

Access to Justice for the Right to Housing

1. The components of the right to housing specified in the questionnaire can be subject to hearing before courts. The cases regarding the specific decisions are brought in the Common courts of Georgia (district courts, appeals courts, and the Supreme Court of Georgia), while cases regarding legal protection and laws are brought in the Constitutional Court of Georgia. In all cases individual persons can bring these claims forward.

a) Non-discrimination is subject to hearing before courts. “The Law of Georgia on the Elimination of All Forms of Discrimination” provides protection from discrimination and aims to ensure equal enjoyment of the rights.

Also, “The Law of Georgia on Internally Displaced Persons”, which entered into force in 01/03/2014 and ensures the right of IDPs to adequate housing, prohibits discrimination on the grounds of displacement.

b) Security of tenure is subject to hearing before the Common courts of Georgia. “The Law of Georgia on Social Assistance” places responsibility on the Government to provide shelter to persons who require housing.

“The Law of Georgia on Internally Displaced Persons” dictates that the Government should ensure that IDPs enjoy their rights to life, dignity, safety and liberty. It guarantees protection of IDP rights, including the right to be protected from unlawful evictions.

According to the law, the State should take all possible measures to ensure the IDPs’ right to restitution. Furthermore, the Law has introduced a notion of legal ownership on living spaces so that IDPs retain their living spaces provided by the State even after returning to their places of origin.

c) In practice the adequacy standards were not brought to courts. However, IDPs, who live in places that are hazardous to their lives and health, can make a complaint in the Common courts of Georgia on the basis of “The Law of Georgia on Internally Displaced Persons”.

It should be mentioned that Decree №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia “The Guiding Principles, Criteria and Procedures of Durable Housing Solution” sets the guiding principles, criteria and procedures for the provision of Durable Housing Solution (DHS) to IDPs. The decree estimates minimal adequacy standards for newly built and empty buildings for IDPs.

d) The cases regarding legal protection and laws are brought in the Constitutional Court of Georgia and the basic rights are guaranteed under the Constitution of Georgia. Also, the IDPs have the right to make a complaint in courts regarding specific decisions made in the framework of IDP accommodation programs.

Case: Georgian citizen Tamar Tandashvili vs. the Government of Georgia - №663

On 11 May, 2018 the Constitutional Court of Georgia granted the complaint of a citizen of Georgia, Tamar Tandashvili, and declared unconstitutional a rule of the Decree of the Government of Georgia (Decree №126, 24.04.2010), which aims at establishing a centralized registry for the socially vulnerable families, who are eligible for state-provided social assistance. Subject of the dispute was Article 5 provision 5 of the Decree, which excluded those persons from registration, who were in unlawful possession of the premises owned by the state without a permission of the owner. The aforementioned provision was not constitutional with respect to Article 14 (everyone is born free and is equal before the law) and Article 17, Paragraph 1 (human honor and dignity is inviolable) of the Constitution of Georgia.

The Constitutional Court sided with the complainant's arguments and indicated that for the purposes of the state-provided social assistance, those persons who lived in the state-owned property without permission, irrespective of the fact when they were entitled to obtain the status of a socially vulnerable family and undergo registration, were equals. It thus follows that the disputed law unjustifiably restricted the rights of the complainant (and persons with a similar status). The Constitutional Court found the foregoing differentiation between the two equal groups of individuals unconstitutional, in violation of the constitutional right to equality.

The Constitutional Court noted that the state does enjoy the legitimate interest to ensure the protection of their property from unlawful possession. Nevertheless, any measure employed in the course of attaining the mentioned objective has to be in line with the constitutional rights and freedoms. The Court indicated that in the present case, to ensure the protection of their property, the state effectively resorted to deprive the complainant (and persons with a similar status) of their right to receive social assistance. Hence, the economic hardship of individuals was, in fact, the very measure employed in the given case to achieve the legitimate objective of protecting the state property from unlawful possession, which was found by the Constitutional Court to be in contradiction with the constitutional right to dignity.¹

e) With respect to progressive realization, please be informed that the GoG provides shelter to the most vulnerable groups (persons with disabilities and elderly). Moreover, the GoG transfers housing units to private property of IDPs transparently according to the rules and eligibility criteria for the provision of IDPs with the living space, which is set out in appropriate Normative Act (Decree №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia). The Normative Act was developed by the Ministry in close cooperation with civil society organizations. Annex №4 of the Normative Act includes “criteria for evaluating opportunities for using the living space”;

¹ <http://www.constcourt.ge/en/news/a-citizen-of-georgia-tamar-tandashvili-vs-the-government-of-georgia.page>

Annex №5 includes “social criteria”. IDP families receive scores in accordance with the criteria; therefore the most vulnerable are prioritized and placed first in line for housing.

The Ministry has also developed a Normative Act on “Approval criteria of Accommodation of Persons Affected by and Displaced as a Result of Natural Disasters”. (Decree №779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, 13/11/2013)

2. There are specialized institutions in Georgia registered under the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia, which provide services to target groups under the social rehabilitation and child care programs (Decree N601) (for persons with disabilities from 18 years and older, 60-65 year-old women). Also, the following branches of the LEPL - State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking are functioning: the shelter for elderly persons in Kutaisi and Dusheti, Martkopi and Dzevri branches for persons with disabilities. Hereby, we would like to inform you that the target groups are accepted in the abovementioned specialized institutions according to the Decree N52/6 of the Minister of Labour, Health and Social Affairs of Georgia (February 26, 2010 Decree on "Acceptance of the person in the specialized institution and approval of the procedure and conditions of the withdrawal from this institution").

5. The Office of the public Defender of Georgia is involved in the policy making regarding IDP issues, including their right to housing at the legislative level; it was involved in the drafting of the strategy on IDPs and relevant action plan. Moreover, it also monitors the implementation of the action plan and is a member of the steering committee, as well as the Commission for studying issues related to IDPs, which is responsible for the allocation of housing to IDPs. Since 2008, a special section is dedicated to the rights of IDPs in the Public Defender’s annual report. The report includes recommendations connected to the right to housing.

The Public Defender of Georgia also monitors the implementation of “The Law of Georgia on the Elimination of All Forms of Discrimination”.