IDPs' Right to Adequate Housing

(Legislative analysis, the key trends of court practice)

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(Legislative analysis, the key trends of court practice)

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Author: **NONA KURDOVANIDZE**

Editor: **KHATUNA KVIRALASHVILI**

Tech. Editor: **IRAKLI SVANIDZE**

Responsible of publication: **EKATERINE POPKHADZE**
NONA KURDOVANIDZE

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Executive Summary

There are nearly 270 000 internally displaced persons in Georgia. The state acknowledges their hard socio-economic conditions and sets creation of dignified living conditions for them among its top priorities. With a view to achieve the goal, the government of Georgia approved its state IDP strategy and the strategy implementation action plan. With the documents, the state has highlighted its obligation in terms of implementing IDPs' integration and durable housing solution. A durable solution is achieved when IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement. [1]

According to information of December 2012 82 559 IDPs (27 202 families) have been provided durable housing solutions, while 5263 families (12 229 IDPs) have received compensation instead of housing. [2] In view of above, the number of IDPs who have not benefited from durable housing solutions' program is still high. Submitted report aims analysis of the mechanism by which the state bears obligation to ensure IDPs right to adequate housing. In the report, we attempted to analyze effectiveness of the mechanism and examined the national judiciary practice implying main trends in terms of the right to housing. We believe that determination of the flows in the area and elaboration of relevant recommendations will play positive role in further development of the legislation.

The report is divided into five parts:

1. **The right to housing**

The right to housing is an inseparable part of human rights and closely linked to other human rights guaranteed by the international instruments. The first chapter addresses general aspects of the right to adequate housing according to international and national legislation. Recognition of the right to adequate housing obliges the state to

[1] IASC Framework on Durable Solutions for Internally Displaced Persons

[2] MRA letter # 05/02-12/15328 of December 15, 2012 (annex 1)

implement activities with a view to ensure realization of the right by all possible means, including legislation.

The research illustrated that although domestic normative acts recognize IDPs' right to housing; they fail to specify standards for adequate housing. The documents adopted by the Steering Committee working on IDPs' State Strategy Implementation Plan envisage, in a certain degree, criteria for adequate housing, however they are not normative acts and this weakens their legitimate nature.

1. Common Court Practice on provision of housing

The second chapter of the report submits analysis of common courts' practice in terms of the cases related to provision of housing. The chapter is divided into three units. The first part concerns analysis of the cases related to provision of housing on the place of integration, the second part covers the cases on provision of housing to IDPs with special needs, whereas the third part discusses cases where applicants questioned compliance of already transferred housing with standards approved by the Steering Committee.

- **Relocation within displacement area**

The Chapter analyses two cases[3] when IDPs, residing in Tbilisi, in "a private sector" requested allocation of housing on the place of integration. The court had to determine if the state was obliged to provide housing to the applicants within displacement area, where they felt themselves more integrated. Therefore, the court had to explain if promotion of socio-economic integration and development of IDPs' housing conditions, an objective declared in a state activity plan, implied state's obligation to provide durable housing solutions on the place where IDPs felt more integrated.

In the instant case the court stated that one of the key objectives of the action plan is promotion of IDPs' socio-economic integration, however,

[3] a) A.B. v. MRA, the Ministry of Economy and Sustainable Development of Georgia and Tbilisi City Hall (case #3/3901-10); b) G.S. and others v. MRA, the Ministry of Economy and Sustainable Development of Georgia and Tbilisi City Hall (case #3/901-11)

it does not mean that IDPs displaced in the capital for a certain period should be provided with housing there. The Court considers that the State Strategy objectives would be attained even if applicants be satisfied with the housing space in other regions of Georgia and relevant socio-economic and other activities will be carried out at the new place of relocation with a view to ensure their integration[4].

- **Individual Needs in provision of housing**

The State Strategy Implementation Action Plan on IDPs of 2009-2012 paid attention to determination of IDP families with special needs. According to the Activity Plan, IDPs should have been offered relocation programs according to their needs with social care component. [5]

The research submits analysis of the case,[6] where failure to fulfill the obligation by the State was disputed by an applicant on the basis of this norm. In the given case, the applicant alleged that he was the Internally Displaced Person from Abkhazia and had critical psychical condition and disability status. He has proven that until August 2010 he lived in Tbilisi, in so-called "Zakvo" building and periodically required medical treatment in various psychiatric institutions. By the period of eviction, he had been registered in psycho-neurological hospital and was under permanent out-patient supervision.

In August 2010, he along with other IDPs, was evicted from "Zakvo" building and relocated in Potsko-Etseri. In the instant case, the applicant disputed compliance of the housing conditions in Portskho-Etseri with standards of adequate housing established by the Steering Committee[7]. Moreover, he alleged that in relocation process, the state failed to consider his special needs and settled him on a place where

[4] The judgment of Tbilisi City Court on the case #3/3901-11 of October 25, 2011.

[5] Paragraph 2.1.11.2. of the Order #403 of the government of Georgia on "approval of IDP State Strategy Implementation Action Plan for 2009-2012".

[6] S.B. v. the MRA, the Ministry of Economy and sustainable Development of Georgia and Tbilisi City Hall (case #3/1311-11);

[7] The applicant alleged that despite conducted rehabilitation works in Potskho-Etseri, there was still need of repair operations, there was no ventilation system, walls were wet and others.

he was deprived of the chance to receive permanent medical aid, since there was no relevant medical institution there to receive necessary medical aid.

In the given case, the court failed to assess duly individual needs of the IDP and his vulnerability and founded impossibility of provision of housing on the argument that applicable legislation did not envisage possibility of later substitution of already transferred housing.

- **Compliance of the housing space with standards approved by the Steering Committee**

The research analyses the case, where applicants disputed compliance of the transferred housing space with the standards approved by the Steering Committee. Regarding the standards, the court stated that though the government of Georgia has examined and approved the document, it is not binding and possesses only recommendation nature. While, according to IDP activity plan, the "standards" adopted by the Steering Committee were considered as the guiding document for durable housing solutions, as well as in rehabilitation of Collective Centers and vacated houses and construction of blocks of flats.

The aim of adopting minimal standards for rehabilitation, conversion or construction works for durable housing solutions by the Steering Committee was to allocate housing to IDPs in line with provided standards. As it follows from the analysis, the court ignored adopted standards and considered the transferred venues valid for IDPs, though on the other hand confessed their incompliance with the established standards. In view of this, we can conclude, that the court applied lower standard for assessing validity of housing spaces than provided in Steering Committee documents.

2. Mechanisms for protection from forced eviction

Provision of the right to adequate housing in linked to existence of relevant legislative guarantees that will protect individuals from unreasoned eviction. The Chapter three of the report addresses legislative mechanisms of protection from unreasoned evictions.

Analysis provided for in this chapter shows that the guarantees for the protection of IDPs from forced eviction from the occupied properties as contained in the national legislation are strictly limited. Even if an IDP is able to provide evidence that he/she is legally possessing the property, the courts tend to explain that the final decision whether his/her family should be evicted from the property will eventually depend upon the evaluation of the Georgian Ministry for IDPs from Occupied Territories, Accommodation and Refugees.

According to the courts' interpretation, it is also only up to the abovementioned Ministry's assessment to determine whether any residential space or monetary allowance offered to an IDP is appropriate or whether such proposals entail aggravation of the IDPs' conditions.

Such practice deprives an IDP of the right to challenge the appropriateness of the Ministry's proposal *before* he/she is evicted from the property. As a result, the police evict him from the occupied building merely on the basis of the Ministry's written consent, under summary rule, without a court trial. The existing mechanism to appeal against administrative acts concerning eviction proved to be ineffective. With such a mechanism in place, it becomes impossible to defend a right temporarily and to avoid possible results before the dispute is adjudicated.

The applicable procedures for forced eviction by the police are inconsistent with international standards. There is no obligation on the part of the State to provide prior consultation and information, the eviction procedures do not take account of climate conditions, no reasonable term is prescribed between the date of serving a warning and the date when the actual eviction is to be implemented, etc.

Pursuant to the Order of the Minister of Interior, actions and decisions of a responsible person may be challenged in accordance with rules established by the legislation.[8] It follows that a warning issued by the police may be challenged by the affected person. However, it should be noted that, according to the Law of Georgia on Police, the challenging under an administrative rule of a written warning issued

[8] Order of the Minister of Interior of Georgia No. 747 dated 24 May 2007, Art. 10.

by a responsible person to an alleged perpetrator will not suspend the implementation of measures to prevent infringement upon a title to immovable property or the validity of the impugned written warning (administrative act).[9]

In this case, Administrative Procedure Code of Georgia envisages temporary protection mechanism of the right, by which the judiciary, notwithstanding the fact that appeal does not terminate operation of the act, can make decision on termination of the disputed act upon the demand of the party. Three days term is set for making the decision. Despite the mechanism on place, its application on eviction cases is ineffective for absence of reasonable terms from the moment of transferring the official warning, until the start of eviction process. According to applicable regulations, eviction can be implemented even on the next day, from receiving the official warning. In view of this, application of temporary protection measure and avoidance of possible outcomes until the end of the dispute becomes impossible.

3. Domestic Court Practice on eviction cases from compact settlements

Law of Georgia on Persons Forcibly Displaced from Georgia's Occupied Territories envisages protection mechanisms for preventing IDPs' eviction from compact settlements. However, one of the problematic issues is recognition of a building as Compact Settlements area. The chapter submits court practice, where status of the building, and therefore application of protection mechanism from eviction was disputed in the case.

Case analysis shows that the courts have been applying non-uniform interpretations. They were often taking a purely formalistic approach; however, in one of the recent cases, the court did apply a broad construction of the term ''compact settlement of IDPs". Following this practice, several important aspects can be distinguished: 1) In order to recognize a building as a compact center area of IDPs and, accordingly, to extend the application of statutory guarantees to them, it is indispensable to determine the lawfulness and legality of

[9] Law of Georgia on Police, Art. 9, paragraph "t".

initial settlement of the IDPs in the building; 2) In the given case, the recognition by the State that the disputed building was a compact center area of IDPs served as a sufficient basis to conclude that the IDPs were lawfully residing in that building; 3) If proven that the State has moved IDPs into a state-owned building, which the State has sold to a private person thereafter (and the customer knew in advance that the building was IDPs' house), the IDPs are still subject to the same legal regime existing before the sale.

5. **Jurisprudence of the European Court of Human Rights**

The Chapter five of the report examines a case adjudicated by the European Court of Human Rights entitled *Saghinadze and others v. Georgia.* In this case, the European Court provided important interpretations about ownership and eviction procedures.

Regarding the possession of the cottage (from which the applicant has been evicted), the European Court of Human Rights stated, that of paramount importance was the authorities' own manifest tolerance of the first applicant's exclusive, uninterrupted and open use of the cottage and the adjacent premises for more than ten years. The Court attaches further importance to the fact that, by adopting the Law of Georgia on Internally Displaced Persons (IDPs), the state recognized that an IDP's possession of a dwelling in good faith constitutes a right of a pecuniary nature. Thus, it was not possible to evict an IDP against his or her will from an occupied dwelling without offering in exchange either similar accommodation or appropriate monetary compensation. As regards eviction procedure, the court stated that adversarial proceedings, in order for the parties to represent an effective procedural safeguard against arbitrariness, should have, according to the domestic law, preceded the interference in question.

In the light of the about findings, the European Court of Human Rights found that the interference with the first applicant's (B. Saghinadze) peaceful enjoyment of his possession was not lawful, whilst the subsequent judicial review, having been arbitrary, amounted to a denial of justice.

Summary recommendations

The above analysis has helped disclose the major shortcomings related to the domestic mechanisms for the exercise of the right to housing by internally displaced persons (IDPs). Furthermore, the study of court practice in that regard enabled us to elucidate the way these shortcomings affect individual decisions made by domestic courts. The research has shown that in some cases the courts made pro-forma interpretations of legal provisions, however, the problem is often caused by the fact that domestic mechanisms do not envisage important aspects related to provision with appropriate housing. We think that domestic legislation needs to be developed with a view to create mechanism enabling adequate realization of the right to housing.

In that regard, it is necessary:

- to determine in the relevant domestic normative acts the specific criteria an appropriate dwelling (with consideration of all the relevant aspects) should meet;
- for the State to take into consideration the location of IDPs' integration and their special needs when making accommodation decisions;
- for the legislation to establish such eviction procedures as would be compatible with international standards, including the inclusion of a requirement of allowing a reasonable time between the date a police warning has been served and the date of actual eviction of an alleged perpetrator.

Methodology

In the working process, initially we analyzed the key legislative norms that define the right to adequate housing. Afterwards, we have sought for relevant court practice providing the main trends for realization of the right to housing. The case analysis is limited only to study of interpretation of disputed norms in court decisions and does not encompass outcomes of the whole case materials.

In the report, the main accent is made on cases examined in 2009-2012 period (IDPs' State Strategy implementation action plan was adopted in 2009, which set certain principles and stages in view of durable housing solutions). The report, however, also concerns earlier cases, that introduced some practice in that regard. Totally, the report implies analysis of more than 10 court decisions.

For analysis of court practice, we applied to the search program of the Supreme Court decisions along with the cases litigated by the Georgian Young Lawyers' Association. [10] While preparing the report, we considered interesting to submit statistics on frequency of IDPs' application to the courts in terms of protection of housing rights and the ratio of successfully ended cases. To this end, we applied to Tbilisi City Court with request of public information. In response, the court provided that it does not carry out processing of relevant statistical data. Furthermore, the court also noted that processing of the cases and mobilization of administrative personnel for that purpose is not an immediate need for court operation. [11] In view of above, we were not able to reflect related data in the report.

[10] http://www.supremecourt.ge/about-job-information/

[11] Letter #1720 of June 12, 2012 of Tbilisi City Court (annex 2)

CHAPTER 1. THE RIGHT TO ADEQUATE HOUSING

Introduction

The right to adequate housing is an inseparable part of human rights and closely linked to other human rights ensured by the international instruments. The right to housing is linked to human dignity and prohibition of discrimination, right to free choice of living place, inviolability of privacy and other rights. Therefore, rights to housing should be examined in line with other human rights, rather than separately.

Recognition of the right to adequate housing obliges the state to implement activities with a view to ensure realization of the right by all possible means, including legislation. The chapter will analyze the legislation of Georgia and discuss provision of the right to adequate housing by national legislation.

1.1. **The right to adequate housing according to international acts**

The right to adequate housing was firstly recognized by the Universal Declaration of Human Rights which provided that:

"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."[12]

Afterwards, the right to adequate housing was also reflected in other human rights' documents. The International Covenant on Economic, Social and Cultural Rights is the most important instrument in that regard. Article 11(1) of the Covenant addresses the right to adequate housing and states: "*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.* "

[12] Article 25(1) of the Universal Declaration of Human Rights

Both the Universal Declaration of Human Rights, as well as the International Covenant on Economic, Social and Cultural Rights are signed by Georgia and therefore, they have prevailing legal force in terms of domestic normative acts. [13]

Although a wide variety of international instruments address the different dimensions of the right to adequate housing, Article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions. In 1991 the UN Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) issued 4 General Comments which specify the content of the right to adequate housing provided for by Article 11(1) of the Covenant.

In its General Comments, the Committee drew a border between the "housing" and "adequate housing" [...] In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equals it with, for example the shelter provided by merely having a roof over one's head [...] the term "housing" should be interpreted as to take account to variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. It must be read as referring not just to housing but to adequate housing. [...] Adequate shelter means [...] adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at a reasonable cost." [...] [14]

While "adequacy" of housing depends on various factors, the Committee believes that it is nevertheless possible to indentify certain aspects of the right that must be taken into account for this purpose in any particular context. According to General Comments, "adequate housing" includes the following:

- Legal security of tenure – Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which

[13] According to Article 6 of the Georgian Constitution, an international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts.

[14] General Comments No. 4, Para. 7

guarantees legal protection against forced eviction, harassment and other threats;

- Availability of services, materials, facilities and infrastructure - An adequate house must contain certain facilities essential for health, security, comfort and nutrition;
- Affordability – Personal and household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised;
- Habitability – Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, wind or other threats to health, structural hazard, and disease vectors;
- Accessibility – Adequate housing must be accessible to those entitled to it.
- Location – Adequate housing must be in a location, which allows access to employment options, health-care, services, schools, child-care centers and other social facilities.
- Cultural adequacy – The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

1.2. **The right to housing according to the UN Guiding Principles on Internal Displacement**

The UN Guiding Principles on Internal Displacement (hereinafter referred to as "the Principles") is additional key document addressing right to adequate housing. "The Principles" were adopted in 1998 and the document is considered as one of the vital instruments for IDPs' assistance and protection. There is wide consensus on the international level in terms of the "Principles".

The document, with its sense, represents so called ''soft law'', as opposed to restricting law. It is not binding for the state parties, yet contains norms from International Human Rights' Law and Humanitarian Law and complies with them. Adoption of the "Principles" targeted analysis

of internationally recognized norms again and filling of the existing gap. At this moment, the document is considered to be practical guidebook for government and other competent state agencies in IDPs activities.

IDPs' right to adequate housing is enshrined in Principle 18. It specifies that:

"At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

a) Essential food and potable water;

b) Basic shelter and housing;

c) Appropriate clothing; and

d) Essential medical services and sanitation (guiding principles 18)."

1.3. **The national legislation in terms of provision of housing to Internally Displaced Persons**

1.3.1. **The Constitution of Georgia**

The Constitution of Georgia does not envisage the right to adequate housing, yet according to Article 39 of the Constitution "The Constitution of Georgia shall not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein but stem inherently from the principles of the Constitution."

1.3.2. **The Law on Internally Displaced Persons**

In 1996, the Parliament of Georgia adopted the Law on Internally Displaced Persons. The Law is governed by the Constitution of Georgia and the universally recognized principles of international law and along with other issues determines IDPs' legal, economic and social guarantees, their rights and obligations. The Law provides for the state obligation to ensure IDPs with temporary housing within Georgia's borders and necessary first aid. [15]

[15] IDP Law, Article 5 [4], Para. 1

1.3.3. State Strategy for internally Displaced Persons and Action Plan

On February 2, 2007 by the decree #47, the Government of Georgia adopted IDPs' State Strategy, according to which, the state has set two key objectives:

- Create conditions for dignified and safe return of IDPs;
- Support decent living conditions for the displaced population and their participation in society;

The strategy mainly contains general norms. It declares that the government of Georgia takes into account the UN Guiding Principles on Internal Displacement, protects internationally recognized rights and freedoms and expresses its political will for peaceful resolution of the conflict in Georgia, which shall become the grounds for safe and dignified return of IDPs to their permanent places of residence. [...] Prior to IDPs return, it is necessary to create, or to eradicate the hindering factors for IDPs to enjoy legal, political, living and socio-economic conditions like other citizens of Georgia. [...] The state strategy targets addressing of IDPs' housing and social conditions with a view to settle IDPs' integration goal.

On May 28, 2009 by the decree #403, the Government of Georgia adopted IDPs' State Strategy implementation Action Plan for 2010-2012. Its primary objective is "promotion of IDPs socio -economic integration and development of their living conditions". With a view to attain the goal, the action plan envisages durable housing solutions (Article 1.3.), which shall be achieved by adequate long-term accommodation and implementation of various measures reinforcing integration.

On June 13, 2012 the Government of Georgia adopted the decree #1162, and approved State Strategy Implementation Action Plan on IDPs for 2012-2014. The goals and objectives of the new action plan are similar to the previous one. Amendments mainly concern terms of implementation therefore we will not pay much attention thereto.

1.3.4. **Documents of the Steering Committee on adequate housing**

Documents adopted by the Steering Committee are additional mechanism for protection of IDPs' right to adequate housing. In particular, the Steering Committee shall elaborate mechanisms/ procedures for IDPs [...] durable accommodation, guidelines for IDPs durable housing solutions, criteria and procedures for rehabilitation, reconstruction and construction standards of Collective Centers (CC) for ensuring IDPs with long-term shelter. It shall work on implementation of action plan and prepare and adopt procedures and principles on various specific issues [...] [16]. Although documents adopted by the Steering Committee are not normative acts (therefore they are not biding), the state agencies, while implementing State Strategy Action Plan, should be governed by them.

In 2009, the Steering Committee worked out the Standards for Rehabilitation, Conversion or Construction Works for Durable Housing Solutions for IDPs, which has been examined and taken as a note by the Government of Georgia at the session #35 of October 30, 2009.[17] According to the action plan, the standards are considered the key document in durable housing solutions, as well as for rehabilitation of collective centers and state owned vacant buildings and for construction of block of flats. The document sets the minimal space in correspondence to family members and defines types of rehabilitation activities.

In 2010 the Steering Committee adopted the Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions (hereinafter referred to as SOP) which provide definition of "adequate durable housing". According to the document: "adequate durable housing is a living unit the property of which will be transferred to an IDP (IDP family) and which meets the technical, sanitary and living standards recognized and utilized for shelter rehabilitation and construction of CC in Georgia. The living unit shall be equipped with gas (where it is feasible from the side of the providing company),

[16] The Decree of the MRA adopted on January 18, 2011, Article 2, Paragraph 1.

[17] http://mra.gov.ge/files/Shelter%20Standards_ENG.pdf.

electricity, and water and sewage system (where it is feasible from the side of the proving company). [18]

Conclusion

Although legislation of Georgia acknowledges IDPs' right to housing, it fails to define clearly the standards of adequate housing. Documents adopted by the Steering Committee envisage criteria for adequate housing, however they are not normative acts (therefore, they are not binding) and this weakens their legitimate nature. In addition, while interpreting the meaning of adequate housing, the key attention is paid to technical standards of housing and it misses other important aspects of adequate housing.

[18] http://mra.gov.ge/files/sop_ENG.pdf

CHAPTER 2. COMMON COURT PRACTICE ON PROVISION OF HOUSING

Introduction

The Chapter addresses common court practice on cases concerning provision of housing. The Chapter is split into three parts. The first part analyses cases concerning relocation within current displacement area, the second one concerns provision of housing by considering special needs, while the third one addresses the cases where applicants complain of incompliance of the transferred houses with the standards approved by the Steering Committee.

2.1. Relocation within displacement area

The Chapter analyses two cases[19] when IDPs registered in "private sector" requested allocation of housing in Tbilisi compatible with the standards adopted by the Steering Committee. Since the disputes were identical, we will submit joint analysis..

In both cases, the applicants proved that they have been registered and lived in Tbilisi, in so called "private sector". The state has not fulfilled its obligation in terms of allocation of housing and therefore, for years (including the time for case examination), they had to rent the house. The applicants have proved that they were integrated in Tbilisi and therefore the state was obliged to relocate them within displacement area. They reported that, relocation in other administrative unit would have aggravated their living conditions.

The applicants founded their claims on the following norms:

- The Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia, according to which, MRA along with the relevant executive and local government bodies shall ensure IDPs with temporary housing and food within the norms established in Georgia.[20]

[19] a) A.B. v. MRA, the Ministry of Economy and Sustainable Development of Georgia and Tbilisi City Hall (case #3/3901-10); b) G.S. and others v. MRA, the Ministry of Economy and Sustainable Development of Georgia and Tbilisi City Hall (case #3/901-11)

[20] IDP law, Article 5, Para 2 and 3 by the time of case examination

- The State IDP Strategy targeting support of IDPs' dignified living conditions and their involvement in public life;
- The State Strategy Implementation Action Plan on IDPs, according to which the second stage started since 2010 and envisaged provision of housing to the IDPs registered in a "private sector";[21]
- The applicants founded their request concerning allocation of housing in the capital, on State Strategy Implementation Action Plan on IDPs during 2009-2012, according to which, the state strategy aims promotion of IDPs socio-economic integration and improvement of their living conditions.[22] The applicants insisted that they had been integrated and had socio-economic links with the capital, therefore, their relocation to another place would have destroyed already built integration and would have violated their rights;
- As for provision of adequate housing compatible with the established standards, the applicants also made reference to the Action Plan, according to which rehabilitation standards approved by the Steering Committee on September 17, 2009 and hereinafter taken as a note on October 30, 2009 by the government, is the guiding document for durable housing solutions.[23]

The applicants also based their claims on international agreements and the UN guiding principles.

In view of submitted legislative foundations, the court had to determine if the state was obliged to provide housing to the applicants within displacement area, where they felt themselves more integrated. Consequently, the court had to explain if promotion of socio-economic integration and development of IDPs' living conditions provided for by the Action Plan , also implied state's obligation on durable housing solutions on the place of their integration.

[21] Government order #403 of May 28, 2009 on approval of State Strategy Implementation Action Plan on IDPs in 2009-2012, Para. 2.2.

[22] Ibid. 1.3.

[23] Ibid. 2.1.8.

In the cases concerned, a court made identical interpretations. In the first case, the first instance court explained that neither the State IDP Strategy, nor activity plan or any other legal act[...] envisage state obligation on provision of housing explicitly in the capital [...].The court also clarified that [...]at this moment, the State has no adequate resources for allocation of living space in the capital, therefore, there is no legitimate ground for satisfying the claim, especially when a period for implementing State Strategy Activity Plan has not expired. (2009-2012) [...].[24]

As regards the second case, the court stated that [...] one of the key objectives of the action plan is promotion of IDPs' socio-economic integration, however, it does not mean that IDPs displaced in the capital for a certain period should be provided with housing there. The Court considers that the State Strategy objectives would be attained even if applicants be satisfied with the living space in other region of Georgia and relevant socio-economic and other activities will be carried out at the new place of relocation with a view to ensure their integration[...][25].

In both cases, the Appeals Court upheld opinions of the first instance court, whereas the Supreme Court considered that the cases were insignificant for formation of common practice, they have been examined without procedural violations in the Appeals Court and considered them inadmissible.

2.2. Individual Needs in provision of housing

The State Strategy Implementation Action Plan on IDPs of 2009-2012 paid attention to determination of Internally Displaced Persons with special needs. According to the Activity Plan, IDPs should have been offered relocation programs according to their needs with social care component. [26]

[24] The judgment of Tbilisi City Court on the case #3/3901-10 of November 30, 2010.

[25] The judgment of Tbilisi City Court on the case #3/3901-11 of October 25, 2011

[26] Government order #403 of May 28, 2009 on approval of State Strategy Implementation Action Plan on IDPs in 2009-2012, Para. 2.2. 11.2

In 2011, Tbilisi City Court examined a case,[27] where failure to fulfill the obligation by the State was disputed by an applicant on the basis of this norm. In the given case, the applicant alleged that he was the Internally Displaced Person from Abkhazia and had critical psychical condition and disability status. He has proved that until August 2010 he lived in Tbilisi, in so-called "Zakvo" building. Periodically, he required medical treatment in various psychiatric institutions. By the period of eviction, he had been registered in psycho-neurological hospital and was under permanent out-patient supervision. In August 2010, he along with other IDPs, was evicted from "Zakvo" building and relocated in Potsko-Etseri. In the instant case, the applicant disputed compliance of the housing conditions in Portskho-Etseri with standards of adequate housing established by the Steering Committee[28] and complained that in relocation process, the state failed to consider his special needs and settled him on a place where he was deprived of the chance to receive durable medical aid. He claimed that in Tbilisi he was able to apply to a doctor every day, whereas in Potskho-Etseri he had not such ability. The applicant also complained that a climate of Potskho-Etseri made negative effect on his health.

The applicant founded his claim on the activity plan, according to which, the key objective of the state strategy was promotion of IDPs' socio-economic integration and development of their housing conditions. Therefore, IDPs' eviction from the capital, where they have been integrated for a long time and their resettlement in isolated villages cannot be considered as proper means for attaining the result. It should be noted, that by the time of case examination, the applicant had not declared agreement on accepting the apartment in his ownership.

In the instant case, the applicant disputed on the one hand incompliance of his living conditions with the standards of adequate housing, location, availability and compliance with technical standards in general and on the other hand alleged that, the State ignored his individual needs and relocated him on the place where he was deprived of an ability to

[27] S.B. v. the MRA, the Ministry of Economy and Sustainable Development of Georgia and Tbilisi City Hall(case #3/1311-11)

[28] The applicant alleged that despite conducted rehabilitation works in Potskho-Etseri, there was still need of repair operations, there was no ventilation system, walls were wet and others.

contact a doctor. There was no relevant medical institution in Potskho-Etseri where he could receive necessary medical assistance.

Tbilisi City Court considered that living spaces allocated for IDPs for later transfer in their ownership complied with all obligatory standards for rehabilitation, reconstruction and construction of CCs.[29] The court refrained from specifying if the state was obliged to consider the IDP's personal needs in relocation process.

The Appeals Court noted that it cannot support applicant's claims on incompliance of the allocated housing with obligatory standards of CCs' rehabilitation, reconstruction and construction and added that, already executed regime could not have been substituted even if such conditions were on the place, since applied normative acts do not regulate possibility of substituting already transferred housing with another one, within IDPs' program. [30]

Notwithstanding submitted appeal, the Supreme Court did not hear the merits of the case and considered it inadmissible by April 5, 2012 decision.

2.3. **Compliance of the housing with standards approved by the Steering Committee**

On May 11, 2010 the government of Georgia introduced amendments to the IDP strategy implementation action plan. As a result, rehabilitation standards [...] approved by the Steering Committee on September 17, 2009[31] and afterwards taken by the government as a note on October 30, 2009, became the guiding document for durable housing solutions, as well as in rehabilitation of Collective Centers and vacated houses and construction of blocks of flats. [...]

In June 2010, IDPs were evicted from CC located at Tvalchrelidze str. No.2, Tbilisi and were resettled in the building located at Sakviri Str., Tbilisi. The ground for IDPs' eviction was an application submitted by the owner of the building to the Police and a written consent of the MRA

[29] The judgment of Tbilisi City Court on the case #3/3901-10 of November 30, 2010.

[30] The judgment of Tbilisi Appeals Court on the case #3b/13/12 of January 24, 2012.

[31] Government decree #403 of May 28, 2009 paragraph 2.1.8.

on appropriateness of eviction. The letter provided, that after eviction, IDPs would be offered housing spaces in a building located at Sakviri str., their housing conditions will be improved and the venues will be transferred in their ownership. Therefore, by the letter, MRA confirmed that housing spaces at Sakviri str. have been transferred to IDPs for durable housing solutions. In view of this, transferred apartments should have complied with the standards approved by the Steering Committee. In 2011, part of IDPs resettled at Sakviri str. applied to the court. [32] They complained of aggravation of their housing conditions after eviction and violation of the IDPs' law. The law provides that one of the grounds for considering IDPs' eviction from CCs reasonable is allocation of relevant housing spaces that will not deteriorate IDPs living conditions. [33]

The applicants alleged that transferred living spaces at Sakviri str. failed to meet standards established by the Steering Committee. Though some rehabilitation activities have been conducted in the building, it still required major repairs. In view of this, IDPs demanded from MRA to bring transferred housing spaces in line with the standards established by the Steering Committee.

In the instant case, the first instance court made the following interpretation: "The government's plan for IDPs' accommodation, establishment of social conditions and development, implies various activities and is planned for a long- term period. Moreover, if the Ministry takes decision on transfer of housing space in IDPs' ownership, it shall conduct repair-rehabilitation activities, which was not implemented in the case concerned. Although the state made decision on applicants' eviction and their relocation at Sakviri str., the issue of transferring the venues in their ownership has not been resolved so far by which the Ministry becomes obliged to conduct rehabilitation activities there." As regards the standards approved by the Steering Committee, the court stated that "though the standards have been examined and approved by the government of Georgia, they are not binding and have only recommendation nature. "

[32] N.E., A.L. and other v. MRA, case #3/1681-11

[33] Article 5^3, paragraph 2, clause b of IDP law

Finally, the court mentioned that "though venues transferred to IDPs require rehabilitation, they are not useless for living and rehabilitation activities might be carried out in parallel to transfer of the living spaces in IDPs' ownership. "

The Appeals Court completely upheld the opinions of the first instance court and added: "while no activities are carried out for transfer of allocated living spaces to applicants as their ownership yet, the applicants have no legal grounds to demand bringing of the houses in the condition that is envisaged by the government decree on IDPs state strategy implementation plan. "

As it follows from the explanations of the first and the second instance courts, they on the one hand demonstrate the necessity of conducting rehabilitation activities, while on the other hand consider transferred spaces valid for housing. In addition, according to the court assessment, the state should have been obliged to bring the transferred housing spaces in compliance with approved standards, when the process of transferring property in their ownership started.

The case was also challenged in the Supreme Court. It should be noted, that by the time of appeal, majority of applicants had already received venues at Sakhviri. Str., in their legal ownership. In view of interpretations of the lower instance courts, the applicants had legal ground to demand bringing of their housing conditions in line with housing standards established by the Steering Committee.

In the instant case, the Supreme Court noted: [34] "though there is not any international agreement defining IDPs' conditions and establishing standards of conduct, it should be considered that IDPs are citizens of the country where they have been displaced and remain on the same territory again. Therefore, the state should bear identical obligation of care and assistance in terms of IDPs, as to any other citizens. Moreover, in view of their special status, the state's obligation of care shall even prevail in terms of IDPs as opposed to ordinary citizens…. Furthermore, the Supreme Court considers that when internal displacement is massive, the state, in view of its economic conditions, has relative freedom of conduct, which should be within the frames of undertaken

[34] The judgment of the Supreme Court of December 28, 2012, case #bs-20-20 (K-12)

obligations. In this situation, the state's integrity in implementation of undertaken obligations should be determined, since it is impossible to ensure absolute standards of protection. "- the Supreme Court noted.

The Supreme Court does not exclude that the building might require repairs, yet it highlights that state's obligation in terms of IDPs is a durable process , rather than a temporary act, while at this moment minimal standards need to be ensured for IDPs', in particular their dignified existence and settling of housing problem. "

The aim of adopting minimal standards for rehabilitation, conversion or construction works for durable housing solutions by the Steering Committee was to allocate housing in line with provided standards to IDPs. It should be concluded from the analysis, that the court ignored adopted standards and considered the transferred venues valid for IDPs, though on the other hand confessed their incompliance with the established standards. In view of this, we can conclude, that the court applied lower standard for assessing validity of housing spaces than provided in Committee documents.

Conclusion

Court practice provided for in the Chapter demonstrates that while examining the case, the court used to interpret legislative norms, state strategy and goals of the action plan narrowly. The court failed to assess duly Individual needs of the IDP and his vulnerability, (internal displacement on the one hand, disability status on the other hand, that made him defendant on the state). The court failed to assess adequately the facts and founded impossibility of provision of housing on the argument that applicable legislation did not envisage possibility of later substitution of already transferred housing. With a view to avoid similar pro-forma approach, national legislation needs to be developed and brought in line with international standards. As a result, neither state agencies, nor courts will be given chance to interpret laws narrowly in violation of IDPs' interests. It should be noted, that in the cases concerned, the court shared positions of the respondent administrative bodies completely.

CHAPTER 3. MECHANISMS FOR PROTECTION FROM FORCED EVICTION

Introduction

Provision of the right to adequate housing in linked to existence of relevant legislative guarantees that will protect individuals from unreasoned eviction. The Committee for Economic, Social and Cultural Rights mentions in its General Comment No.4, that forced evictions are *prima facie* incompatible with the requirements of the Covenant and may take place only in emergency situations, in accordance to international principles [...][35]

The General Comment No.7 concerning forced eviction provides that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party [...] must take all appropriate measures, to maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. [36]

In the same Comments, the Committee makes reference to the General Comment No.62 of the Human Rights Committee, providing that restriction of any individuals' housing may be implemented only in "cases envisaged by law". The legislation should comply with provisions, objectives and goals of the Covenant, should respond to reasonability principle in each specific case [...] as well as should set specific circumstances for allowing such interference. [37]

3.1. Inadmissibility conditions for IDPs' eviction

Article 5^3 of the IDP law sets some safeguards for protection from unreasoned eviction. It provides that until restoring Georgia' s jurisdiction on the occupied territories, IDPs shall not be evicted from CCs, unless

[35] General Comment No.4, paragraph 18.

[36] General Comment No. 7, paragraph 17.

[37] General Comment No.7, paragraph 15.

- There is a written consent;
- Adequate housing is provided that will not aggravate IDPs' living conditions;
- There is natural disaster or other events which envisages some compensations and are regulated by the general rules;
- IDPs have occupied the space arbitrarily, in violation of law.

As it follows from the article, the adequate protection measures are applied unrestrictedly, in terms of the IDPs living in CCs, if IDPs occupy the place lawfully.

3.2. Legislative forms of forced eviction

Georgian legislation envisages two forms of forced eviction: with involvement of courts and with police intervention.

According to the Civil Code of Georgia, an owner of property is entitled to protect his/her title by lodging a case to a court and by claiming eviction of illegal possessors. The Civil Code also enables an owner to evict disturbers without a court decision, by police intervention. The provision of the Code targets protections of owners' rights, with a view to avoid long-lasting proceeding and to carry out eviction by simple procedures by applying to police. The legislation, however, sets some exceptions when police is prohibited to carry out eviction. These are the conditions when alleged disturber submits a written document proving title or legal possession over the disputed immovable property. [38] The Law of Georgia on Police also contains the similar norm. [39]

The Order No. 747 (May 24, 2007) of the Minister of Interior defining the rules, procedures and conditions for prevention of encroachment on or other disturbances of the right of ownership and determining rights and obligations of the parties to the process, considers IDP's card as a valid document for lawful possession. The document, however, may be considered valid for proving lawful possession on immovable property only in terms of CCs, when the address indicated

[38] Article 172 of the Civil Code.

[39] The Law of Georgia on Police Article 9.

in the document coincides with displacement area. [40]

As it follows from the analysis of the norm, an IDP shall not be evicted with police involvement when lawful possession is proved by IDP card. Yet, below submitted court's analysis demonstrates that in some cases, the court considered admissible IDPs' eviction in a given form.

Pursuant to Oder No. 747 of the Minister of Interior, activities for prevention of encroachment on or other disturbances of the right of ownership may be implemented only upon negotiation with the MRA. Before reaching the agreement in a written form, execution of measure for prevention of encroachment on or other disturbances of the right of ownership on real property should be terminated (the mechanism applies to all cases, notwithstanding lawfulness of occupying the space).

Police shall terminate eviction procedures if one from the listed documents is submitted:

- The document proving lawful possession and/or use of immovable property until end of prevention measure (IDP card);
- The document providing enforced decision of the court in terms of prevention of encroachment on or other disturbances of the right of ownership of immovable thing;
- The written document issued by MRA on inappropriateness of IDPs' eviction.

As it follows from the Article, the police shall terminate eviction process if one from the three conditions is on the place. The Order, however, misses exact regulations of a police conduct when on the one hand there is IDP card submitted, as valid document for proving legal possession and on the other hand there is a written consent from MRA on appropriateness of eviction process.

[40] According to Order No.747 of the Ministry of Interior, Article 2, clause b "IDP's card or the certificate issued by MRA on temporary residence place (for compact settlements) is supposed to be valid document for proving lawful possession and or use of immovable property. According Article 8, clause a of the same Order submission of such document may serve as basis for termination of prevention of encroachment on or other disturbances of the right of ownership of immovable thing."

The court has examined the similar case in 2012. In the instant case,[41] while justifying his claim, the applicant brought IDP's card as opposed to written consent of MRA on eviction. The applicant presumed that IDP's card should have been granted preference, as the document proving lawful possession and therefore it excluded IDP's eviction in the instant case. The court interpreted:

"*As a rule, IDP's card is a valid document for proving lawful possession and/or use of immovable thing which prevents the police from evicting IDPs from the registration address indicated in the document, it, however, does not restrict MRA to issue written consent on eviction of IDPs if the Ministry considers such act reasonable*". [42]

While evaluating lawfulness of MRA's written consent, the court stated that [...] in the condition when the owner of the building had offered monetary compensation in exchange to the occupied space, whereas part of IDPs who rejected compensation were offered other alternative housing by the Ministry [...] the consent of the MRA on eviction shall be deemed compatible with eviction conditions envisaged by the Law on IDPs.

3.3. Eviction procedures

The Committee, in its General Comment No.4 mentions that, [...] forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law. [...] It is always important to observe relevant procedure for protection of any human right, [...] they, however acquire special importance in case of forced eviction [...] .[43]

General Comment No.7 of the Committee considers some procedural protections which should be applied in relation to forced evictions. In particular:

a) an opportunity for genuine consultation with those affected;

[41] S.G. v. MRA and Ltd. V (case #3/8526-2011).

[42] The decision of the City Court of February 13, 2012 on the case #3/8526-2011.

[43] General Comment No.7. Para. 16.

b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;

c) information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;

d) government officials or their representatives to be present during an eviction especially where groups of people are involved,

e) all persons carrying out the eviction to be properly identified;

f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;

g) provision of legal remedies

h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

As regards compliance with the mentioned aspects, legislation of Georgia is quite restricted. It should be noted, that at this moment, the order of the Ministry of Interior No.747 of May 24, 2007 does not specify the terms of vacating the occupied venue after receiving the police warning.

It should be noted that in August 2010 (when IDPs' eviction process was a pressing issue), amendment was introduced to the order of the Ministry of Interior No.747 of May 24, 2007. By the introduced amendments, the five days term for voluntary vacation of the building after receiving of official warning has been annulled. According to the applied version, after receiving the warning, an individual shall stop encroachment or other disturbance of others' real property. Therefore, the term for voluntary vacation of the venue is not specified.

3.4. **Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions**

The flaws and instances of human rights' violations revealed in IDPs' eviction process in 2010, served as the basis for adoption of "Standard Operating Procedures for Vacation and Re-allocation of

IDPs for Durable Housing Solutions" (SOP),[44] approved by the Steering Committee in 2010.

These SOPs aim to regulate the process of both re-allocation and vacation of IDPs from their present place of residence and provision of durable/alternative housing solutions. By this document, MRA became obliged in terms of each vacated object

- to clarify the status of each vacated building;
- to clarify whether any of the individuals residing in the building have been granted IDP status or have an application for such status currently pending at the MRA, with a view to secure specific protections against eviction of IDPs are respected;
- to assess on the bases of individual data verification and profiling exercise, whether alternative housing solutions had been or can be offered, whether legal requirements for exceptional eviction under the Law on IDPs have been met and whether consensus to an eviction can be given to the owner or the Police;
- to inform IDPs about alternative housing solutions, the relocation process and whether consensus to re-allocation/ vacation has been granted to the owner or the Police, or whether a document certifying the inexpediency/inappropriateness of such measures has been issued;
- to oversee the effective implementation of the re-allocation process with the view to prevent homelessness and coordinate the physical re-allocation of IDPs, including the transfer of IDPs' personal belongings to the new place of residence.

The MRA is obliged to deliver a written notification to each individual IDP household that possibly the building will be vacated. At least 10 days before, the notification shall be provided to IDPs on that the building will be vacated by the police.

The individual written notification informs IDP household residing in the building that the MRA intends to grant consensus to re-allocation/ vacation of the building to Police (following the 10 days notification

[44] http://mra.gov.ge/files/sop_ENG.pdf

period) which could then lead to issuing of a warning letter and executive measures by the Police. The letter shall also contain possible date of vacation of the building by the police.

The notification shall also contain information on alternative housing provision program, if any, consultation meetings and any other re-allocation measures.

Objective of individual notifications is preparation of IDPs on planned eviction measures, rather than legal solution of the problem. Unless IDPs leave the building voluntarily within 10 days after receiving the notification, the MRA gives consent to the Police on vacation of the building.

3.5. Appeals mechanisms

Pursuant to the Order No. 747 of the Minister of Interior, [...] actions and decisions of a responsible person may be challenged in accordance with rules established by the legislation [...].[45] It follows that a warning issued by the police may be challenged by the affected person. However, it should be noted that, according to the Law of Georgia on Police, [...] the challenging under an administrative rule of a written warning issued by a responsible person to an alleged perpetrator will not suspend the implementation of measures to prevent infringement upon a title to immovable property or the validity of the impugned written warning (administrative act) [...].[46]

In this case, Administrative Procedure Code of Georgia envisages temporary protection mechanism of the right, by which the judiciary, notwithstanding the fact that appeal does not terminate operation of the act, can make decision on termination of the disputed act upon the demand of the party. Three days term is set for making the decision. Despite the mechanism on place, its application on eviction cases is ineffective for absence of reasonable terms from the moment of transferring the official warning, until the start of eviction process. According to applicable regulations, eviction can be implemented

[45] Order of the Minister of Interior of Georgia No. 747 dated 24 May 2007, Art. 10;

[46] Law of Georgia on Police, Art. 9, paragraph "t"

even on the next day, from receiving the official warning. In view of this, application of temporary protection measure and avoidance of possible outcomes until the end of the dispute becomes impossible.

Conclusion

Analysis provided for in this chapter shows that the guarantees for the protection of IDPs from forced eviction from the occupied properties as contained in the national legislation are strictly limited. Even if an IDP is able to provide evidence that he/she is legally possessing the property, the courts tend to explain that the final decision whether his/her family should be evicted from the property will eventually depend upon the evaluation of the Georgian Ministry for IDPs from Occupied Territories, Accommodation and Refugees. According to the courts' interpretation, it is also only up to the abovementioned Ministry's assessment to determine whether any residential space or monetary allowance offered to an IDP is appropriate or whether such proposals entail aggravation of the IDPs' conditions.

Such practice deprives an IDP of the right to challenge the appropriateness of the Ministry's proposal *before* he/she is evicted from the property. As a result, the police evict him from the occupied property merely on the basis of the Ministry's written consent, under summary rule, without a court trial. The existing mechanism to appeal against administrative acts concerning eviction proved to be ineffective. With such a mechanism in place, it becomes impossible to defend a right temporarily and to avoid possible results before the dispute is adjudicated.

The applicable procedures for forced eviction by the police are inconsistent with international standards. There is no obligation on the part of the State to provide prior consultation and information, the eviction procedures do not take account of climate conditions, no reasonable term is prescribed between the date of serving a warning and the date when the actual eviction is to be implemented, etc.

CHAPTER 4. DOMESTIC COURT PRACTICE ON EVICTION CASES FROM COMPACT SETTLEMENTS

Introduction

According to Article 5^3 of the Law of Georgia on Persons forcibly Displaced from Georgia's Occupied Territories, no evictions of IDPs shall take place from the compact settlements of IDPs until the Georgian jurisdiction over Georgia's occupied territories is restored, unless a) an appropriate written agreement has been concluded with the IDPs; b) an appropriate residential space is allocated, which will not deteriorate the IDP's living conditions; c) occurrence of natural calamities or other events in which case payment of compensation is envisage and which are governed by general rules; or d) an IDP has occupied a space arbitrarily, by breaching the law. As mentioned above, the protection mechanism is applied in a limited manner, to IDPs residing in compact settlements only. Another problem relates to recognizing a building as a compact settlement area. This chapter provides analysis of court practice where the status of such buildings was a matter of dispute and, accordingly, statutory guarantees for the protection against evictions were discussed.

4.1. Recognition of a building as a compact settlement area

The Law of Georgia on Internally Displaced Persons (IDPs) was adopted in 1996; however, a large group of forcibly displaced persons had already existed in Georgia since 1990-1993 – before the Law was adopted. Various bylaws had been issued periodically to satisfy the IDPs with residential spaces before adoption of the Law.

On 31 December 1994, the Georgian Cabinet of Ministers adopted Resolution no. 900 tasking the Committee for Refugees and Accommodation, government institutions and local self-governance bodies with providing social arrangements for the forcibly displaced persons. The same was a matter of regulation of the Decree of the President of Georgia no. 643 dated 25 September 1996, which stipulated that heads of regional administrations, town mayors and district governors were to provide IDPs accommodated in private properties

with residential spaces using temporarily unused and bogus buildings (such as kindergartens, buildings of vocational training institutions, etc) until the final resolution of the conflict, for the purpose of moral and social protection of population forced out from Abkhazia.

Based on these provisions, the court practice developed in a way to allow recognition of IDPs' right to lawful ownership only if proven that the space occupied by them was part of State property at the time they have occupied it. In many case has the Supreme Court of Georgia stated as follows:

[...] Georgia's central authorities are obliged to protect both the integrity of the country and the rights of the population in any part of the country. This is why the State assumed the obligation to provide forcibly displaced individuals with living and social conditions [...]. Conflict resolution – a condition upon which the State undertook to accommodate the IDPs – has not been achieved yet. The respondents are prevented, for reasons beyond their control, from the ability to return their initial places of residence. It has been ascertained by the case materials that the building where the disputed rooms are located had been State property at the time the respondents have occupied it and has retained the same status by today [...] On this grounds, the Court reckoned that there was no basis for evicting the IDPs until the condition upon which they were allocated temporary residential spaces – i.e. their return to Abkhazia – has been fulfilled [...].[47]

Pursuant to the Law of Georgia on Internally Displaced Persons (IDPs) currently in force, a compact settlement area means […] place of temporary residence of IDPs where they had been accommodated in an organized manner before measures were implemented to transfer title to residential spaces within the area to forcibly displaced families under rules established by the Georgian legislation / before the issuance of the relevant legal acts [...].[48] However, the initial version of the same Law (which was invalidated on 6 April 2005) regarded an official notice issued by a competent State organ accommodating IDPs

[47] Judgments of the Supreme Court of Georgia in cases nos. 3K/834-01 (28 November 2001) and 3K-868-01 (28 November 2001)

[48] Law of Georgia on Persons Forcibly Displaced from Georgia's Occupied Territories, Art. 1^1, paragraph "h"

in a specific residential area as a mandatory requirement for regarding a given area as a compact settlement area of IDPs.[49]

The court practice developed in a way that courts refuse to recognize a building as an IDP compact settlement area unless the litigant furnishes the court with an official notice issued by a competent State body confirming organized accommodation of IDPs in that building. Thus, wherever such a notice does not exist, courts have not been taking into account the number of years IDPs have lived in a given building and the fact that they were registered to the given place of residence. Nor have the courts been taking into consideration that the Georgian Ministry for IDPs from Occupied Territories, Accommodation and Refugees has not been disputing that the building in question was a compact settlement area for IDPs.

In many of their judgments, courts have stated:

[...] there shall be an act about an IDP's accommodation issued by the appropriate State body to confirm the will of the State to accommodate the IDPs in a compact or individual manner [...].[50]

The courts have explained that IDP cards indicating areas of compact settlement as the residential address could not be invoked as a document proving the holder's right to reside in the given building. [...] An IDP card is a document confirming its holder's status as a forcibly displaced person; however, it neither determines the place of residence of its holder nor grants its holder the right to occupy the residential place [...].[51]

The above-analysis of court practice makes it clear that courts have been using a formalistic approach in determining the status of any specific building thus violating the right guaranteed by law.

The mentioned practice has somewhat changed in the recent years owing to the standard established by the European Court of Human

[49] Law of Georgia on Persons Forcibly Displaced from Georgia's Occupied Territories, as in force before 6 April 2005, Art. 3, paragraph 1

[50] Judgment of the Tbilisi City Court dated 18 June 2009 in the case no. 2/77-08.

[51] Judgment of the Tbilisi City Court no. 2/119-07 dated 9 March 2009. The judgment was challenged under the appeals rule. The Appeals Court fully upheld the reasoning provided by the first instance court. The Supreme Court declared the case inadmissible.

Rights in its judgment in the case *Saghinadze and others v. Georgia*. In the judgment of 2011[52], the Tbilisi Appeals Court relied on the very Judgment of the European Court stating that, in the given case, recognition by the State that the disputed building was a compact settlement area of IDPs served as a sufficient basis to conclude that the IDPs were lawfully residing in that building. This means that IDPs were entitled to enjoy their rights guaranteed for owners by the civil law.

The Appeals Court did not regard inobservance of formal procedures of IDPs' accommodation by the State a basis for finding the residential space unlawfully occupied by the IDPs. The Appeals Court referred to Article 5(3) of the Law of Georgia on Internally Displaced Persons (IDPs) (in force at the material time) stating that the State must ensure a temporary residential space to forcibly displaced persons. The Ministry shall accommodate IDPs within the residential buildings specified to this end by the central and local governments (self-governance bodies). The Appeals Court deemed that it is the power of the State to assign the status of an IDPs' compact settlement area to a building, since it is the positive obligation of the State to assign the status of an IDP to forcibly displaced persons, to draw them into the regime established by the Law of Georgia on IDPs, and to provide them with residential space.

According to the court's reasoning, in order to recognize a building as a compact settlement area of IDPs and, accordingly, to extend the application of statutory guarantees to them, [...] it is indispensable to determine the lawfulness and legality of initial settlement of IDPs in the building. Lawfulness of initial settlement implies the concession of a residential space by the State at its own will and by its own action. Legality implies the allocation by the State of a residential space in accordance with the rules of applicable law – freely, only for the purpose of settling the IDPs temporarily, with the allocated space being used only for providing the IDPs with residence and not being exposed to any claims of third parties in the period the IDPs are using the space as temporary home. Whenever an IDP is accommodated in a State-owned property, it is implied that he/she has been settled in

[52] Order of the Supreme Court of Georgia dated 29 June 2011 in the case no. AS-944-982-2011.

the building until he/she returns to his/her initial place of residence, unless the State offers him/her an alternative residential space or monetary compensation.

In its judgment, the court has made difference between the State settling IDPs in a property of third parties and the State moving the IDPs into its own property but then selling this property to third persons.

If proven that the State has moved IDPs into a State-owned building, which the State has sold to a private person thereafter, the IDPs are still subject to the same legal regime existing before the sale. The court has mentioned that if, at the time of buying the immovable property, [...] the buyer knew that the disputed property was occupied by IDPs, it means that the plaintiff agreed to receive a legally defective thing [...].

The court explained that a buyer cannot put forward claims related to a defective thing if at the time of buying the thing he knew about the defect.[53] This is especially true when the defect is the one established by law. According to the Law of Georgia on Persons Forcibly Displaced from Georgia's Occupied Territories, no evictions of IDPs shall take place from the compact settlements of IDPs until the Georgian jurisdiction over Georgia's occupied territories is restored [...]. The Appeals Court has stated that, in the given circumstances, the buyer can receive a thing free of any legal defects from the State only if the State has concluded a written agreement with the IDPs allocating relevant residential spaces for the use of IDPs or paying them monetary compensations out. Until the State does either of these, the buyer remains restrained by law and his right to demand the actual possessor of his thing withdraw from the thing is limited by the statutory rule that no evictions of IDPs shall take place from the compact settlements of IDPs unless the IDPs are provided with an alternative residential space or paid appropriate monetary compensation.

According to the Appeals Court's assessment, against the background that the disputed building was an area of compact settlement of IDPs, the legal relationship existing between the IDPs temporarily settled in the building and the legal proprietor of the building was not of a nature

[53] The Civil Code of Georgia, Art. 494, paragraph 2

to allow the proprietor demand the actual possessor withdraw from the property. The court deemed that the IDPs were entitled to occupy the disputed residential area and a legal basis for such possession was the Law of Georgia on Internally Displaced Persons. The court explained that, according to the same Law, the IDPs will lose their right to factually possess the property immediately after the State offers them an alternative residence or an appropriate monetary compensation. For these reasons, the Appeals Court reckoned that the existing legal relationship did not allow making a conclusion as if the State fulfilled its obligation at the expense of oppressing the right of a private person to private property; had this been the case, one would face a conflict between two constitutional rights of which one could not be proven without infringing upon the other. In the given case, the State fulfilled its statutory obligation and, as a result, the new proprietor acquired a property in the same legal condition as it was in the hands of the previous proprietor; in other words, the new proprietor received a legally defective property, which he knew about at the time of buying the property, and the rectification of the defect depended not upon the will of the seller or the buyer, but, pursuant to the law, upon the State's ability to satisfy the IDPs with another, alternative residential space or to pay them appropriate compensation. Whenever an IDP is accommodate in a State-owned property, it is implied that he/she has been settled in the building until he/she returns to his/her initial place of residence, unless the State offers him/her an alternative residential space or monetary compensation.

As regards the model when the State, acting at its own will and with its own actions, upon agreement with third parties, accommodates IDPs in a property belonging to these third parties, the temporary accommodation should be limited in a time period, in this case, and the term "provision of IDPs with temporary residential space" should not be understood as limitation of third parties' property right forever upon the expectation that the IDPs will sometime in the future return to their initial places of residence. The consent of third parties to have IDPs accommodated in their private property should not be construed as if these third parties have agreed to limitation of their property rights until the IDPs are able to return to the places of residence they had before being forced out from their territories; even

if such an agreement existed, by law, a transaction cannot be made dependant upon an unknown event that might or might not happen in the future. Such a condition in an agreement makes the agreement void and entitles the proprietor to demand full-fledged exercise of his title to the property, unless the third party is a recipient of some other, replacement value from the State such as an alternative residential space or compensation. In the latter case, the State becomes liable to either provide the IDPs with another residential space or compensate the proprietor for his limited ability to use own property.

Conclusion

As it has been showed, in recognizing a building as a compact settlement of IDPs and determining the lawful possessor of the building (which are crucial aspects in adjudicating eviction cases), courts have been applying non-uniform interpretations. The courts were often taking a purely formalistic approach, however, in one of the recent cases, the court did apply a broad construction of the term "compact settlement of IDPs". Following this practice, several important aspects can be distinguished:

- In order to recognize a building as a compact settlement area of IDPs and, accordingly, to extend the application of statutory guarantees to them, it is indispensable to determine the lawfulness and legality of initial settlement of the IDPs in the building.
- In the given case, the recognition by the State that the disputed building was a compact settlement area of IDPs served as a sufficient basis to conclude that the IDPs were lawfully residing in that building;
- If proven that the State has moved IDPs into a State-owned building, which the State has sold to a private person thereafter, the IDPs are still subject to the same legal regime existing before the sale.

CHAPTER 5. JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Introduction

This Chapter examines a case adjudicated by the European Court of Human Rights entitled *Saghinadze and others v. Georgia.* In this case, the European Court provided important interpretations about ownership and eviction procedures. Therefore, we decided to describe the standard established by the Court in the given case in brief.

5.1. *Saghinadze v. Georgia*

In the given case, the applicants (the family of Saghinadzes) have proven that they were internally displaced persons (IDPs) from Abkhazia and, since 1994, they have been living in a cottage belonging to the Ministry of Interior. Since that time, they have started using the cottage and the adjacent territory planting fruits and setting up other home infrastructure. A letter issued by the Ministry of Interior in 2000 confirmed that the Saghinadzes' family was accommodated in the cottage in 1994 on the basis of an order issued by the Minister of Interior; on its turn, the letter was based on the Law of Georgia on Internally Displaced Persons (IDPs). In 2004, the Ministry of Interior, without any explanation in writing, evicted the Saghinadzes' family from the cottage.

After the eviction, B. Saghinadze brought civil proceedings against the Ministry of Interior demanding that his possession of the cottage be restored. The first instance court upheld his demand but the Appeals Court rejected the first instance court's decision and the Supreme Court stayed the Appeals Court decision.

Endorsing the appellate court's reasoning, the Supreme Court referred to the following:

- Because the applicant failed to produce a legal decision of the relevant authority authorizing his occupation of the cottage in 1994, his ensuing possession could not be considered to have been exercised in good faith.

As to the Interior Ministry's letter dated 2000 (indicating that the Saghinadzes' family settled in the cottage in 1994 on the basis of the written consent issued by the Minister of Interior), the Supreme Court refused to accept it as a valid document arguing that only the Ministry of State Property Management was competent to enter into such transactions with private individuals. The Supreme Court further stated that, pursuant to the law, only the MRA was competent to accommodate IDPs. Given that the cottage had not been offered to the Saghinadzes' family by the Ministry of IDPs, the Supreme Court concluded that the housing guarantees contained in the Law of Georgia on Internally Displaced Persons (IDPs) were not applicable in this case.

Regarding the possession of the cottage, the European Court of Human Rights stated as follows:

- Even assuming that there existed a more appropriate formal procedure for the transfer of the cottage to the first applicant, which was an ordinary private-law transaction and did not concern matters of vital public interest, this omission on the part of the Ministry cannot be attributed to the first applicant or allow a conclusion that he settled in the cottage vexatiously.
- Of further importance in that regard is the historical context in which the relevant facts of the case took place. The Court shares the opinion that, in view of the humanitarian crisis prevailing in Georgia in 1993-1994, when around 300,000 displaced persons from Abkhazia needed to be urgently accommodated by central Government, it would have been hardly realistic to expect the authorities to meticulously follow the administrative formalities in all such housing transactions.
- Of paramount importance in that regard, according to the Court's relevant case-law, was the authorities' own manifest tolerance of the first applicant's exclusive, uninterrupted and open use of the cottage and the adjacent premises for more than ten years.
- The Court attaches further importance to the fact that, subsequent to the transfer of the cottage by the Ministry to the first applicant for temporary accommodation, the State, by adopting various legal acts, confirmed IDPs' right in the housing sector and established

solid guarantees for their protection. The most conspicuous and authoritative amongst these was the Law of Georgia on Internally Displaced Persons (IDPs), which recognized that an IDP's possession of a dwelling in good faith constitutes a right of a pecuniary nature. Thus, it was not possible to evict an IDP against his or her will from an occupied dwelling without offering in exchange either similar accommodation or appropriate monetary compensation.

Regarding the Supreme Court's assessment that only the Ministry of IDPs from Occupied Territories, Accommodation and Refugees was authorized to satisfy the IDPs with dwelling, the European Court stated as follows:

- The Court regrets this formalistic interpretation of the IDPs Act, the very spirit of which was, on the contrary, to confirm IDPs' rights, including the right to accommodation, vis-à-vis the State as a whole rather than any of its executive agencies in particular.

On eviction procedures, the European Court provided the following explanation:

- The only lawful way for the Ministry of Interior to reclaim the cottage from the first applicant's possession was to bring adversarial proceedings in court. Only if and when the dispossession of the first applicant had been authorized by a court could eviction proceedings have been carried out in relation to the first applicant.
- The Ministry took the cottage from the first applicant without a court authorization obtained through fair and adversarial proceedings. Such adversarial proceedings, in order for them to represent an effective procedural safeguard against arbitrariness, should have, according to the domestic law, preceded the interference in question.

In the light of the about findings, the European Court of Human Rights found that the interference with the first applicant's (B. Saghinadze) peaceful enjoyment of his possession was not lawful, whilst the subsequent judicial review, having been arbitrary, amounted to a denial of justice.

Summary conclusion and recommendations

The above analysis has helped disclose the major shortcomings related to the domestic mechanisms for the exercise of the right to housing by internally displaced persons (IDPs). Furthermore, the study of court practice in that regard enabled us to elucidate the way these shortcomings affect individual decisions made by domestic courts. The research has shown that in some cases the vague contents of legal provisions allow different interpretations. However, the problem is often caused by the fact that domestic mechanisms do not envisage important aspects related to provision with appropriate housing.

In spite of recognition of the IDPs' housing right by the domestic normative acts, there is no clear definition of standards, which the dwellings provided to IDPs, should meet. Analysis of the court practice has shown that domestic courts have been narrowly interpreting legal provisions, the State strategy and the State Action Plan in relation to IDPs not focusing on individual needs of the IDPs – a principle indispensable for ensuring the care of the State for individuals.

In that regard, it is necessary:

- to determine in the relevant domestic normative acts the specific criteria an appropriate dwelling (with consideration of all the relevant aspects) should meet;
- for the State to take into consideration the location of IDPs' integration and their special needs when making accommodation decisions.

The analysis has shown that the guarantees for the protection of IDPs from unlawful eviction from their occupied properties as contained in the national legislation are strictly limited. Even if an IDP is able to provide evidence that he/she is legally possessing the property, the courts tend to explain that the final decision whether his/her family should be evicted from the property will eventually depend upon the evaluation of the Georgian Ministry for IDPs from Occupied Territories, Accommodation and Refugees. According to the courts' interpretation, it is also only up to the abovementioned Ministry's assessment to determine whether any residential space or monetary compensation offered to an IDP is appropriate or whether such proposals entail

aggravation of the IDPs' conditions. The applied mechanism to appeal against administrative acts concerning eviction proved to be ineffective. With such a mechanism in place, it becomes impossible to defend a right temporarily and to avoid possible results before the dispute is adjudicated.

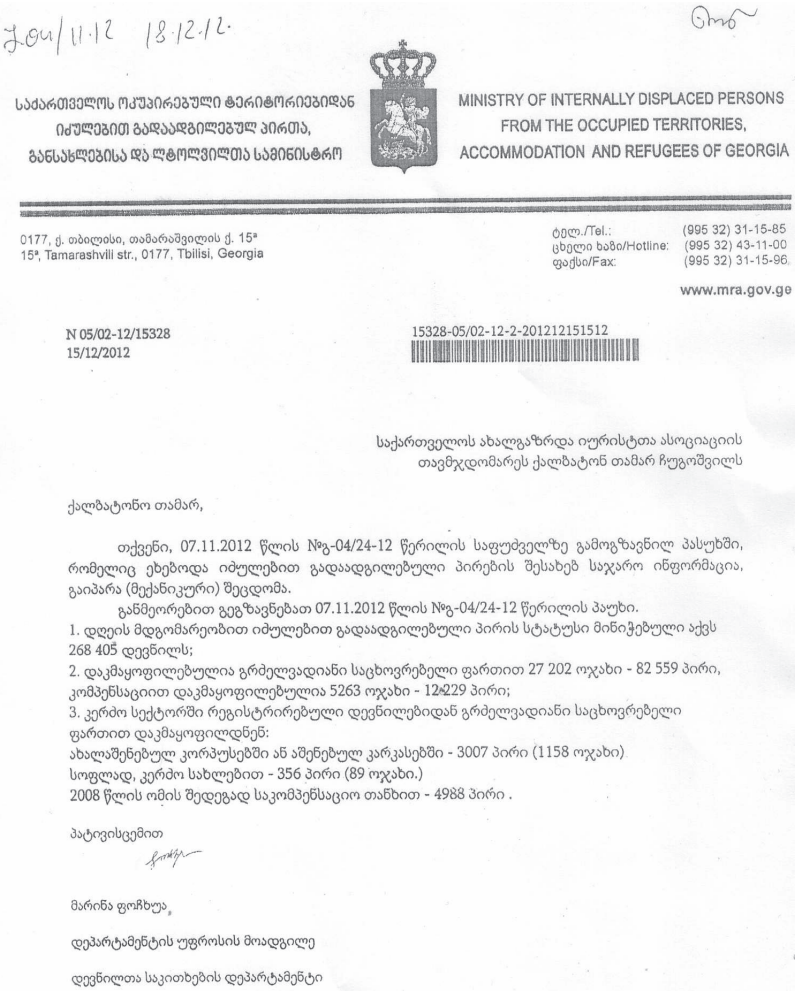
It is further important to note, that the applicable procedures for forced eviction by the police are inconsistent with international standards. There is no obligation on the part of the State to provide prior consultation and information, the eviction procedures do not take account of climate conditions, no reasonable term is prescribed between the date of serving a warning and the date when the actual eviction is to be implemented, etc.

To deal with these shortcomings, it is necessary:

- for the legislation to establish such eviction procedures as would be compatible with international standards, including the inclusion of a requirement of allowing a reasonable time between the date a police warning has been served and the date of actual eviction of an alleged perpetrator.

ANNEXES

Annex #1



ჯ.ეს/11.12 18.12.12.

საქართველოს ოკუპირებული ტერიტორიებიდან იძულებით გადაადგილებულ პირთა, განსახლებისა და ლტოლვილთა სამინისტრო

MINISTRY OF INTERNALLY DISPLACED PERSONS FROM THE OCCUPIED TERRITORIES, ACCOMMODATION AND REFUGEES OF GEORGIA

0177, ქ. თბილისი, თამარაშვილის ქ. 15ª
15ª, Tamarashvili str., 0177, Tbilisi, Georgia

ტელ./Tel.: (995 32) 31-15-85
ცხელი ხაზი/Hotline: (995 32) 43-11-00
ფაქსი/Fax: (995 32) 31-15-96

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15/12/2012

15328-05/02-12-2-201212151512

საქართველოს ახალგაზრდა იურისტთა ასოციაციის
თავმჯდომარეს ქალბატონ თამარ ჩუგოშვილს

ქალბატონო თამარ,

თქვენი, 07.11.2012 წლის №გ-04/24-12 წერილის საფუძველზე გამოგზავნილ პასუხში, რომელიც ეხებოდა იძულებით გადაადგილებული პირების შესახებ საჯარო ინფორმაცია, გაიპარა (მექანიკური) შეცდომა.

განმეორებით გეგზავნებათ 07.11.2012 წლის №გ-04/24-12 წერილის პასუხი.

1. დღეის მდგომარეობით იძულებით გადაადგილებული პირის სტატუსი მინიჭებული აქვს 268 405 დევნილს;
2. დაკმაყოფილებულია გრძელვადიანი საცხოვრებელი ფართით 27 202 ოჯახი - 82 559 პირი, კომპენსაციით დაკმაყოფილებულია 5263 ოჯახი - 12 229 პირი;
3. კერძო სექტორში რეგისტრირებული დევნილებიდან გრძელვადიანი საცხოვრებელი ფართით დაკმაყოფილდნენ:
ახალაშენებულ კორპუსებში ან აშენებულ კარკასებში - 3007 პირი (1158 ოჯახი)
სოფლად, კერძო სახლებით - 356 პირი (89 ოჯახი.)
2008 წლის ომის შედეგად საკომპენსაციო თანხით - 4988 პირი .

პატივისცემით

მარინა ფოჩხუა,

დეპარტამენტის უფროსის მოადგილე

დევნილთა საკითხების დეპარტამენტი

Annex #2

15.06.12
ჟ04/75.12

თბილისის საქალაქო სასამართლო

№1720 12 ივნისი, 2012 წელი

ქალბატონ თამარ ჩუგოშვილს
საქართველოს ახალგაზრდა იურისტთა ასოციაციის თავმჯდომარეს

მის: ქ. თბილისი, ჯ. კახიძის №15

(თქვენი 05.06.2012წ. №გ-04/222-12 სასამართლოში რეგ. 07.06.2012წ/№1-7822 განცხადების პასუხად)

ქალბატონო თამარ,

გაცნობებთ, რომ თქვენს მიერ გამოთხოვილი ინფორმაციის მოძიებისათვის, საჭიროა საქმეების სისტემატიზაცია და საარქივო დამუშავება, რაც მოითხოვს საკმაოდ დიდ დროს. გასათვალისწინებელია ის გარემოებაც, რომ სასამართლო თავის საქმიანობას ახორციელებს მოქმედი კანონმდებლობის საფუძველზე. შესაბამისად, სასამართლოს აპარატი დაკავებულია სასამართლოსთვის კანონმდებლობით მინიჭებული უფლებამოსილების შესრულებით. აღნიშნულის გათვალისწინებით, ამ ტიპის საქმეების დამუშავება და ამ მიზნით სასამართლოს ადმინისტრაციული პერსონალის ძირითადი რესურსების მობილიზება, ამ ეტაპზე არ წარმოადგენს სასამართლოს საქმიანობისათვის აუცილებელ საჭიროებას.

აღნიშნულიდან გამომდინარე, სასამართლო მოკლებულია ინფორმაციის მოთხოვნილი ფორმით მიწოდების შესაძლებლობას.

ამასთან გაცნობებთ, რომ საქართველოს ზოგადი ადმინისრაციული კოდექსის 41-ე მუხლის მე-2 ნაწილის თანახმად, საჯარო ინფორმაციის გაცემაზე უარის თქმის შესახებ გადაწყვეტილება შეგიძლიათ გაასაჩივროთ მისი ოფიციალური წესით გაცნობის დღიდან ერთი თვის ვადაში ზემდგომ თანამდებობის პირთან.

პატივისცემით,

ლევან მიქაბერიძე

კანცელარიის განყოფილების
ადმინისტრაციულ საქმეთა სექტორის უფროსი