alleged criminal offense.³⁵⁵ Besides the lack of reasonable prior notice (time wise) and its uncertainty in some cases, it is also problematic that in national legislation does not foresee the ban on evictions in cases of night, cold and bad weather conditions, which is contrary to the international standards, which itself makes it obligatory to take weather conditions into consideration and recognize the relevant banning regulations.³⁵⁶

Besides, in all three forms of eviction ignoring the needs of vulnerable groups is problematic. None of the normative basis for determining the eviction procedure provides for the modification of the eviction procedure, including the postponement, suspension or termination of the eviction, based on the needs of the vulnerable groups. The only reservation in relation to vulnerable groups is that of the Ministry of Internal Affairs not to use physical force, special means and firearms against persons with disabilities, children and elderly,³⁵⁷ which is a minimum standard and does not respond to the protective international standards which should be utilized by the vulnerable groups in the eviction process.³⁵⁸

In the process of eviction, another important issue is the guarantee of adequate participation of social services representatives, who have to minimize the negative effects of eviction for the person / family. According to the legislation, social workers only participate in the process of eviction on the basis of the court decision, by the National Bureau of Enforcement and their involvement in the demolition of the residential house and in the cases of eviction by the Ministry of Internal Affairs is not guaranteed. With regards to the eviction process on the court decision, the main purpose of social workers' involvement in this process is to min-

353 For more details, see first part of the study: p. 63-64.

354 Law of Georgia "on Enforcement Proceedings", article 84.3.

355 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 "On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property", Article 6.1-6.2.

356 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 15 (1997).

357 Order No. 75 of the Minister of Internal Affairs of March 1, 2016 "On Approval of the Rule on Eviction of individual and persons thereof illegally occupying the housing unit/apartment and/or other property", Article 6.2.

358 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 10 (1997).

imize the cases of violations of the rights and lawful interests of parties and/or third parties as the National Bureau of Enforcement carries out its activities.³⁵⁹

The main problem in the execution of the decision on eviction is the absence of a mechanism of coordination with other state agencies, including the local self-government bodies, which are responsible for providing shelter for homeless persons.³⁶⁰ The enforcement process does not provide for the obligatory participation / awareness of the local self-government which is the relevant body responsible on homelessness, even if the eviction is from the only housing and the probability of staying homeless is high.³⁶¹ Consequently, due to the absence of mechanisms for the protection of the right to housing and the fact that relevant agencies responsible for the protection of housing rights are not participating in the process, the legislation does not include the obligation of local self-government bodies to engage in the eviction process and carry out relevant measures, even if the municipal authorities themselves are implementing the eviction of tenants through demolition of unlawfully constructed dwellings.

In addition, it is problematic to maintain the movable items in the eviction process, as the enforcement measure should be carried out without damaging the movable property. Under the enforcement of a court decision, the law provides for the responsibility to maintain and take care of the immovable property, however, the state does not have the obligation to save and retain movable items in case of eviction due to the criminal offense. Also, this is the case during the demolition of the residential building, because of the non-existence of regulatory norms.

Consequently, the national law regulating the eviction does not take into account any procedure of eviction, which would make it possible for prevention of violation of the right to adequate housing for the persons subject to eviction and adequately conduct the eviction process. Furthermore, it is inherently problematic, that the execution of the eviction procedure does not envisage the participation of the local government, as a responsible organ, and the involvement of social services in the enforcement/post-enforcement processes; does not provide adequate and reasonable time for eviction notice, the needs of vulnerable groups in the process of enforcing the eviction, the appropriate legal basis for suspension or the postponement of the eviction and the prohibition of eviction in case of poor environmental conditions.

359 Regulation of the Protection of the Interest of the Structural Units of the National Bureau of Enforcement, the Legal Entity of Public Law, governed by the Ministry of Justice of Georgia, Article 2.

360 Local Self-government Code, Article 16.

361 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 15.d (1997).

4. The Post-eviction Legal and Social Protection Guarantees

One of the most important guarantees, for the purpose of protecting the right to housing after enforcing the forced eviction, is the right of households – not to be left without access to housing, which naturally implies state's consequent obligation. In addition, it is important that the state support the evicted individuals using all the available legal means in order to obtain support in disputes on the national level regarding compensation for damages and unlawfulness of evictions conducted by the state.³⁶²

4.1. Legal Guarantees for the Protection of Right

The study showed that the main problem in the eviction process is the imbalance between the protection of property rights and the right to housing of persons subjected to eviction. This process not only does not envisage the protection of the right to housing, but it also does not create a space for discussing such an issue. Under these conditions, the existence and access to guarantees of the legal protection for the persons subjected to eviction in the post-eviction period are of particular importance.

The Covenant obliges member states to create legal protection guarantees for persons subject to eviction so that they can utilize legal means to restore their rights and receive appropriate compensation.³⁶³

Analysis of the forms of eviction in the process of court decisions and demolition of the buildings reveals that the national legislation, even when the mechanism of appealing against the eviction decision is taken into consideration, fails to protect the household from eviction. The decision made in the court hearing of the vindication claim can be appealed in a higher instance court according to the general rule,³⁶⁴ however, the legislation, in order to protect the owner's property rights, envisages the immediate execution of the judgment of the first instance court, even if it is appealed.³⁶⁵ The dispute over the ownership is in progress, but the eviction is possible before the end of the dispute.

It is important that the legislation in the process of the demolition of the unlawfully constructed housing provides a possibility to appeal the decision, but the appeal decision does

³⁶² *Ibid*, para.13.

³⁶³ *Ibid*.

³⁶⁴ Civil Procedure Code of Georgia, Article 364.

³⁶⁵ *Ibid*, Article 268.1.e¹.

not stop the demolition.³⁶⁶ Accordingly, the current legislation envisages formal appeal of the decision; however, it does not have the possibility to suspend the eviction before the issue is finalized.

In the case of unlawful eviction, according to the general rule, the legal system envisages the possibility to address the court for remedy and does not offer any special safeguards.

4.2. State Obligation to Provide Alternative Housing

The state is obliged to provide alternate housing for persons subject to eviction. According to the Covenant, it is important that the eviction process does not cause the homelessness of persons subjected to eviction, which obliges the state to use all the appropriate mechanisms to avoid homelessness of the tenants, including by providing alternative accommodation.³⁶⁷ According to the standard set by the Covenant, when the person/family does not have the necessary means to independently satisfy their needs, it is the necessary for the state to take all appropriate measures to ensure alternative housing, in light of its available resources,³⁶⁸ which means that the state needs to utilize all of its available resources to ensure rights realization. Particularly important is the obligation to ensure the immediate provision of alternative housing to especially vulnerable groups, the progressive realization principle is not applied here and this obligation should be immediately fulfilled by the state.³⁶⁹

The local self-government code, in terms of ensuring the right to adequate housing, envisages the only responsibility for the self-government bodies to provide the registration and shelter of homeless persons in the territory of the municipality.³⁷⁰ However, this obligation is not directly linked to ensuring alternative housing to those subjected to eviction, in accordance with the international standards, as the existing obligation implies providing the shelter only. In addition, the legislation does not provide for exceptional protection guarantees for the vulnerable groups in the provision of alternative housing, which contradicts the basic standards set by the Covenant.

366 Product Safety and Free Movement Code, Article 25.4.

367 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 16 (1997).

368 *Ibid*, para.16-17.

369 *Ibid*, para.10.

370 Local Self-government Code, Article 16.

Findings

Analysis of the national legislation of evictions shows that:

- Eviction legislation contains extremely poor rights protection guarantees and does not reflect internationally recognized basic legal standards;
- National legislation sees the eviction issue only in the context of protection of property rights and the main purpose is to restore owner's property rights, which leaves the content of the right to housing and protection of persons subjected to eviction beyond the adequate regulation, which significantly moves the existing regulation away from basic international standards;
- National legislation does not envisage a uniform concept of eviction; The only normative act is the order of the Minister of the Internal Affairs, which recognizes eviction on the level of concept;
- National legislation envisages two forms of eviction, the main form of which is eviction based on the court decision, which is immediately enforceable. Only in certain cases, the eviction is possible by the authorized persons of the Ministry of Internal Affairs. At the same time, in the national legislation the cases of eviction during the demolition of the dwelling built without a construction permit can be found, however, the form of eviction is not recognized by the legislation, thus defying the national and international standards of eviction;
- The main grounds and the only prerequisite for making a decision on the eviction by filing a lawsuit in the court are to examine the issue of the lawfulness of disputed housing. In the judgment, the Court does not determine the adequacy and the proportionality of the eviction, as well as its necessity and appropriateness, deferring the eviction, the needs of persons in danger of being evicted and the states counter obligations, as well as possible harm after the eviction, and issues of its irreversibility;
- The court dispute on eviction is conducted on the basis of the adversarial system, which also allows the possibility of making a decision on the eviction without the participation of the party;
- In the event of the existence of a criminal offense, the rule and the procedure of eviction, in itself, does not include the consideration of right to adequate housing of the persons

subjected to eviction; In this case, a sufficient precondition for the eviction is the body of evidence proving the reasonable assumption of unlawful possession;

- National legislation on the demolition of the residential building does not envisage any kind of guarantees for the realization of the right to adequate housing for persons subjected to eviction and sees the process only as a prevention of construction violation;
- All three forms of eviction exclude reasoning on such issues as the risk of homelessness of people subjected to eviction, eviction from the only dwelling, special needs of vulnerable groups; Consequently, when determining the eviction issue, the main factors that determine homelessness remain beyond assessment;
- In all three forms of eviction, the state authorities and local self-government bodies are excluded from participating in the process as organs responsible for offering alternative accommodation; Social services are also excluded from the process (except for the case of eviction based on court decision);
- The legislation does not provide adequate and reasonable time for the eviction notice, the needs of vulnerable groups in the process of enforcing the eviction, the appropriate legal basis for suspension or the postponement of the eviction and the prohibition of eviction in case of poor environmental conditions;
- Legal and social protection guarantees against eviction are weak. Legal safeguards, including the right to appeal against the eviction decision, cannot safeguard maintenance of the possession of the property and suspend the eviction before the disputable issue is resolved;
- Notwithstanding international standards, national legislation does not provide a direct reference to the state obligation to provide evicted persons, particularly vulnerable groups, with alternative housing, in case there is such a need. The only clear record in the law is the obligation of the municipal authorities to provide the homeless with shelter. For which the existence of homelessness post-eviction is necessary.

Recommendations

- Normative base of eviction defined by the national legislation should be substantially transformed so that it is fully compliant with the basic international standards, which on the one hand include the preventive policies and measures of eviction and on the other hand take into consideration the human rights (including the right to housing) based approach, on the stage of making a decision on eviction, on the enforcement stage and in the following processes after the enforcement;
- The legislator should see the eviction not just as the protection mechanism of the property, but as a measure containing the high risk of infringement of housing rights, the use of which should be the last resort to achieve a legitimate goal;
- The law should provide a uniform definition of eviction and the legal framework for establishing eviction standards, which take into account the legal, institutional and procedural safeguards to ensure the lawfulness and appropriateness of the eviction decision, including the assessment of the violation of the right to housing, household homelessness risks and needs of the especially vulnerable groups, in order to ensure fair and reasonable balance between the rights and the interests of the parties;
- Legislation should recognize the eviction resulting from the demolition of the dwelling without the construction permit document / demolition of the residential housing built in other's possession as a form of eviction and fully subject it to the revised eviction regulation;
- Legislation should take into account the procedure for making and enforcing decisions on eviction which ensures mandatory participation of agencies responsible for the right to housing in the relevant process, as well as the mandatory participation of social services;
- Legislation should take into consideration the mechanism of appealing against the eviction decision, which will defer the eviction process for a reasonable period, by maintaining the fair balance between adequate housing and property rights, before the final decision is taken or alternative housing is provided;
- The legislation should take into account the special needs of vulnerable groups, including persons with disabilities, children, elderly, women, and establish consequent standards of rights when making an eviction decision, when enforcing the decisions and in the following period;

- Eviction enforcement procedure should be fully in compliance with international standards and should take into consideration a reasonable timeframe for the eviction, compulsory participation of state representatives and prohibition of eviction during poor environmental conditions;
- Legislation should explicitly take into account the obligation of the state to ensure that families will not be left homeless after the eviction, *inter alia*, by offering alternative housing, and in case of vulnerable groups by immediately guaranteeing alternate housing.

The Right to Adequate Housing in the Context of the Needs of Persons with Disabilities

(International Standards and Georgian Experience)

Introduction

Disability and socio-economic vulnerability are often closely interconnected,³⁷¹ which cumulatively creates such challenges as homelessness – one of the most severe manifestations of economic vulnerability.³⁷² A number of states often justify homelessness with the scarcity of financial resources. Despite the fact that the similar lack of resources in other policy areas (including, vocational education and employment; social protection and health care systems) negatively affects the entire population of the country, groups that are simultaneously vulnerable in different aspects and are neglected by the state are particularly marginalized and discriminated against³⁷³ – this group includes persons with disabilities as well.

The United Nations (hereinafter “UN”) Special Rapporteur on Adequate Housing³⁷⁴ emphasizes that discrimination and segregation may lead to poverty and socio-economic marginalization.³⁷⁵ Poverty, in its turn, is a pre-condition for homelessness,³⁷⁶ especially when the vulnerability to homelessness is also aggravated by unemployment, forced displacement, no access to social housing and neglect of the needs of most vulnerable populations from the part of the government.

Equal enjoyment of their rights by persons with disabilities remains to be a serious challenge in many societies. Persons with disabilities face barriers in their everyday lives such as limited access to housing, employment and economic prosperity; complete absence or lack of appropriate social, healthcare and independent living support services.³⁷⁷

Neglect of the challenges faced by disabled populations in the national legislation and policy papers and their low engagement in decision-making³⁷⁸ leads to poor implementation of the right of persons with disabilities to adequate housing and eventually results in the danger

371 A/71/314, Report of the Special Rapporteur on the Rights of Persons with Disabilities, Para. 13 (2016).

372 E/CN.4/2005/48, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Para. 61 (2005).

373 *Defending Dignity: Protecting Economic, Social and Cultural Rights*, Amnesty International, 1 (2005).

374 United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context.

375 E/CN.4/2005/48, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Para. 58 (2005); see also: Yeo R., *Chronic Poverty and Disability*, Action on Disability and Development (2001).

376 E/CN.4/2005/48, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Para. 23 (2005); see also: *Briefing Note: Human Rights and Economic Crisis*, Amnesty International, 1 (2012).

377 *The Right to Adequate Housing*, Fact Sheet No. 21/Rev.1, Geneva, 23 (2014).

378 *The United Nations Convention on the Rights of Persons with Disabilities*, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 86 (2017).

of their homelessness. A number of states were faced with the problem of homelessness of persons with disabilities as early as 1960s-1970s, along with the need to deinstitutionalize large-scale mental health institutions. Despite the certainly positive nature of the deinstitutionalization process, complete absence or lack of vital support services for the beneficiaries who had left the service was eventually manifested in the dramatic increase of homelessness among persons with disabilities.³⁷⁹ In the wake of these challenges, several international and national standards and practices were amended; however, despite the states' efforts to effectively tackle the issues faced by persons with disabilities, their needs are continued to be neglected in the national housing policies.³⁸⁰

Furthermore, notwithstanding the severity of the issue, housing legislation and practices are rarely researched and analyzed; nevertheless, even the available sporadic analytical data reveal the problematic nature of this particular right for persons with disabilities, which is the subject of the presented research. Considering the content of existing challenges, the document aims to: analyze international legal standards for housing in the context of disability; review Georgian legislation, policy papers and services in this direction; identify the gaps and provide recommendations for problem-solution. Due to the limitations, the presented research does not delve into the issue of preventing homelessness on the level of national housing policies.

The publication consists of four main chapters. The first chapter provides the detailed analysis of international legal standards for the right to housing in the context of disability; a review of components entailed in this right and the significance of human rights-based policies and measures for preventing homelessness of persons with disabilities. Based on the international housing legislation and policies, the second chapter analyses the situation in Georgia, including obligations and limitations of relevant state bodies in housing provision. For this purpose, the second chapter looks at general and specialized housing services, including municipal programs. The third and fourth chapters present main findings of the research and recommendations to address the gaps in housing policies and the prevention of homelessness.

379 The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 22 (2014); Street Homelessness: A Growing Problem that Needs Urgent Attention, Thematic Report, FEANTSA, 12 (2005).

380 States Must Unequivocally Anchor Their Housing Strategies in Human Rights, Written Statement, Amnesty International, 2 (2018); Effective Human Rights-based Housing Strategies, Submission to the UN Special Rapporteur on Adequate Housing as a Component of the Right to and Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Amnesty International, 6 (2017).

Methodology

The following instruments were applied during the research: analysis of international standards; analysis of national legislation, policy frameworks and practices; collection of public information and analysis of secondary data.

Analysis of International Standards

The analysis covered international standards for adequate housing as well as those addressing the rights of persons with disabilities. Namely, the research looked at the provisions incorporated in international treaties and agreements (including, the UN Convention on the Rights of Persons with Disabilities; International Covenant on Economic, Social and Cultural Rights and European Social Charter); case law (rulings of the European Court of Human Rights; decisions made by Committees of UN Conventions and European Social Charter in response to individual communications; judgments made by national courts of certain states); other instruments establishing international standards (concluding recommendations and general comments by Committees of UN Conventions and European Social Charter; reports published by UN Special Rapporteurs; reports published by UN High Commissioner for Human Rights, etc.). The main purpose of these research instruments was to examine the contents and standards entailed in the right to adequate housing and its components in the context of disability; to identify the state obligations and limitations in the process of preventing homelessness of persons with disabilities and ensuring their access to adequate housing.

Analysis of national legislation, policy frameworks and practices

The research examined Georgian experiences with regard to housing policies and different rights categories of persons with disabilities. For this purpose, it analyzed the national legislation: laws as well as normative acts; policy papers – general documents and disability-specific instruments; relevant institutional frameworks (at the central and municipal level as well as in the context of inter-agency coordination mechanisms) and general and specialized housing programs. The objective of this instrument was to evaluate the extent of engagement of persons with disabilities in legislative initiatives and policy formation, which is also reflected in the institutional frameworks and the content of general and specialized housing services.

Collection of public information from stakeholders

In order to obtain data regarding the surveyed subject, the research team requested information from central and local government bodies, including: Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs; LEPL National Bureau of Enforcement; Ministry of Labour, Healthcare and Social Affairs of the Autonomous Republic of Adjara; also Municipalities of Tbilisi, Batumi, Kutaisi, Telavi, Zugdidi and Ambrolauri. The objective of this instrument was to examine the powers and obligations of government stakeholders in enforcing the right to adequate housing in the context of disability and identify gaps and challenges; to assess general and specialized services, which are or supposed to be designed to eliminate homelessness of persons with disabilities.

Analysis of secondary data

In order to identify existing challenges in rights standards and enforcement, the research also looked at and analyzed data from the following resources: parliamentary and special reports of the Public Defender of Georgia; documents and publications of international non-governmental organizations, as well as the academic literature.

Research limitations

During the analysis of national experiences in enforcing the right to adequate housing, the research mostly focused on examining the legal framework and policy documents, institutional mechanisms and housing services. The document does not review national mechanisms designed to prevent homelessness of persons with disabilities, including on the level of adjoining policies.

1. The Right to Adequate Housing of the Persons with Disabilities within International Standards

The purpose of this chapter is to analyze in detail international standards, which address the right of persons with disabilities to adequate housing, prevention of homelessness and implementation of the human rights-based housing policies.

Certain sections of the analyzed international legal standards cover everyone's right to the adequate housing while other sections aim to define the meaning of additional obligations

of the states to address the issues of vulnerable populations, including persons with disabilities. While in certain cases the two directions of these standards are consistent with each other (for example, when implementing actual procedures of eviction); they are significantly different with regard to other aspects (for instance, adequate housing qualification components).

1.1. The Essence of the Right to Adequate Housing in the Context of the Needs of Persons with Disabilities

Effective realization of the right to adequate housing is closely interconnected with dignified living conditions of persons with disabilities and their full enjoyment of almost all other rights and freedoms. Nevertheless, this particular right is often overlooked in corresponding national legislation or policy papers.³⁸¹ High degree of homelessness of persons with disabilities, the frequency of their institutionalization and violations of their right to adequate housing have prompted the need to implement human rights-based approaches in relevant legislation and practices.

The Universal Declaration of Human Rights set in motion the establishment of international legal standards on adequate housing. The instrument brought this particular right under the umbrella of the right to an adequate standard of living.³⁸² Approaches offered by the Universal Declaration of Human Rights were later shared by the 1966 Covenant on Economic, Social and Cultural Rights (hereinafter “Covenant”)³⁸³ and much later the 2006 UN Convention on the Rights of Persons with Disabilities (hereinafter “Convention”)³⁸⁴ placing particular emphasis on the vulnerability of persons with disabilities to financial hardships and homelessness.³⁸⁵

International standards on the right to adequate housing existing before the Convention did not highlight persons with disabilities as right-holders and elaborate on the obligations of the signatory states to provide housing and other related services based on their needs;

381 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 1 (2017).

382 See: Universal Declaration of Human Rights (UDHR), UN General Assembly, 217 A (III), Article 25.1 (1948). According to this Article: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”.

383 See: the International Covenant on Economic, Social and Cultural Rights, Article 11.1 (1966).

384 See: the UN Convention on the Rights of Persons with Disabilities, Article 28.1 (2006).

385 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 510 (2017).

however, these standards were later interpreted as inclusive of persons with disabilities as well.³⁸⁶ The Convention is essentially the first instrument to focus on persons with disabilities and their needs in the realization of the right to housing (please see Chapter 1.1.1 for more detailed description of the right to housing). Despite the fact that the Convention does not provide a detailed description of all actions to be undertaken by the states in order to ensure enforcement of the right to adequate housing, along with the Covenant it offers a broad framework, which is necessary to ensure that the right of persons with disabilities to adequate housing is implemented. In addition, due to the general nature of the texts of the Convention and the Covenant, the role to establish state obligations falls on the respective UN Committees in the form of their general comments, concluding observations for states and the decisions regarding individual communications.

Notably, the Convention offers a transformative understanding of the rights of persons with disabilities and “fundamentally changes the rights discourse”.³⁸⁷ The Convention brings all types of rights together under one framework and establishes a new approach with regard to the concepts of interconnectedness and integrity of rights and freedoms.³⁸⁸ In 2017 Report, the UN Special Rapporteur analyzed in detail the process of taking the disability perspectives into account and implementing disability rights-based policies.³⁸⁹ According to this paper, the following principles should underpin policies designed to implement the right of persons with disabilities to adequate housing: 1) dignity, autonomy and freedom of choice; 2) substantial equality and non-discrimination;³⁹⁰ 3) affordability; 4) participation and access to legal protection; and 5) adequate measures to realize the right to housing within maximum affordable resources. In the process of implementing the above-described international stan-

386 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights (1995).

387 Stein M., A., Disability Human Rights, California Law Review, Vol. 95:75, 121 (2007); A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 3 (2017).

388 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Paras. 3, 6 (2017); From Exclusion to Equality, Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, The United Nations, 4 (2007). In addition to the Convention, several instruments of the so-called “Soft Law” adopted by the UN are also important in ensuring the consideration of disability perspectives in all aspects of economic and social development. See also: A/65/173, Report of the Secretary – General, Keeping the Promise: Realizing the Millennium Development Goals for Persons with Disabilities towards 2015 and Beyond, para. 76 (2010); World Summit for Social Development, Copenhagen Declaration on Social Development (1995); World Conference on Human Rights, Vienna Declaration and Programme of Action (1993).

389 See, also the human rights-based housing policy directions developed by Amnesty International: 1. Provide persons with adequate housing; 2. Implementation of the right to adequate housing in legislation and policies; 3. Ensure inclusion and participation; 4. Ensure evaluation, monitoring and legal protection. Effective Human Rights-based Housing Strategies, Submission to the UN Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Amnesty International, 7-8 (2017); States Must Unequivocally Anchor Their Housing Strategies in Human Rights, Written Statement, Amnesty International (2018).

390 Achieving Equal Employment Opportunities for People with Disabilities through Legislation, Guidelines, International Labour Organization, 36-37 (2014).

dards and obligations under the 2030 Agenda for Sustainable Development (SDGs)³⁹¹ it is important that the states recognize the right to housing and develop mechanisms for its enforcement.³⁹² Moreover, it is crucial that persons with disabilities are identified as vulnerable to homelessness and social exclusion and that their rights enforcement and effective removal of barriers they face are prioritized.³⁹³

For the purpose of detailed review of international legal standards regarding the right of persons with disabilities to adequate housing, this chapter of the research analyzes the general essence of the right to adequate housing, key components of the eligibility of housing and standards of eviction with consideration of the needs of populations with disabilities.

1.1.1. The General Essence of the Right to Adequate Housing

In order to analyze the right to adequate housing with regard to persons with disabilities, it is important to elaborate on the essence of the right itself. As described above, particular attention must be paid to the detailed analysis of the two documents – the Convention and the Covenant and the provisions enshrined in these instruments.

The Covenant briefly touches upon the right to adequate housing. Nevertheless, the UN Committee on Economic, Social and Cultural Rights has emphasized that enforcement of this particular right plays a central role in the enjoyment of all other economic, social and cultural rights.³⁹⁴ The same Committee has also stated that all human beings are holders of the right to adequate housing regulated by Article 11 of the Covenant and that it ensures non-discrimination and enforcement of the right of an individual and their family members to live in secure, peaceful and dignified conditions at any place.³⁹⁵ The Committee also calls for the signatory states to recognize and incorporate the right to adequate housing in their national legal systems, along with other rights and freedoms described in the Covenant.³⁹⁶ Finally, despite the discretion given to the states in terms of actions designed to provide ade-

391 See: The United Nations General Assembly, Resolution 70/1, Transforming our World: the 2030 Agenda for Sustainable Development, A/RES/70/1, Goal 11.1 (2015).

392 A/HRC/37/53, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Para. 16 (2018).

393 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 7 (2017); The European Federation of National Organizations Working with the Homeless, Exploring the potential of the NAPsIncl: the fight against homelessness in the European strategy to combat poverty, Homeless in Europe, 13 (2002).

394 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 1 (1991).

395 *Ibid*, para. 6-7.

396 General Comment No. 9: The Domestic Application of the Covenant, Committee on Economic, Social and Cultural Rights, para. 2 (1998).

quate housing, the Committee emphasizes that development of the national housing strategy must be one of the continued policy directions.³⁹⁷

Compared to the limited descriptions given in Article 11 of the Covenant, Article 28 of the Convention provides a more comprehensive clarification. Unlike the Covenant, in this article, the Convention directly points to persons with disabilities as holders of the right to adequate housing and establishes obligations for signatory states to ensure access to adequate housing for persons with disabilities.³⁹⁸

The UN Committee on the Rights of Persons with Disabilities has often spoken about the obligation of the states to adjust the state/social housing services to the needs of persons with disabilities and ensure their accessibility, including consideration of universal design standards during construction, so that persons with disabilities are able to benefit from the service.³⁹⁹ In the attempt to establish the exact meaning of the states' obligations it is important to classify the types of obligations based on implementation timeframes. Analysis of international legal standards demonstrates that the states have immediate obligations on the one hand and general standards on the other, which they have to adhere to with regard to each citizen, including persons with disabilities. *It is an immediate obligation of the State to take prompt actions to provide persons living in extreme poverty and destitution with a core minimum with regard to adequate food, clothing and housing.*⁴⁰⁰ This type of obligation requires the adoption and implementation of homelessness prevention strategies.⁴⁰¹ The meaning of the states' immediate obligation also incorporates perspectives of the right to equality.⁴⁰² More specifically, it entails taking actions in order to eliminate discrimination and ensure equality in legislation and practice, including corresponding programs and services available in the given country.

397 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 12 (1991).

398 See, the UN Convention on the Rights of Persons with Disabilities, Article 28.2d (2006).

399 General Comment No. 2, Accessibility, Committee on the Rights of Persons with Disabilities, para. 42 (2014); General Comment No. 5 on Living Independently and Being Included in the Community, The Committee on the Rights of Persons with Disabilities, para. 92 (2017); Concluding Observations on the Initial Report of Armenia, Committee on the Rights of Persons with Disabilities, paras. 49-50 (2017); Concluding Observations on the Initial Report of Colombia, Committee on the Rights of Persons with Disabilities, para. 63 (2016); Concluding Observations on the Initial Report of Serbia, Committee on the Rights of Persons with Disabilities, paras. 57-58 (2016); Concluding Observations on the Initial Report of Ecuador, Committee on the Rights of Persons with Disabilities, paras. 44-45 (2014).

400 General Comment No. 6 on Equality and Non-discrimination, Committee on the Rights of Persons with Disabilities, Para. 68 (2018).

401 A/HCR/28/62, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Para. 49 (2015).

402 Felner E., Closing the "Escape Hatch": A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights, *Journal of Human Rights Practice*, Vol.1, No. 3, 403 (2009).

On the other hand, enforcement of the right to adequate housing is connected to the obligations, which have a *continuing discourse* and aim for *progressive realization* of this right. The need to introduce and apply this concept was dictated by the scarcity of the states' financial resources to completely and immediately achieve the objectives of the obligations.⁴⁰³ In terms of implementing the right to adequate housing and adjoining rights and freedoms, this type of obligation can be manifested in actions such as expansion of the number and geographical coverage of social housing; increasing access to social services.⁴⁰⁴

Regardless of the type of obligation, the Convention suggests statistical data collection as one of the essential factors for the effectiveness of state policies designed to implement the right of persons with disabilities to adequate housing. The Convention views such data collection as an important mechanism to evaluate implementation of the obligations as well as to identify gaps and barriers of the implementation process and requires the states to: "collect information, including statistical and research data which will support the formation and implementation of policies required for effective enforcement of the Convention".⁴⁰⁵ Therefore, in order to develop truly effective implementation mechanisms, it is important for the national policies to rely on relevant statistical data and the tendencies the data points to.

Housing policies should also take into account additional factors. Specifically, the state efforts to provide housing should not target only those persons with disabilities who live in poverty; when planning policies the state must take into account the socio-economic circumstances that place persons with disabilities in an unequal position compared to other members of the society.⁴⁰⁶ Furthermore, the Committee emphasizes the importance of promoting human rights-based approach on all levels of housing policies and the need to increase accessibility of housing and adjoining support services, particularly for persons with psycho-social and intellectual needs.⁴⁰⁷

In spite of the fact that the Convention and the Covenant along with respective UN Committees play significant roles in elaborating on the meaning of the right of persons with dis-

403 General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), Committee on Economic, Social and Cultural Rights, paras. 1, 9 (1990).

404 Concluding Observations on the Initial Report of the Niger, Committee on Economic, Social and Cultural Rights, para. 24 (2018).

405 The importance of collecting and disseminating information about persons with disabilities, particularly regarding their living conditions and the need to ensure comprehensive research about all aspects of barriers faced by them has also been addressed in the The United Nations General Assembly Resolution 48/96, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 13 (1993).

406 Concluding Observations on the Initial Report of Costa Rica, Committee on the Rights of Persons with Disabilities, para. 57 (2014).

407 Concluding Observations on the Initial Report of Canada, Committee on the Rights of Persons with Disabilities, para. 38 (2017).

abilities to adequate housing, other international legal acts which deal with the housing right of all or particular groups of persons with disabilities must also be briefly reviewed; more specifically, the **European Social Charter** and its Article 31⁴⁰⁸ which addresses the right of *all persons* to housing and determines the states' obligation to promote affordability and accessibility of the adequate standard of living.⁴⁰⁹ The European Committee of Social Rights prioritizes the states' obligation to provide housing to vulnerable groups and for this purpose, highlights persons with disabilities.⁴¹⁰ In the case *International Movement ATD Fourth World v. France*, the Committee specifies that provision of the right to housing is not focused only on the outcome but is a continuing process which incorporates the state's obligations to 1) take necessary legal, financial and practical actions in order to ensure sustainability of the process; 2) collect and maintain statistical data about the needs, resources and outcomes; 3) regularly review and revise adopted strategies; 4) establish temporary thresholds for specific actions and goals; 5) pay special attention to the impact of relevant policies on all groups, particularly, *vulnerable groups*.⁴¹¹

The **1989 UN Convention on the Rights of the Child** is another important document for understanding the right of persons with disabilities to adequate housing. The document specifies the obligation of signatory states to recognize the right of *every child* to adequate housing for their physical, intellectual, mental, moral and social development and to provide support to minors and their parents/other carers, including through housing programs.⁴¹²

Certain components of the housing right of persons with disabilities as vulnerable populations are directly covered⁴¹³ by other international legal instruments such as 1951 UN Convention Relating to the Status of Refugee (Art. 21); 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (Art. 5); 1979 UN Convention on Elimination of All Forms of Discrimination against Women (Art. 14(2)); 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Art. 43(1));⁴¹⁴ 1962 No. 117 Convention

408 Despite the fact that European Social Charter has been enacted for Georgia since 2005, the State has not recognized the binding nature of the Article 31 of the Charter yet.

409 See, the European Social Charter (Revised), Article 31.1, 31.3 (1996).

410 Digest of the Case Law of the European Committee of Social Rights, Council of Europe, 170 (2008).

411 *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, Decision on Merits, ECSR, paras. 59 – 60 (2007).

412 See the Convention on the Rights of the Child, Article 27.1, 27.3 (1989).

413 Although the European Convention on Human Rights and Fundamental Freedoms, as well as the American Convention on Human Rights and the African Charter on Human and People's Rights do not directly cover the right to adequate housing, the court practice generated by these documents interpreted this right as part of the rights and freedoms listed in them, for example: the right to property; the right to privacy and family life, etc. see: The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, 12 (2014).

414 As of November 2018, this instrument is not obligatory for Georgia.

of the International Labour Organization on Social Policy (Basic Aims and Standards) (Art. 5(2)); 1977 European Convention on the Legal Status of Migrant Workers (Art. 13).⁴¹⁵

1.1.2. Key Qualification Components of Adequate Housing

In order to establish the standard of the right to adequate housing and the content of obligations derived from it, it is important to evaluate the broad meaning of the right as well as the adequacy of the housing. The UN Committee on Economic, Social and Cultural Rights provides an in-depth analysis of this concept in its General Comment No. 4 where it lists key factors which are necessary to qualify the right to adequate housing. Review of these factors is important for the presented research as they are directly connected to persons with disabilities⁴¹⁶ on the one hand and are relevant for the explanation and implementation of Article 28 of the Convention on the other.⁴¹⁷

According to the Committee, in the process of evaluating the adequacy of housing for everyone, including persons with disabilities, the following elements must be taken into consideration:⁴¹⁸

- **Legal security of tenure**, which will ensure legal protection of persons against forced eviction, harassment and other threats. This component is viewed as central to the right to adequate housing by the UN Special Rapporteur⁴¹⁹ which requires a whole set of obligations to be fulfilled, including: prohibition of eviction which may lead to the loss of shelter or significant support systems by persons with disabilities;⁴²⁰ guaranteed right of persons with disabilities to live in the community, in an adequate and safe tenure and with access to services and support.⁴²¹

- **Availability of services, materials, facilities and infrastructure** is extremely important to ensure independent living of persons with disabilities through access to support

415 As of November 2018, this instrument is not obligatory for Georgia.

416 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 49 (2017).

417 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 512 (2017).

418 See: General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 8 (1991).

419 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 50 (2017).

420 For more detailed review of the issues related to eviction of persons with disabilities, please, see Chapter 1.1.3.

421 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 51 (2017).

services required by Article 19 of the Convention.⁴²² This component means that an adequate house must contain certain facilities essential for health, security, comfort and nutrition; it should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and emergency services. It is similarly important that persons with disabilities have unobstructed access to these services and that the access is not determined by the ownership type of the tenure.⁴²³

- **Affordability of housing** is one of the biggest challenges faced by persons with disabilities. This component means that personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs (such as nutrition, education, healthcare, etc.) are not threatened or compromised. It requires from state parties to establish housing subsidies for populations who are vulnerable to socio-economic circumstances and allocate forms and levels of housing finance which adequately reflect their housing needs. For the purpose of this component, the state parties are required to remove financial and legal barriers for persons with disabilities to afford housing, which includes affordability of rent, utilities and other important services, by providing financial support such as rent subsidies and access to loans.⁴²⁴

- **Accessibility**⁴²⁵ component ensures access to adequate housing resources, which enables persons with disabilities to lead independent lives and participate in all aspects of life.⁴²⁶ The UN Committee on Economic, Social and Cultural Rights has emphasized the obligation of state parties to prioritize vulnerable populations to this end. For the purpose of this component, the Committee also specifies the definition of “vulnerable persons” suggesting that along with other populations,⁴²⁷ they include those with physical or mental health-related disabilities. Therefore, housing policies, as well as practices, should prioritize and take into consideration the specific needs of persons with disabilities in this regard.⁴²⁸

422 *Ibid*, par. 54; A/HRC/28/37, Thematic Study on the Right of Persons with Disabilities to Live Independently and be Included in the Community, Report of the Office of the United Nations High Commissioner for Human Rights, para. 32 (2014).

423 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 54 (2017).

424 *Ibid*, par. 53.

425 See also: General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, para. 33 (1995).

426 General Comment No. 2, Accessibility, Committee on the Rights of Persons with Disabilities, para. 1 (2014).

427 For example, the elderly, children, eco-migrants, HIV-positive persons.

428 See also: A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement, para. 31 (2007).

Notably, the Convention has singled out the obligation to ensure accessibility in a separate article and with Article 9 has established a standard, which requires from state parties to ensure unobstructed access to housing for persons with disabilities. The same article provides obligations for state parties to ensure accessibility of all types of housing, including social and private tenure. The standard covers issues of physical accessibility of the housing as well as its components, removal of communication barriers, including during application procedures to request housing, and access to workplaces, public amenities and services.⁴²⁹

The European Court of Human Rights issued an interesting comment regarding this component of the right to adequate housing in the case *Guberina v. Croatia*.⁴³⁰ The case was about the refusal by relevant state bodies to provide tax benefits to the parents of a minor with disabilities in the procurement of a tenure tailored to the needs of the minor. The parents argued that the property they owned did not provide the required infrastructural accommodations for their household as it was very difficult to take the child out of the building in a wheelchair (their home was on the third floor of the building and the elevator was not usable either) and engage them in the community as well as services that were significant for them. Taking into account the principle of reasonable accommodation the court found discrimination in enforcing the property rights and ruled that when making decisions, the state should have considered the specific circumstances, particularly the key infrastructural and technical adaptations that were necessary to be implemented in order to meet the needs of the minor with disability.

Systemic analysis of the Convention demonstrates that “accessibility” is guaranteed in Article 9 not only in terms of the principle but also as an independent right however interconnected with other rights as well.⁴³¹ Furthermore, unlike Article 28 (which requires signatory states to progressively realize specific measures), Article 9 lists immediate obligations, which require states (including on municipal level) to develop legislation and policies and implement them in an ultimately short period of time.⁴³²

- **Habitability** – means that the housing must be habitable in terms of providing adequate space and protection from cold, damp, heat, rain, wind or other threats to health. As the

429 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 40 (2017).

430 *Guberina v. Croatia*, App. no. 23682/13 (ECtHR, 22 March 2016).

431 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 227 (2017).

432 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 41 (2017); General Comment No. 2, Accessibility, Committee on the Rights of Persons with Disabilities, paras. 14, 24 (2014); General Comment No. 6 on Equality and Non-discrimination, Committee on the Rights of Persons with Disabilities, paras. 41-42 (2018).

standard should ensure that the housing meets physical as well as social requirements, its content differs depending on the specific needs of person with disabilities and it may require certain physical adjustments to be made.⁴³³

- **Location** – requires that housing for persons with disabilities is in a location which provides access to services which are significant and necessary for them, including transportation, support services, healthcare and education services and workplaces. Disregard of this component due to the low income of persons with disabilities violates their right to adequate housing.⁴³⁴
- **Cultural adequacy** – requires consideration of cultural identities. The UN Special Rapporteur on Adequate Housing emphasizes the importance of taking into account the cultural adequacy of housing components as it enables persons with disabilities to effectively participate in their communities.⁴³⁵

1.1.3. Standards for the Eviction from Tenure in the Context of the Needs of Persons with Disabilities

As mentioned above, protection from eviction is one of the components of the right of persons with disabilities to adequate housing. Although eviction negatively affects all persons and in certain cases, directly violates their rights,⁴³⁶ one of the reasons for the particular vulnerability of persons with disabilities to this practice is that in case of eviction they not only have to leave their habitat but are forced to lose their acquaintances and support networks as well.⁴³⁷

Standards of eviction can be grouped under two major directions. One direction includes general standards, which identically deal with all persons subjected or to be subjected to eviction and the second direction includes additional clarifications, which must be adhered to with regard to persons with disabilities by decision-making bodies during the enforcement and post-enforcement period of the eviction.

433 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 55 (2017).

434 *Ibid*, par. 56.

435 *Ibid*, par. 57-58.

436 See: General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights (1997); The United Nations, Human Rights Commission, Resolution 1993/77, Forced Evictions (1993); The United Nations, Human Rights Commission, Resolution 2004/28, Prohibition of Forced Evictions (2004).

437 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 50 (2017).

According to the clarification of general standards for eviction issued by the UN Committee on Economic, Social and Cultural Rights, each case of eviction must be preceded by the search of alternative solutions with stakeholder involvement (persons who are subjected to eviction).⁴³⁸ In cases where eviction is inevitable, after implementing all procedures within proportion and reason, the evicted persons must be provided by the states with shelter and access to food, water, clothes and essential medical, educational services and opportunities for earnings.⁴³⁹

Analysis of international standards of eviction reveals additional requirements, which must be met by the states with regard to persons with disabilities.

- **Before the eviction** – pursuant to the international standards, the states are required to provide legal protection to persons with disabilities against forced eviction, regardless of the ownership type of the tenure. Eviction of persons with disabilities is prohibited in cases when it may lead to the complete loss of housing and other important forms of support.⁴⁴⁰ The Court of the Republic of South Africa clarified this obligation in several cases where it defined the test of “justice” with regard to eviction and specified that during review relevant authorities were required to consider if the person in question belonged to a group of vulnerable populations (a person with disability had been subjected to eviction in this particular case) and to what extent the eviction would lead to their homelessness.⁴⁴¹

- **Actual eviction** – during the process of eviction relevant authorities must take actions in order to consider specific needs of vulnerable populations, including persons with disabilities.⁴⁴² During eviction of persons with disabilities, the states are also required to

438 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 13 (1997); A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement, para. 38 (2007).

439 See, General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 9, 13-15 (1997); A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).

440 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 16 (1997); A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement, paras. 54-56 (2007).

441 *Pitje v. Shibambo and Others* (CCT144/15) [2016] ZACC 5; 2016 (4) BCLR 460 (CC), the High Court of South Africa, 2016; *Arendse v. Arendse and Others* (12659/2009) [2012] ZAWCHC 156; [2012] 4 All SA 305 (WCC); 2013 (3) SA 347 (WCC), the High Court of South Africa, 2012.

442 Forced Evictions, Fact Sheet No. 25/Rev.1, United Nations, New York and Geneva, 34 (2014).

take all necessary steps in order to prevent any form of discrimination.⁴⁴³ Furthermore, pursuant to international standards, persons with disabilities must be provided with unobstructed access to medical services to the highest standard and if necessary, to social and psychological services during the actual eviction.⁴⁴⁴

- **Post-eviction process** – in cases when persons with disabilities are subjected to eviction despite the prevention measures taken by the state, all actions must be implemented in order to prevent their homelessness/isolation from the community. Persons with disabilities must not be forced to worsen their conditions due to the change in the location of their tenure as a result of eviction, for example, lose access to support services and employment.⁴⁴⁵ For this purpose, persons with disabilities must be provided with alternative shelter, including social housing that meets their needs and access to community and community-based services.⁴⁴⁶

Based on the international standards the Supreme Court of Argentina made an important decision regarding eviction of persons with disabilities in the case *Q.C.S.Y. v. Government of the Autonomous City of Buenos Aires* in which it ruled that homelessness of the mother and her son with disabilities was a vulnerability condition; emphasized the obligation of the state to establish minimum guarantees for access to housing and required from the state to provide the claimant with shelter *immediately*.⁴⁴⁷

1.2. Prevention of Homelessness of Persons with Disabilities within International Standards

As described above, homelessness is the gravest violation of the right to adequate housing. International legal obligations undertaken by the signatory states require prevention of homelessness and implementation of strong actions against it. Furthermore, although rea-

443 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 10 (1997).

444 A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement, para. 54 (2007).

445 A/HCR/25/54, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, para. 29 (2013).

446 General Comment No. 7: The Right to Adequate Housing: Forced Evictions (art.11 (1)), Committee on Economic, Social and Cultural Rights, para. 16 (1997); A/HRC/4/18, Report of the Special Rapporteur on Adequate Housing As a Component of the Right to an Adequate Standard of Living, Annex I, Basic Principles and Guidelines on Development-based Evictions and Displacement, paras. 32 – 33 (2007); Digest of the Case Law of the European Committee of Social Rights, Council of Europe, 171 (2008).

447 A/HCR/28/62, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Para. 59 (2015).

sons for homelessness may vary from state to state and region to region, one finding is obvious: gaps in access to independent living support programs, social and health care services and employment opportunities significantly increases the risk of homelessness for persons with disabilities.

It is important that the state policies in this direction are founded on the understanding that the right to adequate housing is not a standalone right but is closely intertwined with other rights and freedoms endorsed by international instruments, as their realization promotes access to housing and reduces risks of violating this right. Therefore, the right to adequate housing cannot be effectively enforced if the states do not implement prevention and responsive policies with regard to other rights and freedoms as well and do not view their realization as an opportunity to reduce risks of violating the right to adequate housing.

Unlike other members of the society, persons with disabilities face higher risks of living in poverty. One of the reasons for this risk is the increased costs incurred by this particular group of population to enjoy their right to housing, assistive technology or healthcare. Lack/absence of adequate financial support and subsidized housing programs of the state also have negative impact on the right of persons with disabilities to adequate housing. Furthermore, in the absence of adequate support from the state, families are the only support providers to persons with disabilities which has a significant impact on the household income and increases the risk for the grave violation of the right to adequate housing: homelessness.⁴⁴⁸

The aim of this chapter is to review the international legal standards, which address prevention of homelessness of persons with disabilities and focus on aspects such as ensuring access of persons with disabilities to independent living support services, social and healthcare services as well as employment.

1.2.1. Promotion of Independent Living of Persons with Disabilities and Their Participation in the Community

The right of persons with disabilities to independent living and participation in community is one of the key foundations of the Convention.⁴⁴⁹ With regard to the formulation and regulation of this particular right, the Convention is, in fact, an unparalleled document⁴⁵⁰

448 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 52 (2017).

449 See, UN Convention on the Rights of Persons with Disabilities, Preamble, Articles 3, 9 and 19 (2006).

450 In addition to the Convention, this right of persons with disabilities is also addressed by regional legal instruments, such as: European Social Charter (amended), (Article 15); EU Charter of Fundamental Rights (Article 26) and Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (Article 4).

compared to other universal legal instruments.⁴⁵¹ Consequently, the content and limitations of this right are established by means of this international instrument. Although the above-mentioned right is not directly endorsed by the Covenant, the UN Committee on Economic, Social and Cultural Rights links it to the right of persons with disabilities to adequate housing and posits that along with this right, Article 11 of the Covenant addresses the right to independent living and participation in the community and access to support services, including assistive technology, which in their turn, enable persons with disabilities to increase independence in their everyday lives and enjoy their rights.⁴⁵²

The right enshrined in the Convention also requires from the signatory states to recognize the right of persons with disabilities to independent living and participation in the community which leads to the need to incorporate corresponding rights standards in national legislation on the one hand and define obligations of relevant state bodies and service providers on the other, including mechanisms that will be applied in case of rights violations.⁴⁵³

Detailed analysis of the right to independent living and participation in the community reveals their key components which are important for granting persons with disabilities the right to adequate housing and preventing their homelessness. More specifically, the standards of this right create the obligation to prohibit institutionalization of persons with disabilities and provide community services.

1.2.1.1 Prohibition of Institutionalization of Persons with Disabilities

Prohibition of institutionalization is derived from the right of persons with disabilities to choose their place of residence, decide with whom to live and not be forced to reside in places allocated specifically for them. Regardless of a variety of institutionalization practices, major characteristics are the same: absence/lack of individual approaches; deprivation of the opportunity to make one's own decisions regarding one's place of residence; isolation and segregation from the community.⁴⁵⁴ As the loss of control by persons with disabilities over

451 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 361 (2017).

452 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, para. 33 (1995).

453 A/HRC/10/48, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, Para. 51 (2009); The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 362 (2017). The UN Committee on the Rights of Persons with Disabilities has also underlined this issue in the concluding observations issued towards several States. For example, see: Concluding Observations on the Initial Report of El Salvador, Adopted by the Committee at its tenth session (2–13 September 2013), Committee on the Rights of Persons with Disabilities, Para. 41 (2013).

454 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 361 (2017); Focus on Article 19 of the UN Convention on the Rights of Persons with Disabilities, Focus Report 2009, European Coalition for Community Living, 23 (2009).

their life is one of the important factors in this regard, it can be argued that both large and small-scale specialized residential institutions where others have means to control the lives of beneficiaries are in contradiction with the objectives of international standards.⁴⁵⁵

Institutionalization of persons with disabilities is directly connected to the violation of their right to adequate housing. As the states fail to provide essential community-based services, independent living support services, family assistance programs and other support systems, persons with disabilities are forced to live in residential institutions.⁴⁵⁶ Spending years in an institution not only violates the right to independent living and adequate housing but also negatively affects enforcement of other rights of persons with disabilities in the future as tenure in the residential institution may lead to the loss/lack of independent living skills and mistrust toward community-based independent living.⁴⁵⁷

Minors with disabilities who live in specialized institutions are particularly vulnerable since, in the lack of independent living skills development programs and support services, their future lies in homelessness, poverty and social isolation in most cases.⁴⁵⁸ In response to the grim outcomes of institutionalization and in compliance with the human rights standards the states must close down large specialized institutions for minors with disabilities and place them in environment similar to home, which also means provision of adequate and community-based support to their parents/legal representatives⁴⁵⁹ in order to reduce poverty; provision of early intervention programs and other measures which are designed to ensure effective operation of community-based services.⁴⁶⁰

Protection of minors in residential institutions against homelessness and violation of their right to adequate housing is one of the principles in the *UN Guidelines for the Alternative*

455 A/HRC/10/48, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, Para. 21 (2009).

456 General Comment No. 5 on Living Independently and Being Included in the Community, The Committee on the Rights of Persons with Disabilities, para. 25 (2017); A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 17 (2017); see also: Concluding Observations on the Initial Report of Chile, Committee on the Rights of Persons with Disabilities, para. 43 (2016).

457 A/72/128, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, Annual Report, Para. 18 (2017).

458 In Search of Shelter, Leaving Social Care in Albania, Amnesty International, 6 (2010).

459 Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, Para. 12 (2017); Concluding Observations on the Initial Report of Belgium, Committee of the Rights of Persons with Disabilities, Para. 16 (2014).

460 Concluding Observations on the Initial Report of Croatia, Committee on the Rights of Persons with Disabilities, Para. 40 (2015).

*Care for Children*⁴⁶¹ which accentuates the states' obligation to systematically prepare minors for independent living and provide minors with disabilities with special support services (including legal, healthcare and social services, employment and education support programs), which, *inter alia*, will prevent their re-institutionalization. The document also highlights the importance of appointing a person with special powers with minors to support them in independent living when leaving the alternative care.⁴⁶²

The UN Committee on the Rights of Persons with Disabilities proactively advocates for deinstitutionalization of minors and adults with disabilities as a means to avoid violation of Article 19 of the Convention and for the development of community-based services.⁴⁶³ According to the Committee, the process of deinstitutionalization must take place within a strictly pre-determined and reasonable timeframe and with adequate financial resources, regular monitoring of the action plan and active engagement of persons with disabilities and their representative organizations in the process.⁴⁶⁴ Furthermore, it should be taken into account that effective deinstitutionalization requires systemic approach which views transformation of residential institutions as just one element of the solution and demands a whole range of changes in multi-sectoral programs to achieve inclusion of persons with disabilities, such as supported and subsidized housing; health care, habilitation, rehabilitation and other support services; educational and employment services as well as transforming the public attitudes about disability.⁴⁶⁵

461 United Nations General Assembly Resolution 64/142, Guidelines for the Alternative Care of Children, paras. 131-136 (2010).

462 See also: Recommendation CM/Rec(2010)2 of the Committee of the Ministers to Member States on Deinstitutionalization and Community Living of Children with Disabilities, the Council of Europe (2010).

463 See, Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, para. 32 (2017); Concluding Observations on the Initial Report of Australia, Adopted by the Committee at its tenth Session (2-13 September 2013), Committee of the Rights of Persons with Disabilities, para. 42 (2013); Concluding Observations on the Initial Report of Austria, Adopted by the Committee at its Tenth Session (2-13 September 2013), Committee of the Rights of Persons with Disabilities, paras. 36-37 (2013); Concluding Observations on the Initial Report of Azerbaijan, Committee of the Rights of Persons with Disabilities, para. 33 (2014).

464 Concluding Observations on the Initial Report of Australia, Adopted by the Committee at its Tenth Session (2 - 13 September, 2013), Committee on the Rights of Persons with Disabilities, para. 42 (2013); Concluding observations on the initial report of Paraguay, adopted by the Committee at its ninth session, 15-19 April 2013, Committee on the Rights of Persons with Disabilities, para. 48 (2013); Concluding Observations on the Initial Report of Croatia, Committee on the Rights of Persons with Disabilities, paras. 29-30 (2015); Concluding Observations on the Initial Report Germany, Committee on the Rights of Persons with Disabilities, para. 42 (2015).

465 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 366 (2017); A/HRC/28/37, Thematic Study on the Right of Persons with Disabilities to Live Independently and be Included in the Community, Report of the Office of the United Nations High Commissioner for Human Rights, para. 25 (2014); E/CN.4/2005/48, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Para. 61 (2005); Consideration of Reports Submitted by States Parties under Article 35 of the Convention, Concluding Observations of the Committee on the Rights of Persons with Disabilities, Spain, Committee on the Rights of Persons with Disabilities, paras. 39-41 (2011); Concluding Observations on the Initial Report of Argentina as Approved by the Committee at its Eighth Session (17-28 September 2012), Committee on the Rights of Persons with Disabilities, para. 34 (2012); Concluding Observations on the Initial Report of the Republic of Korea, Committee on the Rights of Persons with Disabilities, para. 40 (2014).

1.2.1.2 Access to Support Services

Pursuant to Article 19 of the Convention and in order to promote inclusion of persons with disabilities in public life and prevent their isolation and segregation, the signatory states are required to provide them with access to assistance services including individual support at home or in the community. For this purpose, states must develop relevant services and ensure that persons with disabilities have access to them (regardless of their geographical location).⁴⁶⁶ In addition, the UN Committee on the Rights of Persons with Disabilities has issued recommendations to a number of states regarding the need to take legislative measures and allocate financial resources to develop support services, such as personal assistance which promotes independent living of persons with disabilities.⁴⁶⁷

Although the Committee grants the states the discretion to develop and establish independent living support services/programs, it emphasizes the key requirements that these services/programs must meet. More specifically, criteria for access to services should be stipulated in a non-discriminatory language; they should focus on the individual needs of persons with disabilities and not the type of their disability and be sensitive to the issues of age and gender.⁴⁶⁸ It is similarly important for the services/programs to be consistent with each other and accessible across the country.⁴⁶⁹ Finally, persons with disabilities should be regularly informed about available services/programs.⁴⁷⁰

The UN Committee on the Rights of Persons with Disabilities has issued an interesting clarification of state obligations with regard to Article 19 in the case *H.M. v Sweden* which was about a person with disabilities who was refused by the municipality the permission to build a hydrotherapy pool in their home. The Committee stated that without the pool the claimant would be forced to move to a specialized healthcare institution, which would violate their

466 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 367 (2017); The Right of People with Disabilities to Live Independently and be Included in the Community, Council of Europe Commissioner for Human Rights, 30 (2012).

467 See, Concluding Observations on the Initial Report of Argentina as Approved by the Committee at its Eighth Session (17-28 September 2012), Committee of the Rights of Persons with Disabilities, para. 34 (2012); Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, para. 32 (2017); Concluding Observations on the Initial Report of Canada, Committee of the Rights of Persons with Disabilities, para. 38 (2017); Concluding Observations on the Initial Report of Austria, Adopted by the Committee at its Tenth Session (2-13 September 2013), Committee of the Rights of Persons with Disabilities, paras. 38-39 (2013).

468 General Comment No. 6 on Equality and Non-discrimination, Committee of the Rights of Persons with Disabilities, para. 59 (2018).

469 Concluding Observations on the Initial Report of Slovakia, Committee on the Rights of Persons with Disabilities, paras. 57-58 (2016).

470 Concluding Observations on the Initial Report of Jordan, Committee on the Rights of Persons with Disabilities, para. 38 (2017).

right to independent living and participation in the community. Therefore, in the above case, the Committee found a breach of Article 19 of the Convention.⁴⁷¹

The UN Committee on the Rights of Persons with Disabilities specifies the group of populations, which should be engaged in policy formation. Firstly, the involvement of persons with disabilities and their representative organizations is absolutely necessary for developing the mechanisms and strategies for independent living, including services on the local/municipal level.⁴⁷² Secondly, it is important to take into account the interests of supporters of persons with disabilities. Existing experiences demonstrate that in the absence of adequate government support, family members of persons with disabilities in most cases end up being their only supporters, therefore, the states should grant them a whole set of benefits such as social protection benefits, allowances and pension schemes.⁴⁷³

1.2.1.3 Access to Community Services

Article 19 of the Convention also incorporates the right of persons with disabilities to access community services and facilities. For the purpose of this right, the concepts of access to and inclusiveness of services are defined broadly so that they cover all services and facilities, which are accessible for the rest of the society.⁴⁷⁴ Implementing required actions in this direction is important as high levels of inclusion and consideration of the needs of persons with disabilities eventually lead to the reduced necessity of specialized services and provide a good mechanism to prevent isolation of persons with disabilities from the society.⁴⁷⁵

1.2.2. Provision of Social Protection and Health Care Programs

Similar to the right to an adequate housing, the right of persons with disabilities to social protection and the states' obligation to provide adequate standard of living are derived from the provisions enshrined in the Convention and the Covenant. This right standard requires that poverty reduction and social inclusion strategies prioritize perspectives of persons with

471 *H.M. v. Sweden*, Communication No. 3/2011, Committee on the Rights of Persons with Disabilities, paras. 8.9 (2012).

472 Concluding Observations on the Initial Report of Bosnia and Herzegovina, Committee of the Rights of Persons with Disabilities, para. 35 (2017); Concluding Observations on the Initial Report of Brazil, Committee of the Rights of Persons with Disabilities, para. 37 (2015).

473 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 367 (2017); Concluding Observations on the Initial Report of Cook Islands, Committee on the Rights of Persons with Disabilities, para. 39 (2015); Concluding Observations on the Initial Report of Mauritius, Committee on the Rights of Persons with Disabilities, paras. 31-32 (2015).

474 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 369 (2017).

475 *Ibid*, The Right of People with Disabilities to Live Independently and be Included in the Community, Council of Europe Commissioner for Human Rights, 32-33 (2012).

disabilities;⁴⁷⁶ that access to social protection, pension support⁴⁷⁷ and poverty reduction programs⁴⁷⁸ is granted and that the states compensate for the disability-related financial costs incurred by persons with disabilities and their families.⁴⁷⁹

Furthermore, it is important that any assistance/support program operating in frames of the above-described right not only completely responds to the needs of persons with disabilities⁴⁸⁰ but are also consistent with each other on the central as well as local government level⁴⁸¹ and are equally accessible for *all persons*, regardless of their place of residence.⁴⁸²

In the process of ensuring an adequate standard of living for persons with disabilities, it is crucial that the states establish minimum standards for social protection/assistance, which incorporates all components under this right.⁴⁸³ Exact meaning/content of this obligation is

476 According to the UN Committee on the Rights of Persons with Disabilities the actions taken to ensure adequate standard of living must prioritize persons with disabilities and their family members who are vulnerable to homelessness. For example, those who live in poverty, who are unemployed or do not have a regular income, who live in rural areas, who are women and/or elderly. Concluding Observations on the Initial Report of Canada, Committee of the Rights of Persons with Disabilities, paras. 49-50 (2017); Concluding Observations on the Initial Report of Colombia, Committee on the Rights of Persons with Disabilities, para. 63 (2016).

477 In the concluding recommendations issued by the Committee to Ukraine, it touched upon the need to periodically review the pension budget with the aim to increase the pension for persons with disabilities. See: Concluding Observations on the Initial Report of Ukraine, Committee on the Rights of Persons with Disabilities, paras. 52-53 (2015).

478 Concluding Observations on the Initial Report of Costa Rica, Committee on the Rights of Persons with Disabilities, paras. 57-58 (2014); Concluding Observations on the Initial Report of Turkmenistan, Committee on the Rights of Persons with Disabilities, paras. 43-44 (2015).

479 See the UN Convention on the Rights of Persons with Disabilities, Article 28.2 (2006); General Comment No. 6 on Equality and Non-discrimination, Committee on the Rights of Persons with Disabilities, Para. 68 (2018); The United Nations General Assembly Resolution 48/96, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Rule 13 (1993); General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, para. 28 (1995).

480 With regard to certain States the Committee has expressed their alarm at the fact that their legislations did not provide social protection benefits to persons with disabilities due to the income/property owned by their family members. The Committee emphasized the importance of benefits responding to the individual needs of persons with disabilities. Furthermore, the Committee regularly asks for social protection and poverty reduction services/programs to take into account the additional costs by disability. For example, see: Concluding Observations on the Initial Report of the Republic of Korea, Committee on the Rights of Persons with Disabilities, paras. 53-54 (2014); Concluding Observations on the Initial Report of Armenia, Committee on the Rights of Persons with Disabilities, para. 50 (2017); Concluding Observations on the initial report of the Plurinational State of Bolivia, Committee on the Rights of Persons with Disabilities, para. 64 (2016); Concluding Observations on the Initial Report of Gabon, Committee on the Rights of Persons with Disabilities, para. 61 (2015).

481 Concluding Observations on the Initial Report of Bosnia and Herzegovina, Committee on the Rights of Persons with Disabilities, para. 51 (2017); Concluding Observations on the Initial Report of Chile, Committee of the Rights of Persons with Disabilities, para. 60 (2016).

482 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, para. 28 (1995); Concluding Observations on the Initial Report of China, Adopted by the Committee at its Eighth Session (17 - 28 September 2012), Committee of the Rights of Persons with Disabilities, paras. 43-44 (2012).

483 A/70/297, Report of the Special Rapporteur on the Rights of Persons with Disabilities, paras. 10 - 12 (2015); Concluding Observations on the Initial Report of Italy, Committee on the Rights of Persons with Disabilities, para. 72 (2016); Concluding Observations on the Initial Report of the European Union, Committee on the Rights of Persons with Disabilities, para. 67 (2015); Concluding Observations on the Initial Report of Gabon, Committee on the Rights of Persons with Disabilities, paras. 60 - 61 (2015).

not established and the evaluation whether the state has fulfilled the minimum requirements depends on an in-depth analysis of each case and the evidence demonstrated by the State that it has utilized all available resources in order to implement the obligations as a priority.⁴⁸⁴

Instances when significant portions of populations are deprived of basic health care, housing and/or shelter, for example, are qualified as a gross violation of international standards and failure to implement the obligations.⁴⁸⁵ In addition, it is important to take into account the clarification issued by the UN Committee on the Rights of Persons with Disabilities according to which lack of financial capacity must not be used to justify the reduction of social protection/assistance to persons with disabilities in order for them to achieve the minimum adequate standard of dignified living.⁴⁸⁶ The Committee practice with regard to clarification of the above-described standard is quite sporadic, however, a number of significant concepts can still be derived from it: 1) regardless of the lack of financial capacity, state budgets must be developed so that they prioritize the needs of vulnerable populations, including persons with disabilities;⁴⁸⁷ 2) social housing should be modified to meet the requirements of persons with disabilities; 3) additional social assistance should be provided to families of children with disabilities in order for them to live above the minimum earning standard; 4) social assistance should be provided to persons with disabilities based on their individual needs and not their disability type and/or household income.⁴⁸⁸

At the same time, the states are required to take special measures to develop comprehensive, multidisciplinary and individualized community-based healthcare programs for persons with disabilities, which will incorporate access to human rights-based services of rehabilitation and habilitation.⁴⁸⁹ The UN Committee on the Rights of Persons with Disabilities highlights the need for rehabilitation/habilitation services to include *all persons with disabilities*

484 General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), Committee on Economic, Social and Cultural Rights, para. 10 (1990).

485 *Ibid.*

486 Concluding Observations on the Initial Report of Armenia, Committee on the Rights of Persons with Disabilities, para. 49 (2017).

487 The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 516 (2017).

488 Concluding Observations on the Initial Report of Ecuador, Committee on the Rights of Persons with Disabilities, paras. 44-45 (2014); Concluding Observations on the Initial Report of the Republic of Korea, Committee on the Rights of Persons with Disabilities, paras. 53-54 (2014); Concluding Observations on the Initial Report of the Czech Republic, Committee on the Rights of Persons with Disabilities, paras. 53-54 (2015).

489 Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, para. 46 (2017); Concluding Observations on the Initial Report of Brazil, Committee of the Rights of Persons with Disabilities, para. 47 (2015); Concluding Observations on the initial report of the Plurinational State of Bolivia, Committee of the Rights of Persons with Disabilities, para. 58 (2016).

and provide timely access (including physical, information and geographical accessibility⁴⁹⁰) regardless of their age, sex and disability.⁴⁹¹

1.2.3. Implementation of the Right of Persons with Disabilities to Employment

Violation of the right of persons with disabilities to adequate housing and their right to employment are closely interconnected issues. As highlighted by International Labor Organization (ILO) multiple times, inadequate efforts of states to support employment of persons with disabilities often result in their homelessness and/or significant breach of their right to independent living and vice versa.⁴⁹² Discriminatory practices with regard to the employment of persons with disabilities are one of the acute issues⁴⁹³ as persons with disabilities end up mostly unemployed or find jobs in sheltered, segregated employment with low remuneration.⁴⁹⁴

The Covenant is considered to be one of the most significant international instruments with regard to the right of persons with disabilities to employment, more specifically, Articles 6 and 7 of the Covenant which address the issues related to access to employment for all persons as well as the right to fair and favorable working conditions and professional education. The UN Committee on Economic, Social and Cultural Rights calls on the signatory states to ensure access of persons with disabilities to the regular labor market.⁴⁹⁵ Despite existing clarifications of the obligations derived from the Covenant, adoption of the Convention has undeniably added to the significance of the labor rights of persons with disabilities in that it directly requires from the signatory states to build an *open, inclusive and accessible labor market*, where persons with disabilities will have access to opportunities for employment on an equal basis with others.⁴⁹⁶

490 Concluding Observations on the Initial Report of Ukraine, Committee on the Rights of Persons with Disabilities, paras. 46 – 47 (2015).

491 Concluding Observations on the Initial Report of Ethiopia, Committee on the Rights of Persons with Disabilities, paras. 57-58 (2016); Concluding Observations on the Initial Report of Latvia, Committee on the Rights of Persons with Disabilities, para. 45 (2017); Concluding Observations on the Initial Report of Costa Rica, Committee on the Rights of Persons with Disabilities, paras. 51-52 (2014).

492 O'Reilly A., the Right to Decent Work of Persons with Disabilities, International Labour Organization, 8 (2007); see also: The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 498 (2017); Housing Rights Assessment Mission to Papua New Guinea, 29 June – 9 July 2010, United Nations Office of High Commissioner for Human Rights, Regional Office for the Pacific, Suva, Fiji, 11-12 (2010); From Exclusion to Equality, Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, The United Nations, 85 (2007).

493 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, para. 20 (1995).

494 *Ibid.*; O'Reilly A., the Right to Decent Work of Persons with Disabilities, International Labour Organization, 8 (2007).

495 General Comment No. 5: Persons with Disabilities, Committee on Economic, Social and Cultural Rights, paras. 20-27 (1995); General Comment No. 18: the Right to Work, Committee on Economic, Social and Cultural Rights, para. 17 (2006).

496 See, the UN Convention on the Rights of Persons with Disabilities, Article 28 (2006).

During analyzing the standards⁴⁹⁷ of the right of persons with disabilities to employment one can differentiate between two key directions where any gaps may lead to the distinctly negative impact on the realization of this right and other relevant rights, including the right to adequate housing and independent living. The first direction implies obligations for the states to develop policies and programs, which will ensure equal and fair labor conditions⁴⁹⁸ and non-discriminatory access for persons with disabilities to open labor market in public as well as private sector.⁴⁹⁹ This direction has significant foundations in the principle of reasonable accommodation, which plays the most important role in promoting access to persons with disabilities to the labor market and the denial to which is viewed as discrimination.⁵⁰⁰ The second direction entails a whole range of positive measures to be taken with regard to persons with disabilities, including such important components as: professional rehabilitation (introducing and developing technical and professional coaching programs; regular review of and unobstructed access to these programs⁵⁰¹); programs to help with the transition from professional education to open labor market;⁵⁰² policies supporting employment of persons with disabilities in private sector which may also consider offering incentives to businesses, action plans, etc.⁵⁰³

497 Including the rights standards enshrined in the Convention and the Covenant as well as the regulations set forth in the respective international instruments issued by ILO.

498 Concluding Observations on the Initial Report of Latvia, Committee on the Rights of Persons with Disabilities, para. 43 (2017); see also: C111 – Discrimination (Employment and Occupation) Convention, (No. 111), ILO (1958); R099 – Vocational Rehabilitation (Disabled) Recommendation, (No. 99) (1995); ILO Declaration on Fundamental Principles and Rights at Work (1998).

499 Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, para. 48 (2017); Concluding Observations on the Initial Report of the European Union, Committee of the Rights of Persons with Disabilities, paras. 50, 52 (2015); Concluding Observations on the Initial Report of Austria, Adopted by the Committee at its Tenth Session (2-13 September 2013), Committee of the Rights of Persons with Disabilities, para. 47 (2013); Concluding Observations on the Initial Report of Belgium, Committee of the Rights of Persons with Disabilities, para. 39 (2014); The United Nations Convention on the Rights of Persons with Disabilities, A Commentary, Della Fina V., Cera R., Palmisano G. (eds.), 500 (2017).

500 See, the UN Convention on the Rights of Persons with Disabilities, Article 2. The term “reasonable accommodation” is defined in the following words: “reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” With regard to States’ obligations, see, Concluding Observations on the Initial Report of Armenia, Committee of the Rights of Persons with Disabilities, para. 48 (2017); Concluding Observations on the Initial Report of Belgium, Committee of the Rights of Persons with Disabilities, para. 39 (2014); also, the European Union, Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000.

501 See, the UN Convention on the Rights of Persons with Disabilities, Article 27 (2006). International Covenant on Economic, Social and Cultural Rights, Article 6 (1966). C159 – Vocational Rehabilitation and Employment (Disabled Persons) Convention, (No. 159), ILO (1983); R099 – Vocational Rehabilitation (Disabled) Recommendation, (No. 99), ILO (1995); R168 – Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, (No. 168), ILO (1983); O’Reilly A., the Right to Decent Work of Persons with Disabilities, International Labour Organization, 7 (2007).

502 Concluding Observations on the Initial Report of Cook Islands, Committee on the Rights of Persons with Disabilities, para. 50 (2015).

503 UN Convention on the Rights of Persons with Disabilities, Article 27 (2006); From Exclusion to Equality, Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol, The United Nations, 85-88 (2007).

2. The Regulation of the Right to Adequate Housing of Persons with Disabilities in Georgia

Persons with disabilities can be described as one of the most invisible, isolated and vulnerable population groups in Georgia who are unable to enjoy or adequately enjoy most of their fundamental rights and freedoms.⁵⁰⁴ One of the most significant challenges faced by persons with disabilities is the level of access to the right to adequate housing which is linked to the absence of coherent, well-coordinated and effective state policies in this regard.

With this in mind, it is important to analyze the extent of consideration of the needs of persons with disabilities in the right to adequate housing, which in itself is regulated by the Georgian legislation in a fragmented way. For this purpose, it is similarly essential to examine the institutional framework and both general and specialized services designed to provide housing to persons with disabilities.

2.1. The Reflection of the Needs of Persons with Disabilities in Georgia's Housing Regulation

The Constitutional Perspective on the Right to Adequate Housing and General Challenges in the Legislation

The right to adequate housing is not addressed in the Georgian legislation in a consolidated nature and specific obligations of the state are derived from a variety of national instruments in a fragmented way. Firstly, one should look at the Constitution of Georgia – the constitutional amendments⁵⁰⁵ have clarified the definition of the social state, which for the first time in Georgia's history introduced the state obligation to provide “dignified housing”⁵⁰⁶ however only in principle. Also for the first time, the amendments include language regarding the protection of the rights of persons with disabilities according to which Georgia has taken on a constitutional obligation to take specific actions in order to guarantee the enjoyment of the rights and interests of this particular group.⁵⁰⁷

504 See also: December 11, 2013 Ordinance N 1741-IS by the Parliament of Georgia “on Approving the State Policy on Mental Health” – “The State Concept Paper on Mental Health”.

505 See, Constitutional Law of Georgia on Amending the Constitution of Georgia, 2017. Pursuant to Article 3(2), amendments will be enacted as soon as the President of the country elected in subsequent elections will give the oath.

506 Constitutional Law of Georgia on Amending the Constitution of Georgia, 2017. Article 1 (Constitution of Georgia Article 5(1)).

507 *Ibid*, Article 1 (Constitution of Georgia Article 11.4).

Despite the provisions endorsed in the Constitution and the obligations derived from the international standards, a number of gaps still persist in Georgian legislation in terms of the enforcement of the right to adequate housing which generates compelling challenges not only for persons with disabilities but other groups of the population as well. Namely: 1) the national legislation does not specify the right to housing and its components; 2) the national legislation provides a narrow definition of the right to housing which is inconsistent with the international standards and associates it with shelter provision for homeless people; 3) the legislative definition of a “homeless person” is ambiguous, flawed and deprived of meaning with regard to specific groups.⁵⁰⁸

The Legislative Regulation of the Right to Adequate Housing

The legislation of Georgia includes a number of normative acts, which should be analyzed in order to establish the regulatory framework of the right of persons with disabilities to adequate housing.

The Law of Georgia on “Social Protection of Persons with Disabilities” was enacted as early as 1995 and has since been revised only in terms of the definition of persons with disabilities in order to comply with the Convention standards; therefore, there is a great need for the law to be significantly revised and updated.⁵⁰⁹ The law scantily regulates the right to adequate housing and links the obligation to enforce the right of persons with disabilities to adequate housing with individual rehabilitation programs. Furthermore, the law highlights the obligation of local governments to provide housing for persons with disabilities only in cases where there is no necessity to place them in residential institutions or other types of residential settings as a result of rehabilitation measures.⁵¹⁰ Analysis of the document demonstrates the obscure and inadequate regulation of the obligations of the state and the corresponding procedural issues designed to provide housing for persons with disabilities. In addition, the language used in the law allows institutionalization of persons with disabilities, which contradicts the concept of independent living endorsed in the Convention.

The requirement to provide housing is also fragmentally addressed in the Law of Georgia “on Social Assistance”, which, first and foremost, aims to establish a coherent social assistance system and support populations in a fair, meaningful and effective way.⁵¹¹ As pointed out above, despite the declared objectives of the law, it is characterized with significant flaws in terms of regulating the right to adequate housing in that it identifies the obligation to en-

508 Homelessness: Analysis of the State Policies, Human Rights Education and Monitoring Center (EMC), 67 (2016).

509 The Parliament of Georgia pointed to the lack of legislative regulations in 2004 in its Ordinance N 3337 “on Approving the Major Directions of Social Policy Enforcing the Rights of Children with Disabilities”

510 Law of Georgia “on Social Protection of Persons with Disabilities”, Article 27.2.

511 Law of Georgia “on Social Assistance”, Article 1.

force the right to adequate housing with the obligation to provide shelter for the homeless.⁵¹² Enforcement of even such a narrow understanding of the right to adequate housing can still pose significant challenges without effective legislative foundations in place.

The law also defines a “homeless person”, however, the legislative definition of this group significantly narrows down the target populations of the law and is applied only to those persons who do not have a permanent place of residence and are also registered as homeless with local governments.⁵¹³ Both components of the given definition are vague and flawed. Firstly, it is a problem that the law does not specify what a permanent place of residence means; therefore, it is ambiguous if the obligation to provide shelter covers those individuals who, for the policy purposes, are described as a priority group by the international standards, including some of the most vulnerable persons within the group of persons with disabilities: those living in specialized state institutions (including mental health institutions⁵¹⁴).

As for the registration of an individual as homeless, considering the ambiguity and ineffectiveness of the provisions in the Law on Social Assistance, municipalities are allowed freedom to determine the pre-conditions for registering persons within their territories as homeless or completely ignore the obligation required by the law.⁵¹⁵ The municipalities, which have normative acts to regulate the registration of the homeless and related procedures, do not take into account the vague definition provided in the law and set additional requirements to be met by potential beneficiaries.⁵¹⁶ In the absence of the applicable unified definition, in-

512 *Ibid*, Article 4.b: “a care facility – a provider of social service that provides homeless persons with overnight accommodation and food”.

513 Law of Georgia “on Social Assistance”, Article 4.p.

514 Homelessness: Analysis of the State Policies, Human Rights Education and Monitoring Center (EMC), 38 (2016).

515 N SI 52 Correspondence of Telavi Municipality City Hall, 11.05.2018; According to the official data of the LEPL Legislative Herald of Georgia, only 9 municipalities of Georgia (specifically, those of Tbilisi, Kutaisi, Ozurgeti, Sagarejo, Senaki, Zugdidi, Samtredia, Tetritskaro and Gori) have a formal legal instrument determining the procedures for registering and providing certain type of shelter to homeless persons on their respective territories. According to the Public Defender of Georgia, the number of municipalities with regard to registering homeless persons is 29 and 18 municipalities have certain criteria for shelter provision. See, the Report by the Public Defender of Georgia on the Human Rights and Freedoms Situation in Georgia, 238 (2017).

516 For instance: Gori and Zugdidi municipalities do not issue a status of homelessness if the applicant is registered as seeking shelter in other municipalities too. In order to grant a status of homelessness, Sagarejo municipality requires from the applicant to provide proof of registration on the municipal territory or a proof of actual residence on the territory for 5 years and a proof of absence of housing within or outside Georgia or evidence that their housing does not meet the minimum requirements (is reduced to ruins). Tbilisi municipality has the highest number of additional criteria, including those related to producing evidence regarding duration, border-crossing, property ownership/lease/use and certain amount of income. See: May 14, 2018 resolution N 60 of Gori Municipality City Assembly “on Approving the rules for registering homeless persons on Gori municipal territory and providing them with temporary shelter”, Annex N 1, Article 2; August 3, 2018 Zugdidi Municipality City Assembly resolution N 71 “on Approving the rules for registering homeless persons on Zugdidi municipal territory and providing them with temporary shelter”, Annex N 1, Article 2; September 25, 2015 Sagarejo Municipality Assembly Resolution N 38 “on Approving the rules for registering homeless persons on Sagarejo municipal territory, also on registering, selecting and providing shelter to persons who have arbitrarily taken residency in municipal buildings and the rules on monitoring”, Annex N 1, Article 6; November 27, 2015 Tbilisi Municipality City Assembly resolution N 28-116 “on Approving the rules for registering homeless persons on Tbilisi municipal territory and providing them with housing/shelter”, Annex N 1, Article 2.

consistent policies on municipal level create unequal conditions for homeless people, which may be transformed into discrimination.

Analysis of homelessness registration regulations in a variety of municipalities has demonstrated that the needs of persons with disabilities are normally disregarded in the process. In addition to other administrative barriers that persons with disabilities face and the burden of proof they experience when applying for disability status, producing evidence of the absence of property under their ownership is one of the most problematic criteria.⁵¹⁷ While a person with disabilities may own a housing property, it may not be accessible and adjusted to their needs or may be inadequate for them for other reasons. The existing legislation leaves individuals in such circumstances without protection, which can be viewed as a serious flaw in this regard.

Legislative Regulation of Eviction Procedures

In addition to the challenges described above, one of the components of the right to an adequate housing such as consideration of the needs and interests of persons with disabilities during eviction is also poorly addressed in the national legislation. Notably, international standards operating in this direction are basically disregarded by Georgia's legislation. The Law of Georgia on Enforcement Proceedings mentions persons with disabilities only in a narrow sense where it prohibits the use of physical coercion, special devices or firearms by policemen against pregnant women, minors, "disabled" or elderly persons except for circumstances defined in the law.⁵¹⁸ The national legislation does not offer mechanisms for preventing homelessness of vulnerable persons, nor does it entail measures to delay or terminate the enforcement proceedings or provide other protection actions. For the purpose of enforcement procedures, persons with disabilities are not viewed as vulnerable populations; therefore, they are not provided with any protection mechanisms offered by international standards, such as, for example: prevention measures before the enforcement of eviction; prohibition of worsening of the housing and access to relevant services during eviction of persons with disabilities; provision of adequate housing for persons with disabilities (adhering to the components defined in the international standards), etc.

517 For instance, November 27, 2015 Tbilisi Municipality City Assembly Resolution N 28-116 "on Approving the rules for registering homeless persons on Tbilisi municipal territory and providing them with housing/shelter", Annex N 1, Article 2.1; February 22, 2017 Kutaisi Municipality City Assembly Resolution N 160 "on Approving the rules for registering homeless persons on Kutaisi municipal territory and providing them with temporary shelter", Annex N 1, Article 1.3.

518 The Law of Georgia "on Enforcement Proceedings", Article 14.4.

The Right of Persons with Disabilities to Adequate Housing in National Policy Documents

In addition to the legislative regulation of the right to adequate housing, the presented research also analyzed corresponding policy papers which, similar to respective legislative acts, are insufficient and ineffective. The most acute problem in this regard is the absence of policies and policy documents (such as strategies and action plans) against homelessness, which has a distinctly negative impact on all persons and particularly persons with disabilities. Furthermore, the research has found that the right to adequate housing as an issue is poorly considered in policy papers, which are developed to enforce the rights of persons with disabilities. Consequently, absence of policies against homelessness in general and disregard of the right to adequate housing in disability rights policy papers, in particular, makes it impossible to talk about the lack of coherent policies in this direction; however, the presented research attempts to assess the existing minimum provisions which determine the policy framework currently in effect with regard to this right.

In the lack of effective regulations of the right to housing and adequate consideration of the needs of vulnerable populations in this process, the National Human Rights Strategy (2014-2020) identifies implementation of obligations related to the right to adequate housing and enforcement of the rights of persons with disabilities on an equal basis with others as one of the priority objectives of the Government and lists specific tasks to this end. Namely, based on this document, the Government takes on the obligation to carry out effective measures in order to ensure access to adequate housing for *vulnerable groups* and to develop corresponding legislation and a state housing strategy which will respond to the *interests of all groups*. Despite the goals and objectives listed in the document, the human rights action plans developed by the Government since 2014 with the aim to implement the National Human Rights Strategy do not include objectives regarding the right to adequate housing which can be interpreted as a complete neglect of this right from the part of the Government.

Georgian human rights actions plans address the right of persons with disabilities to adequate housing in a fragmented manner in the context of certain population groups only, such as internally displaced persons on the one hand and imprisoned persons with disabilities on the other.⁵¹⁹ In different occasions the human rights action plans incorporated the obliga-

519 Please see July 9, 2014 Ordinance of the Government of Georgia N 445 “on Approving the 2014-2015 Human Rights Action Plan; Establishing the Interagency Coordinating Council for the 2014-2015 Human Rights Action Plan and Approving its Statute”; Annex N 1 – The Human Rights Action Plan of Georgia (2014-2015), Activity: 15.1.5; July 21, 2016 Ordinance of the Government of Georgia N 338 “on Approving the 2016-2017 Human Rights Action Plan of Georgia”, The Human Rights Action Plan of Georgia (2016-2017), Activity: 4.6.9.1; 14.1.1.7; April 17, 2018 Ordinance of the Government of Georgia N 182 “on Approving the 2018-2020 Human Rights Action Plan”, Annex N 1 – The 2018-2020 Human Rights Action Plan, Activity: 4.2.2.3.

tion to revise the national legislation into compliance with the Convention and adopt corresponding normative acts;⁵²⁰ however, as pointed out above, the legislation of Georgia has yet to be harmonized with the provision of the Convention. The human rights action plans have also entailed measures to promote the right of persons with disabilities to independent living by means of expanding geographical coverage of the community-based organizations sub-program and increasing the number of beneficiaries engaged in the program;⁵²¹ development of plans to support independent living of persons with disabilities; continuation of deinstitutionalization of minors with disabilities and development of the strategy to close down residential institutions for adults with disabilities as well.⁵²²

Analysis of activities implemented under the human rights action plans demonstrates their insufficiency for effective realization of the right to adequate housing.⁵²³ For years the action plans focused on expanding only one component for implementation of the right to independent living, specifically, community-based organizations sub-program while a whole range of actions such as support services for adults who have left the state care programs (including beneficiaries with psycho-social needs) and provision of adequate and diverse community programs have been neglected by the state throughout these years.⁵²⁴ As the adoption and fulfillment of the most recent 2018-2020 Human Rights Action Plan ends the implementation of the National Human Rights Strategy in terms of the timeline, it can be argued that the realization of the right to adequate housing is beyond the focus area of the state. The research also examined policy papers specifically addressing issues of persons with disabilities, such as the 2014-2016 Action Plan on Promoting Equal Opportunities for Persons with Disabilities; Mental Health Strategy and the adjoining 2015-2020 Action Plan. The Mental Health Strategy highlights the necessity to introduce and develop community-based

520 July 9, 2014 Ordinance of the Government of Georgia N 445 “on Approving the 2014-2015 Human Rights Action Plan; Establishing the Interagency Coordinating Council for the 2014-2015 Human Rights Action Plan and Approving its Statute”; Annex N 1 – The Human Rights Action Plan of Georgia (2014-2015), Activity: 20.1.4; July 21, 2016 Ordinance of the Government of Georgia N 338 “on Approving the 2016-2017 Human Rights Action Plan of Georgia”, The Human Rights Action Plan of Georgia (2016-2017), Activity: 19.1.1.1; 19.1.1.2; April 17, 2018 Ordinance of the Government of Georgia N 182 “on Approving the 2018-2020 Human Rights Action Plan”, Annex N 1 – The 2018-2020 Human Rights Action Plan, Activity: 19.1.12.8.

521 July 21, 2016 Ordinance of the Government of Georgia N 338 “on Approving the 2016-2017 Human Rights Action Plan of Georgia”, The Human Rights Action Plan of Georgia (2016-2017), Activity: 19.1.1.1; April 17, 2018 Ordinance of the Government of Georgia N 182 “on Approving the 2018-2020 Human Rights Action Plan”, Annex N 1 – The 2018-2020 Human Rights Action Plan, Activity: 19.1.7.2

522 July 21, 2016 Ordinance of the Government of Georgia N 338 “on Approving the 2016-2017 Human Rights Action Plan of Georgia”, The Human Rights Action Plan of Georgia (2016-2017), Activity: 12.1.1.1; April 17, 2018 Ordinance of the Government of Georgia N 182 “on Approving the 2018-2020 Human Rights Action Plan”, Annex N 1 – The 2018-2020 Human Rights Action Plan, Activity: 16.6.1.1 – 16.6.2.3; 19.1.5.1 – 19.1.5.3; 19.1.7.1 – 19.1.7.2.

523 Monitoring Report on the Implementation of Human Rights Strategies and Action Plans (2016-2017), Rights of Persons with Disabilities, Children’s Rights, Gender Equality and Women’s Rights, Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights, Saphari, 13 (2018).

524 *Ibid*, 38-39.

homes for persons with disabilities in Georgia and the 2015-2020 Action Plan entails obligations to develop a strategy for deinstitutionalization of mental healthcare; transform mental health ambulatory services into community-based services and expand them, while it does not directly require the development of community-based homes system for this specific group.⁵²⁵

Furthermore, the Action Plan on Promoting Equal Opportunities for Persons with Disabilities takes into account the needs of persons with disabilities with regard to the right to adequate housing only on the surface level and incorporates only one activity in this direction: engagement of persons with disabilities in the existing housing programs of the state (Activity 5.1.). The Action Plan disregarded a number of issues, such as legislative regulation of the right to adequate housing in the context of the needs of persons with disabilities; measures against homelessness and preventive actions; modification and expansion of the state's housing programs to respond to the needs of persons with disabilities, etc. In addition, the steps taken by the state in order to implement the Action Plan were mostly superficial and did not set out to achieve effective results of the activities incorporated in the Plan.⁵²⁶

Analysis of the housing legislation and policy framework points to the Government's inaction in the enforcement of the right to adequate housing and failure to recognize the problem of housing. Legislation and policies related to the rights of persons with disabilities, including their right to adequate housing, are extremely weak and in need of significant revision. As a result, it can be argued that there is no adequate housing legislation and policy framework in Georgia and the right to adequate housing is only outlined in legislative and policy documents in the form of inconsistent and fragmented provisions.

2.2. Institutional Mechanisms for Implementing of the Right to Adequate Housing

For effective implementation of the right to adequate housing it is not only necessary to have legislative and policy foundations in place but to operationalize appropriate institutional mechanisms as well; however, along with ambiguous and inadequate rights protection instruments, duties and responsibilities of Georgian Government's structural units are similarly insufficient and ambiguous in terms of ensuring the right to adequate housing.

525 See, December 31, 2014 Ordinance N 762 of the Government of Georgia on "Approving the Mental Health Strategy and the 2015-2020 Action Plan", "Mental Health Strategy and 2015-2020 Action Plan", Activity: 3.1.1., 3.1.3.

526 Monitoring Report on the Implementation of Human Rights Strategies and Action Plans (2016-2017), Rights of Persons with Disabilities, Children's Rights, Gender Equality and Women's Rights, Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights, Saphari, 13 (2018).

Despite the fact that the *Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees* is a coordinating body in the social assistance system,⁵²⁷ the legislation does not directly lay out such obligations as: development of policies to ensure the enforcement of the right to adequate housing, including with consideration of the needs and interests of vulnerable populations; prevention of homelessness and policies to combat homelessness. The only legislatively mandated function of the Ministry is to maintain a registry of persons registered as homeless with local governments;⁵²⁸ however, even these requirements are not carried out in practice.⁵²⁹

On the central level the Construction Policy Department of the *Ministry of Economy and Sustainable Development of Georgia* is required to prepare and implement policies in developing housing and adjoining infrastructure in Georgia, however, there is no distinct stipulation in their Statute about consideration of the needs of persons with disabilities in this process.⁵³⁰ Furthermore, even the limited obligations of this structural unit to develop housing and other adjoining policies are basically unfulfilled in reality.⁵³¹ As for the Government actions to coordinate policies against homelessness such as the creation of a commission in the winter of 2013-2014 to work on the problems of homeless people, it was only a temporary measure.⁵³²

The National Coordinating Council on the Issues of Persons with Disabilities established by the Government of Georgia as a permanent advisory body⁵³³ was supposed to facilitate the following: policy coordination; development/revision of Government strategies; coordination and supervision of the development and implementation of state programs; review of legislative recommendations and initiatives;⁵³⁴ however, the composition of the Council has not been renewed and consequently, it can be considered as non-functional.

527 The Law of Georgia “on Social Assistance”, Article 16; September 14, 2018 Ordinance N 473 of the Government of Georgia “on Approving the Statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia”; Statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, Articles 2-3.

528 The Law of Georgia “on Social Assistance”, Article 17.d.

529 N 01/26687 Correspondence of the Ministry of Labor, Health and Social Affairs of Georgia; 08.05.2018.

530 December 7, 2015 Order N 11/514 of the Ministry of Economy and Sustainable Development “on Approving the Statute of the Construction Policy Department of the Ministry of Economy and Sustainable Development”.

531 “Homelessness – Analysis of State Policies”, Human Rights Education and Monitoring Center (EMC), 26 (2016).

532 Please see also an example of establishing a temporary coordinating body – December 13, 2013 Government of Georgia Ordinance N 1946 “on Urgent actions to provide assistance to homeless people in the winter of 2013-2014”.

533 December 13, 2009 Government of Georgia Ordinance N 231 “on Establishing the National Coordinating Council on the Issues of Persons with Disabilities and Its Statute” – “Statute of the National Coordinating Council on the Issues of Persons with Disabilities”, Article 1.

534 *Ibid*, Article 2.

Analysis of the institutional framework demonstrates that on the central level none of the structural units of the Government of Georgia is actually working towards enforcement of housing policies. Furthermore, none of them is tasked with the responsibility to coordinate policies against homelessness and the interagency council on disability policies is in fact non-functional. Enforcement of the right to adequate housing as an isolated effort is impossible without implementing the adjoining rights since the requirements for ensuring access to this right entail legislation and policies related to other rights and freedoms as well and they intersect in the competencies basically of all government bodies. Consequently, clear definition of tasks of central level government agencies and the operation of a coordinating body is most crucial to make sure that the needs of persons with disabilities are taken into account and enforced in actions and policies of the relevant state actors.

Compared to central government units, local government bodies are relatively more functional. The Law of Georgia “on Social Assistance” and the Organic Law of Georgia “Local Self-Government Code” require local governments to register homeless persons, maintain the homeless persons database and report to the LEPL Social Service Agency; also to provide shelter to the homeless, which in most cases goes unfulfilled (please see Chapter 3.1).⁵³⁵ Furthermore, the legislation vaguely addresses the distribution of roles between local municipalities and the Healthcare and Social Protection Ministries of autonomous republics of Georgia in terms of maintaining homeless persons’ registries and informing the Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.⁵³⁶ Measures undertaken by local municipalities in the long-term documents related to implementing the right to adequate housing are fragmented and the approaches per regions are mostly inconsistent.⁵³⁷ Additional challenge is the failure of the legislation to facilitate coordination between local municipalities on the one hand and local municipalities and the central government on the other.

Considering the above, it can be argued that absence of a central coordinating mechanism for the enforcement of the right to adequate housing and the rights of persons with disabilities is accompanied by insufficient legislative regulation of duties and responsibilities of local municipal units and the narrowing down to the obligation to provide shelter for the homeless. These challenges cumulatively result in the ineffective institutional mechanism

535 The Law of Georgia “on Social Assistance”, Article 18.o; the organic Law of Georgia “Local Self-Government Code”, Article 16.2.u.

536 The Law of Georgia “on Social Assistance”, Articles 18, 19.

537 For example, see: September 17, 2013 Ordinance of the Government of Georgia N 1365 “on Approving the 2014-2021 Strategy of Development of Kvemo Kartli Region”; September 17, 2013 Ordinance of the Government of Georgia N 1363 “on Approving the 2014-2021 Strategy of Development of Guria Region”; September 17, 2013 Ordinance of the Government of Georgia N 1363 “on Approving the 2014-2021 Strategy of Development of Racha-Lechkhumi and Kvemo Svaneti Region”.

and make it impossible to adequately implement the right to adequate housing, including with consideration of the needs of persons with disabilities.

2.3. Housing Services for Persons with Disabilities

Policies against homelessness of persons with disabilities are closely interconnected with a whole range of prevention and responsive measures in adjoining policies as access to adequate housing depends on a number of aspects including: appropriate social protection and healthcare systems and their affordability and accessibility; access to employment, etc.

Enforcement of the rights of persons with disabilities to social protection, employment, healthcare, education and other fundamental rights remains to be a challenge which in most cases restricts access to adequate housing for persons with disabilities in Georgia and increases the risks of their homelessness. Weaknesses in the prevention policies evidenced in many areas of governance are related to limited social protection, lack of social services, neglect of the individual needs of persons with disabilities⁵³⁸, restricted access of persons with disabilities to the labor market⁵³⁹ and other factors.

Due to the limitations the research has not examined policies to prevent persons with disabilities from homelessness, which is an indisputably fundamental element; however it analyses mechanisms for housing provision such as general and specialized housing services for persons with disabilities.

2.3.1. The General Housing Services

The main objective of this section of the document is to review existing general services of housing and examine the level of attention paid to the needs of persons with disabilities on the level specific services as well as in terms of common challenges.

Similar to the registration of homeless persons, a number of normative acts establish the criteria for relevant departments of local municipalities to make decisions about providing certain types of housing (emergency shelter, social housing) and determining the order in

538 Parliament of Georgia has highlighted the gaps in the Concept Paper on Social Integration of Persons with Disabilities which continues to be relevant from today's perspective: prevalence of medical approaches in the legislation with regard to persons with disabilities; absence/lack of coordination between stakeholder government bodies; poor engagement of local municipalities in response actions; lack of comprehensive statistical data about persons with disabilities; lack of economic mechanisms supporting equal opportunities, etc.

539 The Report by the Public Defender of Georgia on Human Rights and Freedoms in Georgia, 303-304 (2017).

which applications are reviewed and approved. The criteria are different from municipality to municipality, however, it must be noted that persons with disabilities are normally prioritized. Nevertheless, municipal criteria are mostly based on the category of a person's disability rather than their individual needs.⁵⁴⁰ Furthermore, analysis of municipal resolutions demonstrates instances where persons with certain types of disabilities are not prioritized for housing provision. For example, Tbilisi, Senaki and Zugdidi municipalities assign the priority score to people with profound and moderate disabilities while those with mild disabilities do not get an additional score. Occasionally, in Tetrtskaro municipality, for example, even persons with profound disabilities are excluded from a group of prioritized populations. The research has also found that consideration of the components of independent living in general housing services continues to be a significant challenge.

- **Immediate (Emergency) Shelter Service** is a prompt and temporary measure for beneficiaries who are left homeless. The Government of Georgia approved a technical regulation regarding the minimum functional standards for emergency shelters in 2014. Analysis of this instrument has revealed a number of gaps with regard to the research subject. The document does not directly exclude any populations from the target group of the service; however, for the purposes of temporary housing provision, it introduces the concept of a “homeless person”. According to the definition, the following persons are considered to be homeless: 1) those who live roofless; 2) those who do not have permanent shelter; 3) those who do not have legal income or property in ownership; or persons who: 1) live on the streets; 2) whose lives are in danger.⁵⁴¹ This definition is different from that developed by local municipalities to define “homelessness” and, following the adopted legal requirements, it may cover yet insufficiently only a small group of persons with disabilities: those who are roofless. For example, this term does not incorporate persons with disabilities who live on the streets, whose lives are in danger and those who own a property which is not accessible for them.

Close examination of the programs operating in local municipalities demonstrates that the provision of this service is quite limited across the country and persons with disabilities are in fact deprived of access to it. For instance, according to the statute of NELP Lilo Homeless Shelter, persons who are unable to take care of themselves cannot benefit

540 Please see May 14, 2018 Gori Municipality Assembly Resolution N 60 “on Approving Rules for registering homeless persons on the territory of Gori municipality and providing them with temporary shelter”, Annex N 1, Article 5; February 22, 2017 Kutaisi Municipality Assembly Resolution N 160 “on Approving Rules for registering homeless persons on the territory of Kutaisi municipality and providing them with temporary shelter”, Annex N 1, Article 4.

541 February 7, 2014 Government of Georgia Ordinance “Technical Regulation – Minimum Standards for Temporary Functioning of Shelters for the Homeless”, Annex N 1 – “Minimum Standards for the Homeless Shelter Setup”, Article 3.2.

from the shelter.⁵⁴² Restriction of access to Tbilisi emergency shelter for persons with disabilities points to the blatant discrimination on the part of the Government. According to experiences of other countries, target groups of emergency housing services are the most vulnerable populations⁵⁴³ and the nature of similar services provided in Georgia are in complete contradiction with international practice. Therefore, the situation in Georgia is on the one hand contradictory to the international standards which require from the states to prioritize persons with disabilities in housing provision and the exclusion of beneficiaries with disabilities from the services on the other hand means refusal to implement one of the fundamental provisions of the Convention – reasonable accommodation, denial to which is described as discrimination according to the Convention.

Even though normative foundations of the documents adopted by certain municipalities do not exclude the possibility to provide shelter to persons with disabilities in theory, it almost never happens in practice. For example, Senaki and Tetrtskaro municipalities have procedural rules for registering homeless persons and providing shelter to them but this obligation is not reflected in their respective budgets for the year 2018. Furthermore, according to the procedural regulations adopted by Tbilisi, Kutaisi, Senaki, Samtredia, Tetrtskaro, Gori and Zugdidi municipalities, provision of housing for the homeless depends on the availability of resources and properties of the municipalities and the regulations do not require the provision of housing within a certain period of time. Such regulations contradict the immediate obligations to provide homeless persons with shelter, food and clothes, undertaken by the state by signing on to the Covenant and the Convention.

- **Rental Allowance Service** is the most common municipal service and eligibility criteria for the service vary from region to region.⁵⁴⁴ These services are characterized with a number of gaps including their temporary and unstable nature, blanket criteria and low coverage;⁵⁴⁵ they also rarely, if at all, take into account the interests of persons with disabilities. In most cases fixed budget amounts allocated by municipalities significantly complicate consideration of individual needs.⁵⁴⁶ In their responses to the correspon-

542 Tbilisi Municipality Decree N 41.16.1192 “On the approval of the registration applications and receipts of homeless persons to the NELP Lilo Homeless Shelter”.

543 “Homelessness – Analysis of State Policies”, Human Rights Education and Monitoring Center (EMC), 47-48 (2016).

544 For example, Khoni municipality provides shelter only to victims of domestic violence while Chokhatauri municipality does so only for victims of natural disasters and accidents. Tsageri municipality provides rental service to families who do not have a home.

545 “Homelessness – Analysis of State Policies”, Human Rights Education and Monitoring Center (EMC), 54-59 (2016).

546 *Ibid*, 55-56. For example, see the December 2017 Chokhatauri Municipality Assembly N 53 Resolution “on Approving the 2018 Budget of Chokhatauri Municipality”, December 26, 2017 Sagarejo Municipality Resolution N 34 “on Approving the 2018 Social Assistance Program for the Population of the Municipality”.

dence requesting public information the municipalities speak about prioritizing persons with disabilities in rental allowance services, however, they do not specify what is meant by “prioritization”.⁵⁴⁷ Access to this service is also associated with another challenge: lack of services to support independent living and fight against homelessness, which may serve as preconditions for persons with disabilities to be permanently excluded and vulnerable.⁵⁴⁸

- **Social Housing** is a long-term service, which is implemented only in certain municipalities. For example, Ozurgeti municipality provides social housing for the homeless and the normative acts adopted by Tbilisi municipality prioritize persons with disabilities, however, based on the category of their disability and not their individual needs.⁵⁴⁹
- **In terms of housing provision**, Zugdidi municipality needs to be mentioned separately: their municipal budget has been covering the housing program for homeless persons or those in destitute living conditions since 2015 and the program entails construction of homes with municipal funding on the land owned by the applicant. According to the information provided by the municipality, 17 households including those of persons with disabilities have benefitted from this program during 2015-2017.⁵⁵⁰

2.3.2 Specialized Housing Services for Persons with Disabilities

In addition to the general housing services, the research has examined specialized services of housing which are specifically designed for persons with disabilities under the state care and which evolve in two main directions in Georgia. One direction includes community-based services, which currently are poorly developed and the second covers large residential institutions, mental health institutions and children’s homes which are in gross violation of the provisions enshrined in the Convention and which have adopted a function of home for the residents.

547 N 52 correspondence of Telavi Municipality, 11.05.2018; N 31-01181211389 correspondence of Saburtalo District of Tbilisi Municipality, 01.05.2018; N 34-0118121226 correspondence of Gldani District of Tbilisi Municipality, 01.05.2018.

548 “Homelessness – Analysis of State Policies”, Human Rights Education and Monitoring Center (EMC), 58 (2016).

549 See, May 4, 2015 Ozurgeti Municipality Assembly Resolution N 26 “on Approving the rules for registering, selecting and providing social housing to homeless persons registered on Ozurgeti municipal territory, also to persons occupying the former hospital building and the rules for monitoring”; September 25, 2015 Sagarejo Municipality Assembly Resolution N 38 “on Approving the rules for registering, selecting and providing social housing to homeless persons registered on Sagarejo municipal territory, also to persons occupying the municipal buildings and the rules for monitoring”; November 27, 2015 Tbilisi Municipality Assembly Resolution N 28-116 “on Approving the rules for registering homeless persons on the territory of Tbilisi municipality and providing them with shelter/social housing”.

550 Zugdidi municipality correspondence N 02/5538, 11.05.2018.

The human rights conditions of residents of these institutions are particularly critical in terms of their access to the right to adequate housing and existing challenges in preventing homelessness. Two major problems have been identified in this regard. Firstly, the very existence of large residential settings with their specialized and institutionalized nature is in contradiction with Article 19 of the Convention which prohibits institutionalization of persons with disabilities. Secondly, the vulnerability of these populations is aggravated by the lack of social connections, meaningful social inclusion and inadequate support services and lack of independent living programs offered by the state.⁵⁵¹ The latter leads to the high number of institutionalized persons with disabilities, unprepared release from the institutions, lack of social skills, etc.⁵⁵²

Considering the acuteness of the problem, it is important to analyze the independent living support policies for persons in specialized institutions (both small and large-scale) both minor as well as adult persons with disabilities. The technical regulation adopted by the Government of Georgia – Childcare Standards – includes language about preparing minors for independent living which in its turn means development of necessary skills and support for the realization of the right to education;⁵⁵³ however, in practice most of the children with disabilities leave the state residential institutions basically unprepared for independent living and often end up homeless.⁵⁵⁴ This situation is also evidenced in the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, about seven 18-year old persons with disabilities who live in children's small group homes for general education purposes.⁵⁵⁵

With regard to adult beneficiaries, the minimum service standards for persons with disabilities and elderly people who live in state-run residential institutions do not incorporate requirements to develop independent living skills of the beneficiaries and provide them with other types of support;⁵⁵⁶ services for persons who have left the state care programs are also absent from the State Program for Social Rehabilitation and Childcare.⁵⁵⁷ Components of independent living skills development are included only in the technical regulation about the standards of psycho-social rehabilitation; however, they have an extremely narrow profile and are limited to medical matters only.⁵⁵⁸

551 "Homelessness – Analysis of State Policies", Human Rights Education and Monitoring Center (EMC), 61-93 (2016).

552 Rights of Persons with Disabilities in Georgia, Public Defender of Georgia, 53 (2015).

553 January 15, 2014 Government of Georgia Ordinance N 66 "Technical Regulation – on Adopting the Childcare Standards", Annex N 1 "Technical Regulation – Childcare Standards", Article 13.

554 Rights of Persons with Disabilities in Georgia, Public Defender of Georgia, 7 (2015).

555 Ministry of Labor, Health and Social Affairs of Georgia correspondence N 01/26687, 08.05.2018.

556 July 23, 2014 Ordinance of the Minister of Labor, Health and Social Affairs of Georgia, N 01-54/n "on Approving minimum service standards for persons with disabilities and the elderly living in specialized residential institutions".

557 Ministry of Labor, Health and Social Affairs correspondence N 01/26687, 08.05.2018.

558 January 15, 2014 Government of Georgia Ordinance N 66 "on Approving the Technical Regulation on Standards of Psycho-Social Rehabilitation" – "Technical Regulation: Standards for Psycho-Social Rehabilitation", Article 3.7.

Considering the challenges described above, including the inaction of the Government of Georgia to provide adequate independent living support services, existing large-scale residential institutions have acquired the role of a permanent home for beneficiaries. In its annual and special reports, the Public Defender of Georgia has for numerous times pointed to the instances of institutionalizing and keeping persons with disabilities, particularly those with psycho-social needs, in residential institutions even when there is no medical necessity for such action.⁵⁵⁹ This practice is in violation of the provisions set forth by the Convention regarding the prohibition of institutionalization and the Georgian legislation, particularly Article 15(5) of the Law of Georgia on Psychiatric Care according to which: “keeping patients in the hospital longer than necessary for examination and treatment shall be prohibited”. Absence of response to the request for public information from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia⁵⁶⁰ regarding this issue may be pointing to the possibility of such cases going undocumented. At the same time, the Public Defender of Georgia suggests that the number of such individuals kept in mental health institutions is quite high and constitute a significant portion – 30-40% of the overall number of people enrolled in this service.⁵⁶¹

Furthermore, according to the information⁵⁶² provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking provides 24-hour residential services to 260 persons with disabilities in the specialized institutions located in Dusheti, Martkopi and Dzevri, also in the residential institution for children with disabilities in Kojori and the Tbilisi orphanage. Despite the seriousness of the problem, the process of deinstitutionalization which started in 2004 is still unfinished. Parliament of Georgia adopted Concept Paper on Social Integration of Persons with Disabilities in 2008 which provides political foundations for implementing a long-term deinstitutionalization plan; however, no effective actions have taken place since.

Along with the absence of deinstitutionalization efforts, the state’s insufficient investment in the development and improvement of monetary support services poses yet another problem. Current legislation covers support services such as reintegration allowance and compensation for adult care.⁵⁶³ Reintegration allowance is a monetary assistance provided to biological

559 See, also Human Rights in Closed Institutions, National Preventive Mechanism of the Public Defender of Georgia, 46-47 (2017).

560 Ministry of Labor, Health and Social Affairs of Georgia correspondence N 01/26687, 08.05.2018.

561 See, Human Rights in Closed Institutions, National Preventive Mechanism of the Public Defender of Georgia, 46-47 (2017); Monitoring of Mental Health Institutions, Public Defender of Georgia, 12 (2015).

562 Ministry of Labor, Health and Social Affairs of Georgia correspondence N 01/26687, 08.05.2018.

563 Law of Georgia “on Social Assistance”, Articles 9, 11.

families/trustees/guardians of a person in a specialized institution/under the state care if they take the person out of the institution and provide adequate care in a home environment.⁵⁶⁴ Adult care allowance is a monetary assistance issued to a person who moves the adult beneficiary out of the specialized institution to a home environment and provides them with support and care.⁵⁶⁵ Pursuant to the social assistance legislation, the amount of reintegration allowance is 90 Georgian Lari (130 GEL in the case of persons with disabilities) and the adult care assistance is 45 Georgian Lari.⁵⁶⁶ In addition to ambiguities in the calculation methodology, the extremely small amounts of assistance jeopardize actual fulfillment of the purpose of the social assistance which obviously negatively affects the enforcement of the right of persons with disabilities to independent living and adequate housing.

Under the second direction of specialized housing services are those envisaged in the state social rehabilitation and childcare programs provided through community organizations, small group homes, specialized home-based care services for children with deep and severe disabilities or health complications and finally, the foster care program.

The community organizations sub-program includes “the component of small group home services to support independent living of persons with disabilities” which are for persons with disabilities aged 18 and above and children of persons with disabilities under 18 if it does not violate the best interests of the child. Unlike large residential institutions, the nature and purpose of these services are more in line with the requirements of the Convention; however, this type of services is underdeveloped in Georgia. Based on the information provided by Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, as of May 2018, a total of 224 beneficiaries are enrolled in the community organizations sub-program service including 146 persons with disabilities.⁵⁶⁷

The number of children with disabilities enrolled in relevant services is also very low. According to the Ministry of Internally Displaced Persons from the Occupied Territories, La-

564 *Ibid*, Article 9.2; 2006 Government of Georgia Ordinance N 145 on Social Assistance: “Key principles of social assistance programs and rules for determining the amounts of reintegration allowance; foster care assistance; adult care assistance; rules for determining the social assistance amounts, financing the activities and reporting; rules for funding monthly allowances for internally displaced persons from the occupied territories of Georgia, also persons with refugee or humanitarian status”, Article 2.2¹.

565 Law of Georgia “on Social Assistance”, Article 11.1.

566 *Ibid*, Article 9.2; 2006 Government of Georgia Ordinance N 145 on Social Assistance: “Key principles of social assistance programs and rules for determining the amounts of reintegration allowance; foster care assistance; adult care assistance; rules for determining the social assistance amounts, financing the activities and reporting; rules for funding monthly allowances for internally displaced persons from the occupied territories of Georgia, also persons with refugee or humanitarian status”, Articles 10³, 10⁷.

567 Ministry of Labor, Health and Social Affairs of Georgia correspondence N 01/26687, 08.05.2018.

bor, Health and Social Affairs of Georgia, as of May 2018,⁵⁶⁸ only 39 out of a total of 315 beneficiaries of the small type houses sub-program are children with disabilities and the number has increased only by 17 units since 2015. The number of children enrolled in foster care sub-program is comparatively higher and amounts to 229 individuals. The sub-program of home-based care for children with deep and severe disabilities and health complications which aims to place children who are without care in specialized small group homes and provide them with care and upbringing in an environment similar to home, is also extremely limited in scope: there is only 1 home registered under this sub-program which provides services to 7 beneficiaries.

As mentioned above, the low level of preparedness of beneficiaries for independent living on the one hand and inadequate development of small scale institutions and community-based services or insufficient engagement of persons with disabilities in these services on the other are some of the most serious problems regarding specialized housing services. In order to deinstitutionalize persons with disabilities and promote their independent living, it is crucial to increase the funding for these sub-programs and the number of their target audiences, including through expansion of their geographical coverage;⁵⁶⁹ and to introduce and develop other varieties of community-based services.

The research has found that general housing services are faced with significant gaps, which have the particularly negative impact on persons with disabilities. While a certain amount of services give somewhat priority to persons with disabilities, normally they do not include all persons with disabilities. Furthermore, municipal services for emergency shelter provision are clearly discriminating against persons with disabilities.

Analysis of specialized housing services for persons with disabilities has revealed that placement in large residential institutions, which in themselves contradict the established human rights standard, is the most frequently used practice when it comes to persons with psycho-social needs; this practice in its turn completely ignores the right of persons with disabilities to adequate housing and other fundamental rights and freedoms. Finally, the low level of community-based and support services leads to the institutionalization of persons with disabilities for an unclear period of time and serious and continuous violation of a number of their rights and freedoms.

⁵⁶⁸ *Ibid.*

⁵⁶⁹ Monitoring Report on the Implementation of Human Rights Strategies and Action Plans (2016-2017), Rights of Persons with Disabilities, Children's Rights, Gender Equality and Women's Rights, Human Rights Education and Monitoring Center (EMC), Partnership for Human Rights, Saphari, 39-40 (2018).

Findings

With regard to the international standards addressing the right of persons with disabilities to adequate housing:

- The international standards obligate the states to recognize the right to adequate housing as part of the right to adequate standard of living, which concerns specific person as well as their family, in their national legislative systems;
- Realization of the right to adequate housing is connected to two types of obligations of the state: firstly, that of immediate provision of housing, food and clothes to persons who are vulnerable or in extreme poverty, also elimination of discrimination against them; and secondly progressive realization of the right to adequate housing translated into gradual and progressive application of resources in order to fully enforce the right;
- Standard of adequate housing for persons with disabilities includes the following key components: legal security of tenure; access to services and infrastructure; affordability and accessibility of housing; location, habitability and cultural adequacy. These standards require the states to ensure access of persons with disabilities to social housing, including with due implementation of the principles of reasonable accommodation and universal design; also to prohibit eviction in cases where it may lead to complete loss of home and/or important forms of support;
- Policies against homelessness should prioritize persons with disabilities and consider their individual needs supported by evidence and statistical data. This in its turn should entail enforcement of human rights-based approaches in housing policies. Furthermore, effective implementation of the right of persons with disabilities to adequate housing and prevention of homelessness are linked with the need to incorporate the purpose and components of homelessness prevention in a variety of adjoining policies (related to social protection, health care, independent living);
- States are required to explicitly recognize and address the right of persons with disabilities to independent living and participation in the community in their national legislation, which, in its turn is associated with deinstitutionalization and development of community-based services;
- States are required to develop a whole range support services, including those related to social protection and health care, rehabilitation and habilitation, employment and inde-

pendent living; reconcile the municipal services with each other; modify their content and nature in order to respond to the needs of each person and ensure their accessibility. For this purpose, states should establish the minimum standards for social protection/assistance, which must incorporate components of the right to adequate housing; however, it should not result in the scarcity of social assistance/allowances in order to ensure dignified living of persons with disabilities.

With regard to national standards and practices addressing the right of persons with disabilities to adequate housing:

- Georgia's legislation, policy papers and practices neglect the standards of the right to adequate housing required by international legal instruments, including those concerning vulnerable populations. The national legislation offers an extremely narrow definition of the right to adequate housing and associates it with the provision of shelter to homeless people by local municipalities;
- Since the ratification of the Convention, Georgia has not implemented the instrument in the national legislation, which creates significant gaps in the enforcement of basically all rights and freedoms of persons with disabilities, including their right to adequate housing;
- The legal acts related to eviction procedures do not view persons with disabilities as vulnerable populations and do not adhere to the provisions of the international standards, including implementation of actions to prevent eviction and provide adequate housing to persons with disabilities upon completion of their eviction;
- Georgia does not have a homelessness prevention strategy and corresponding action plans which would demonstrate the Government's visions of overcoming the challenges. Moreover, specific or general action plans promoting the rights of persons with disabilities poorly address the Government's obligations to enforce their right to adequate housing;
- The duties and responsibilities of the Government's central and municipal structural units are ambiguous and insufficient in order to combat homelessness of persons with disabilities. There is no interagency unit, which would facilitate and coordinate the development and/or implementation of state policies in order to enforce the right to adequate housing;
- The criteria used to establish homelessness of an individual are mostly dismissive of the needs of persons with disabilities. This is connected to the ambiguity of the definition of

a “homeless person” on the one hand and formal barriers constructed by relevant legal acts on the other;

- Formal legal acts regarding registration of homeless persons and provision of certain types of housing for them (on the municipal level, if applicable) assign certain priority to persons with disabilities during decision-making, however, consideration is given to the category of disability of the applicant rather than their individual needs;
- Emergency shelter service provision is limited across the country and in certain cases; the service discriminates against persons with disabilities;
- Rental allowance service is also characterized with a number of flaws: pre-determined amounts of funding for the service significantly hinder full consideration of the needs of persons with disabilities and the failure to provide support services for independent living and homelessness prevention may lead to their continued vulnerability;
- Social housing services are extremely scarce on the national level. When provided, persons with disabilities are prioritized, however, only based on the category of their disability and not their actual individual needs;
- Still operational large-scale residential institutions and failure to carry out a deinstitutionalization reform remain to be some of the most serious challenges in the efforts to implement the right of persons with disabilities to adequate housing as well as other rights and fundamental freedoms. In the given circumstances, these institutions have taken on the role of a permanent home for the residents. As a result, persons with disabilities and especially those with psycho-social needs continue to live in harsh conditions even when there is no medical reason and necessity;
- Poor development of community-based services and the failure from the part of the state to provide adequate support services and/or their provision in a limited and ineffective manner adds to the existing practice of continued rights violations and institutionalization of persons with disabilities;
- Persons with disabilities in state-run residential institutions who are aged 18 and above leave the institutions completely unprepared for independent living and mostly end up on the streets. There are no state services available that would respond to the challenges they face.

Recommendations

Considering the findings of the research it is important to implement the following recommendations:

- Georgia should completely revise the national legislation in order to adequately address the right of persons with disabilities to housing. Revision should be based on the standards established by international legal instruments concerning access to housing as well as eviction and prevention of homelessness;
- The Government should develop a strategy and an action plan against homelessness, which will clearly demonstrate the Government's vision in this regard, including with consideration of the needs of vulnerable populations. Policy documents protecting the rights of persons with disabilities should incorporate actions to enforce their right to adequate housing;
- Georgia should take actions to identify and periodically review the number of citizens with disabilities, including homeless persons with disabilities;
- The legislation should clearly define the duties and responsibilities of state actors (central and local) in terms of enforcing the right to adequate housing and taking into account the needs of persons with disabilities;
- Interagency coordinating units should be created which will facilitate and coordinate the development and implementation of homelessness prevention policies on the one hand and disability rights policies on the other;
- The right of persons with disabilities to independent living should be adequately recognized in the Georgian legislation and the rights and freedoms which are adjoining to the right to adequate housing should be viewed and implemented by the state as relevant actions in order to prevent homelessness;
- The Government should take actions to ensure greater access to emergency shelter services and eliminate the service practices which discriminate against persons with disabilities;
- Existing housing services should be responsive to the individual needs of persons with disabilities. Steps should be taken to ensure the expansion and accessibility of long-term

housing services, including social housing, with consideration of the individual needs of persons with disabilities;

- Effective measures should be implemented in order to deinstitutionalize large residential institutions of persons with disabilities and they should include plans for simultaneously developing community-based services and preparing beneficiaries for independent living, supported by relevant budget allocations;
- The Government should introduce and/or improve community-based services, including supported housing programs;
- The Government should introduce support programs for persons with disabilities aged 18, who leave the residential institutions. The programs should respond to their needs and provide them with opportunities for independent and dignified living.

