



COMBATING HOMELESSNESS

The Notion of a Homeless Person
and the Criteria for Determining
the Status of the Homeless

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The Notion of a Homeless Person and the Criteria for Determining the Status of the Homeless

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Introduction

Homelessness is a global challenge, but the scope of the problem varies by country.¹ Homelessness is one of the gravest expressions of social exclusion also in Georgia.² The Public Defender of Georgia³ and the organizations working on these issues⁴ have been referring to the challenge of homelessness and inaction of the state for many years. In terms of recognizing the problem of homelessness at the national level, the National Strategy for the Protection of Human Rights (2014-2020) adopted by the Parliament of Georgia, which calls for consistent and sustained efforts by the state to address the challenge, is noteworthy. However, none of the action plans developed to implement the Strategy and to address the issue of homelessness. As a result of the Constitutional reform of 2017, the Constitution notes that the state should ensure the provision of adequate housing;⁵ And in 2018, as part of the Open Government Partnership⁶ the country has committed itself to develop a homelessness Strategy and its accompanying Action Plan by 2021.⁷ In this situation, the process should go beyond the declarative framework, namely to create an appropriate national strategy and action plan and attain concrete results in terms of eliminating the problem of homelessness.

Prerequisite for developing a strategy for combating homelessness is to assess the scale of the problem - the homeless groups and the number of people involved should be identified (as well as the causes of homelessness). This is not possible without determining the notion of a homeless person. In national law, there is no clear definition of homelessness, which makes identifying the magnitude of the problem in Georgia, planning homelessness policy and measuring its effectiveness, illusory, in essence. The purpose of this paper is to analyze the notion of homelessness and the criteria to determine whether the person is homeless and propose changes in line with the Georgian context in this regard.

International and various national experiences have been studied during the research process, and the identified standards and trends have been the basis for the assessment of the Georgian reality. Criteria for

¹ According to the European Federation of National Organizations Working with the Homeless (FEANTSA) the number of homeless persons has declined in recent years in only two European countries - Finland and Norway. European Parliament: Parliamentary Questions <http://www.europarl.europa.eu/doceo/document/E-8-2018-003014_en.html?Redirected=1> (17.12.2019); Fourth Overview of Housing Exclusion in Europe 2019, FEANTSA - Foundation Abbé Pierre (2019) <https://www.feantsa.org/public/user/Activities/events/OHEEU_2019_ENG_Web.pdf> (17.12.2019).

² There is no unified national database on the number of homeless people so far. Letter of Social Service Agency of July 1 2019, No. 04/35430; See also Homelessness: State Policy Analysis, Human Rights Education and Monitoring Center (EMC) (2016).

³ Report of the Public Defender of Georgia on the State of Human Rights and Freedoms in Georgia (2018); Report of the Public Defender of Georgia on the State of Human Rights and Freedoms in Georgia (2017); Report of the Public Defender of Georgia on the State of Protection of Human Rights and Freedoms in Georgia (2016); Special Report of the Public Defender of Georgia on the Right to Adequate Housing (2015).

⁴ The Right to Adequate Housing: Analysis of Key Challenges, Human Rights Education and Monitoring Center (EMC) (2018); Housing Policy in Georgia on the Example of Tbilisi, Urban Reactor (2018); Homelessness: State Policy Analysis, Human Rights Education and Monitoring Center (EMC) (2016).

⁵ Constitution of Georgia (1995), Article 5, Paragraph 4. On Georgia's international obligations regarding the right to adequate housing, see The Right to Adequate Housing: Analysis of Key Challenges, Human Rights Education and Monitoring Center (EMC) (2018).

⁶ One of the commitments under the 2018-2019 Open Government Partnership Georgia Action Plan was the development of a strategy document and a government action plan for the realization of the right to adequate housing.

⁷ The final stage of the commitment is the submission of a housing policy document and action plan for the adoption, the deadline of which is September 2021.

selecting the countries for comparative legal analysis is their progress in recent years in reducing homelessness or their relative advantage over other countries.⁸ In the case of Georgia, considering the separation of authorities at the central and local levels, the experiences of several municipalities in relation to homelessness have been studied.

1. The Essence of Homelessness - International Context

1.1. The Concept of Homelessness

When determining the content of homelessness, it is important to understand the right to adequate housing to which many international treaties or agreements apply.⁹ In terms of definitions, the view of the Committee on Economic, Social and Cultural Rights (hereinafter referred to as “the UN Committee”) is important to note, according to which adequate housing includes not only shelter but also “living in security, peace and dignity”.¹⁰ The Committee notes that, in addition to the various criteria, legal safeguards for the security of tenure; accessibility to services, materials, equipment and infrastructure; financial accessibility to adequate housing, suitability for living should be guaranteed.¹¹

Unifying the notion and criteria of homelessness has not been easy for the international community: although homelessness has been addressed in many documents, there is still no clear consensus on its content.¹² However, in the context of soft law, there is a clear tendency to interpret it broadly in line with the view of the UN Committee. More specifically, a 2005 report by the UN Special Rapporteur indicates that it is, in fact, problematic to narrow the definition of homelessness - to consider only such persons as homeless who have no roof over their head (physical space).¹³ The UN Department of Statistics identifies two major categories of homelessness – besides rooflessness, secondary homelessness is also underlined which includes groups that do not have a place to live and change their living space overnight, as well as groups living in temporary shelters or similar facilities for a long time.¹⁴ The most comprehensive view on the notion of homelessness has been elaborated on the regional level, notably the 2010 European

⁸ In this regard, it is important to make note that the results depend on a variety of factors, such as the definition of homelessness, how this definition has changed over the years, from what period the implementation of the homelessness strategy began, which programs directly related to housing and, in general, to the social welfare, are implemented in Georgia.

⁹ The Right to Adequate Housing: Analysis of the Key Challenges, Human Rights Education and Monitoring Center (EMC) (2018), 15-18.

¹⁰ General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), Committee on Economic, Social and Cultural Rights, para. 7 (1991).

¹¹ Ibid.

¹² Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Homelessness as a Global Human Rights Crisis That Demands an Urgent Global Response, A/Hrc/31/54 (2016); Kate Amore, Michael Baker & Philippa Howden-Chapman, The ETHOS Definition and Classification of Homelessness: An Analysis, European Journal of Homelessness, Volume 5, No. 2, 20 (December 2011); Opinion of the European Economic and Social Committee on the Problem of Homelessness (Own-Initiative Opinion), Soc/408, Brussels, Para. 5.1 (27 October 2011).

¹³ Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Homelessness, E/Cn.4/2005/48, Paras. 11-14 (2005).

¹⁴ UN-Habitat Response to Questions from the Special Rapporteur on Adequate Housing (12 November 2015) <https://www.ohchr.org/Documents/Issues/Housing/Homelessness/Unagencies_Regionalbodies/13112015-Un_Habitat.Docx> (17.12.2019).

conference, which defined its main task as developing a notion that would not leave out “hidden homelessness”.¹⁵

Concerning the definition of homelessness, the European Typology on Homelessness and Housing Exclusion (ETHOS)¹⁶ (hereinafter referred to as “European Typology (ETHOS)”), as well as the notion developed by the Institute for Global Homelessness (IGH) (hereinafter “IGH”) should be noted.¹⁷ European Typology (ETHOS) covers almost all homeless groups and is the most authoritative definition of homelessness. In particular, given its comprehensiveness, it represents the scale of the assessment of homelessness policies developed by different countries; the European Union also uses this definition.¹⁸ The definition of IGH should also be emphasized as it creates a global mechanism for assessing homelessness, though it relies on European typology (ETHOS). These typologies also share the logic of broadly interpreting homelessness.

1.2. The European Typology on Homelessness and Housing Exclusion (ETHOS)

In 2005, FEANTSA¹⁹ and the European Observatory on Homelessness²⁰ elaborated the European typology on homelessness (ETHOS). It was revised number of times and the last edition was completed in 2017.²¹ The European Typology (ETHOS) distinguishes the four conceptual categories of homeless groups: the roofless persons, houseless persons, and people living in insecure or inadequate accommodation. It should be noted that the document itself does not distinguish which categories belong to homelessness and which to the housing exclusion,²² as their content must be dictated by the national context itself.²³ According to some researchers, the roofless and houseless categories together define homelessness; persons living in insecure and inadequate housing are categories of housing exclusion.²⁴ However, unifying the homelessness and housing exclusion in a single document, emphasizes that housing policy should be

¹⁵ There is no uniform definition of the concept of hidden homelessness. However, in general terms, it includes homeless people who temporarily solve their problem, such as by living with relatives or friends. For some researchers, hidden homeless people are considered those who are living in women's shelters, persons who are in migrant shelters, persons who are due to leave institutions. See Report on Leveraging the European Consensus to Win the Fight against Homelessness, 7 (9-10 June 2016); Klimentina Ilijevski, Katerina Mojanchevska, Aleksandra Iloska, Maria Donevska, Hidden homelessness in Macedonia: reasons, institutional responses and design of a new social welfare system <<https://www.feantsaresearch.org/download/seminar-1-hidden-homelessness-in-macedonia-ilijevski-et-al171113809606357775.pdf>> (17.12.2019).

¹⁶ European Typology on Homelessness and Housing Exclusion (ETHOS).

¹⁷ Institute of Global Homelessness (IGH) <<https://ighomelessness.org>> (17.12.2019).

¹⁸ Opinion of the European Economic and Social Committee on the Problem of Homelessness (Own-Initiative Opinion), Soc/408, Brussels, 27 October 2011, Paras. 5.1.-5.4; Kate Amore, Michael Baker & Philippa Howden-Chapman, the ETHOS Definition and Classification of Homelessness: An Analysis, European Journal of Homelessness, Volume 5, No. 2, 19-37 (December 2011).

¹⁹ European Federation of National Organisations Working with the Homeless (FEANTSA).

²⁰ European Observatory on Homelessness (EOH).

²¹ ETHOS – European Typology on Homelessness and Housing Exclusion <<https://www.feantsa.org/en/toolkit/2005/04/01/ethos-typology-on-homelessness-and-housing-exclusion>> (17.12.2019).

²² This ambiguity, in turn, has been the subject of criticism by researchers. See e.g. Kate Amore, Michael Baker & Philippa Howden-Chapman, the Ethos Definition and Classification of Homelessness: An Analysis, European Journal of Homelessness, Volume 5, No. 2, 25-26 (December 2011).

²³ ETHOS – Taking Stock 6, <<https://www.feantsa.org/download/ethospaper20063618592914136463249.pdf>> (17.12.2019).

²⁴ Kate Amore, Michael Baker & Philippa Howden-Chapman, The ETHOS Definition and Classification of Homelessness: An Analysis, European Journal of Homelessness, Volume 5, No. 2 (December 2011).

designed not only to respond to the extreme social exclusion of individuals but also to prevent such an outcome.

The logic of European typology (ETHOS) is based on the legal dimension of adequate housing and does not merely link homelessness or housing exclusion to the absence of physical space. In particular, conceptual categories are based on the content of housing that encompasses the physical, legal, and social dimensions. The physical dimension of housing means the existence of a dwelling or space, which is owned by a person or a member of their family; the legal dimension covers the lawfulness of ownership while the social aspect includes the possibility of personal life and relationships.²⁵

The conceptual categories of European typology (ETHOS) combine the operational categories, which in turn are characterized by descriptions and general definitions of housing. The following operational categories are read in the notion of the rooflessness: (1) people living rough (2) people staying in a night shelter.

The conceptual category of houseless people comprises of four operational categories: (3) people living in accommodation for the homeless (housing, where the beneficiaries stay for a short term); (4) people living in a women's shelter; (5) people living in accommodation for immigrants; (6) people due to be released from institutions (penitentiary institutions; medical institutions; children's institutions/homes).

The conceptual category of people living in insecure housing consists of the following operational categories: 7) people receiving longer-term support (care for the elderly, for no less than a year); 8) people living in insecure accommodation; 9) people living under the threat of eviction; 10) people living under the threat of violence (police recorded incidents).

Concept of inadequate housing covers 11) people living in temporary/non-conventional structures; 12) people living in unfit housing; 13) people living in extreme overcrowding.²⁶

Despite the creation of the European Typology (ETHOS), the experience of European countries with regard to the definition of homelessness is still different. In order to measure and compare the scale of homelessness in European countries, there is an emerging need for more or less consistent criteria based on national practice. Such a harmonized version is the ETHOS Light concept. This concept covers mainly the operational categories of homelessness (and not housing exclusion). The ETHOS Light relies on the operational categories of European Typology (ETHOS), but it excludes certain groups of people living in inadequate or insecure housing.²⁷ Consequently, there has also been criticism of the ETHOS Light concept. Particularly noteworthy is the fact that the notion of homeless people did not cover those due to leave children's institutions/houses.²⁸

²⁵ ETHOS FAQ <https://www.feantsa.org/download/ethos_faq-18107446974200637605.pdf> (17.12.2019).

²⁶ ETHOS Typology.

²⁷ Volker Busch-Geertsema, Defining and Measuring Homelessness, in Homelessness Research in Europe, FEANTSA, Eds. Eoin O'sullivan, Volker Busch-Geertsema, Deborah Quilgars & Nicholas Pleace, Brussels, 26 (2010).

²⁸ Ibid, 25.

Thus, given the content of the European typology (ETHOS) and its international recognition, the definition of homelessness at the national level should be assessed accordingly. It should also be noted that the ETHOS Light is, in turn, the minimum standard that the notion of homelessness must meet. Consequently, at least, groups covered by ETHOS Light should be considered homeless, who need to be further provided with their respective support programs.

2. The Essence of Homelessness - Experiences of Countries²⁹

Studying the national context of homelessness is important to identify examples of good practice. It should also be emphasized that this process has its limits - the approaches of countries vary greatly, making it difficult to generalize experiences.³⁰ When discussing the notion of homelessness in different countries and identifying trends, the European Typology (ETHOS) is used for comparative analysis in the present study. It is noteworthy that in some cases, there is no uniform definition of homelessness nationally and definitions apply at the regional or municipal level.³¹

Analysis of the national experiences indicates that there is consensus on the first two conceptual categories of European typology (ETHOS) (the roofless and houseless persons) and they are more or less covered by the notion of homelessness.³² In some cases, the criteria for homelessness do not include persons living in inadequate housing, as well as the operational categories of groups living in insecure housing.³³ However, despite incomplete integration of operational categories elaborated by the European typology (ETHOS) into the definition of homelessness, information on disadvantaged groups is, as a rule, collected for the prevention of homelessness.³⁴ It is noteworthy that in some cases, states recognize almost all groups covered by European typology, although this is done by ranking the groups of homeless people in the light of the degree of violation of the right to housing. Specifically, at a particular point in time, in parallel to the homeless, they identify individuals at risk of homelessness, as well as those living in poor conditions. These approaches are used, for example, in Norway, Austria, Germany, Luxembourg and other countries.³⁵

²⁹ See the legislative overview of some countries in the Annex. The criteria for selecting countries are their progress in reducing homelessness.

³⁰ Homelessness, The Homeless, and Integrated Social Services, in Integrating Social Services For Vulnerable Groups: Bridging Sectors For Better Service Delivery, OECD Publishing, Paris, 113-114 (2015); Volker Busch-Geertsema, Lars Benjaminsen, Maša Filipović Hrast & Nicholas Pleace, Extent and Profile of Homelessness in European Member States, EOH Comparative Studies on Homelessness Brussels, 9 (December 2014); Kate Amore, Michael Baker & Philippa Howden-Chapman, The ETHOS Definition and Classification of Homelessness: an Analysis, European Journal of Homelessness, Volume 5, No. 2, 20 (December 2011); Volker Busch-Geertsema, Defining and Measuring Homelessness, in Homelessness Research in Europe, FEANTSA, Eds Eoin O'sullivan, Volker Busch-Geertsema, Deborah Quilgars And Nicholas Pleace, Brussels, 19-39 (2010).

³¹ Extent and Profile of Homelessness in European Member States, EOH Comparative Studies on Homelessness, Brussels, 17 (December 2014).

³² ETHOS – Taking Stock, 6 <<https://www.feantsa.org/download/ethospaper20063618592914136463249.pdf>> (17.12.2019).

³³ Ibid. 4, 6.

³⁴ Volker Busch-Geertsema, Defining and Measuring Homelessness, in Homelessness Research in Europe, FEANTSA, Eds Eoin O'sullivan, Volker Busch-Geertsema, Deborah Quilgars & Nicholas Pleace, Brussels, 25 (2010); ETHOS – Taking Stock, 6 <<https://www.feantsa.org/download/ethospaper20063618592914136463249.pdf>> (17.12.2019).

³⁵ Volker Busch-Geertsema, Defining and Measuring Homelessness, in Homelessness Research in Europe, FEANTSA, Eds Eoin O'sullivan, Volker Busch-Geertsema, Deborah Quilgars & Nicholas Pleace, Brussels, 25 (2010).

Bearing in mind the European typology (ETHOS), it is possible to distinguish between countries that broadly define homelessness and countries that consider homeless people as those who are roofless as well as those living in homeless shelters.³⁶ Such definition of homelessness can be found, for example, in Portugal, Hungary, Poland, Spain, the Czech Republic, Italy, the Netherlands.³⁷ In a broader definition, the homeless are those who are due to leave institutions or penitentiary system within a specified period, as well as those temporarily living with relatives or acquaintances. This practice is followed by, for example, Finland, Denmark, Germany, and the UK.³⁸

It is also important that those persons, who, according to the national practice are not considered as homeless, should be included in the definition of the homeless person, and theoretical discussion on the necessity of their inclusion is particularly relevant. For example, people living under the threat of eviction;³⁹ persons receiving long-term assistance for homelessness;⁴⁰ migrants - in many European countries, shelters for them are separated and they do not fall into the category of the homeless.⁴¹

3. Homelessness in Georgia – Legal Analysis

3.1. Criteria for Considering a Person as a Homeless

To determine the criteria for a homeless person in Georgia, an analysis of the legal framework and relevant practice is essential. The issue of homelessness is addressed by various legal acts, some of which are at the national level and some of them are operating on the local level. This chapter focuses on the central level, therefore, in order to identify the concept, in the first place, it is important to assess the Law “On Social Assistance”, according to which a homeless person is a person without a constant, specified place of residence, who is registered at a local authority as homeless.⁴² The definition is thus two-fold, the first element concerns the general concept of homelessness, and the second one is pointing out the databases of homeless people, which are created at the local level. Based on the given definition, the question may be raised whether the concept of homelessness is proper. Having a database of homeless people at the local government level means registering them according to the defined operational categories, thus it is important to identify how (on what basis) and by whom these categories are defined.

The absence of a permanent and definite place of residence - as the concept of homelessness - needs to be reviewed. The legislation does not specify what permanent residence means, what time category it is.⁴³ However, the Supreme Court of Georgia has clarified the notion of “permanent residence”.⁴⁴ From the

³⁶ In turn, the assessment in the present study of broad and narrow definitions is based on European typology (ETHOS).

³⁷ Extent and Profile of Homelessness in European Member States, EOH Comparative Studies on Homelessness, Brussels, 16-20 (December 2014).

³⁸ Ibid.17-18.

³⁹ Volker Busch-Geertsema, Defining and Measuring Homelessness, in Homelessness Research in Europe, FEANTSA, Eds Eoin O’sullivan, Volker Busch-Geertsema, Deborah Quilgars & Nicholas Pleace, Brussels, 25 (2010).

⁴⁰ Ibid. 25.

⁴¹ Ibid. 26.

⁴² Law of Georgia “On Social Assistance”, Article 4(g).

⁴³ The Civil Code of Georgia defines the notion of “place of residence”. See Civil Code of Georgia, Article 20.

⁴⁴ The Supreme Court of Georgia, Chamber of Administrative Cases, bs – 1896 – 1849 (k-10) (June 9, 2011).

Court's perspective, "permanent residence" is the particular form of the concept of "place of residence". If a person can have several residences, a permanent place of residence may mean one living space at a time. The Court of Cassation also determined other characteristics of permanent residence. In particular, it is necessary to identify the will of the person when choosing the place and the existence of the proof of factual residency.⁴⁵ A will component means owning an apartment, home or other living space, and residency means "ordinary, daily living on the site",⁴⁶ as evidenced by tax receipts, household records, permanent resident census results, and more.⁴⁷ The component of a specified place of residence is likely to be related to a particular place of residence.

The above interpretation of the Court of Cassation does not cover the content of the right to adequate housing. In particular, the definition does not cover the social dimension of housing, legal dimension is incomplete and it can be argued that the definition relies entirely on the physical paradigm of housing, which precludes the realization of the right to adequate housing.⁴⁸

In addition, the Georgian Government's Resolution defining the term of a homeless (roofless) person is noteworthy.⁴⁹ Existing statutory documents do not connect this definition to the notion of the homeless (roofless) person prescribed by the Law "on Social Assistance". According to the Resolution, a person who has no permanent place of residence, legal income and property in ownership, or a person who, in the given moment, is on the street and whose life is in danger is considered to be homeless (roofless).⁵⁰ This term is an example of a narrow definition of homelessness and does not cover the social dimension of the right to housing.

Beyond the general arrangement, special legislation should be outlined that addresses the issues of adequate housing. In particular, the Code of the Rights of the Child provides for the right of the child to an adequate standard of living, which includes the obligation to provide the ecologically clean living environment.⁵¹ The Explanatory Note of the Law does not address the concept of living environment in detail, but indicates that the general purpose of this article is to provide every child with a standard of living that meets his or her "physical, mental, spiritual, moral and social development needs".⁵²

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ The Georgian legislation does not define the notion of adequate housing (the Civil Code of Georgia contains provisions on housing, though none of them directly covers the content of housing). Georgia has ratified the International Covenant on Economic, Social and Cultural Rights, which creates the theoretical possibility that components of the right to adequate housing can be brought into the national level as well. However, given the commitment to the progressive realization of the right, this remains a highly theoretical assumption. See also Homelessness: State Policy Analysis, Human Rights Education and Monitoring Center (EMC)(2016).

⁴⁹ Technical Regulations - Approval of the Minimum Standards for the Operation of a Temporary Shelter for the Homeless, Government of Georgia Resolution No. 131 (7 February 2014).

⁵⁰ Ibid. Article 2(2).

⁵¹ Child Rights Code N5004-I, Article 47.

⁵² Explanatory note on the Draft Law of Georgia - "Child Rights Code" <<https://info.parliament.ge/file/1/BillReviewContent/214086?>> (17.12.2019).

Thus, from a combined analysis of the above legislative provisions and judicial explanations, it is clear that national policy on homelessness is unsystematic and the existing normative notions do not allow for establishing an obvious interconnection between them; Given the scarce legislative regulation and judicial clarification on these issues, the legal interpretation is also weak. Additionally, there is no unified national standard or guidelines at the central level for the municipalities.

3.2. The Role of Local Government in Defining the Notion of Homelessness

According to the Georgian legislation, the local self-government bodies have an essential function in relation to the issue of homelessness, including the registration of homeless persons.⁵³ Considering that there is only a general concept of homelessness at the national level and that municipalities are given the authority to register homeless people, there is a legitimate assumption that the criteria for the homelessness are not be uniform. This means that: (a) groups of persons, who would be recognized as homeless in accordance with the international consensus on the issue, may be excluded from the category of homeless persons in different municipalities; (b) There could be a different territorial approach to substantially equal homeless groups. Unfortunately, these risks are acute in Georgian reality under inconsistent policy conditions. In addition, it is problematic that not all municipalities register homeless persons.⁵⁴

More specifically, regarding the municipalities' non-uniform approach to homelessness⁵⁵ - the basis for applying for temporary housing after being registered as a homeless person is a rating score system based on a variety of criteria, including the socio-economic status of the family, as well as the number of persons with disabilities, minors, or state pension recipients in the family. In some cases, the following circumstances are taken into account: family income,⁵⁶ “seriously ill” person living in the family,⁵⁷ family members living without parental care,⁵⁸ victims of a natural disaster (fire, wind, etc.).⁵⁹

⁵³ On the one hand, the Law “On Social Assistance” stipulating that the local self-government body carries out the registration of the homeless person, and on the other hand, the Local Self-Government Code states that municipalities provide the homeless with shelter and register them. See Organic Law of Georgia “Code of Local Self-Government”, Article 16, Paragraph 2, Sub-paragraph f).

⁵⁴ However, another explanation is also possible, according to which the local self-government body can register persons according to the conceptual definition of homelessness (absence of a permanent and specified place of residence).

⁵⁵ The 2018 Public Defender's Report on the State of Human Rights and Freedoms in Georgia indicates that “municipalities still lack the methodology for homeless persons’ registration, which results in the production of inadequate databases at the local level”, only 6 out of 30 municipalities surveyed defined the rule of registration of the homeless and managed the relevant database. See in detail Report of the Public Defender of Georgia on the State of Protection of Human Rights and Freedoms in Georgia (2018) 208 <<http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> (17.12.2019); Homelessness: State Policy Analysis, the Human Rights Education and Monitoring Center (EMC), 41-42 (2016).

⁵⁶ Kharagauli Municipality Council Resolution “On Approval of the Procedure for the Homeless Registration and Provision of Temporary Housing to a Person Registered in the Municipality of Kharagauli”, No. 18 Annex 1, Article 5, Paragraph 1(b) (July 1, 2019).

⁵⁷ Kharagauli Municipality Council Resolution No 18, Annex 1, Article 5, Paragraph 1, Sub-paragraph d) (1 July 2019).

⁵⁸ Samtredia Municipality Council Resolution “On Approval of the Procedure for the Homeless Registration and Provision of Temporary Housing in the Municipality of Samtredia No. 19, Annex 1, Article 4, Paragraph 2(d) (August 17, 2017).

⁵⁹ Sagarejo Municipal Council resolution “On Approval of the Procedure for the registration, selection, provision of the social housing program to the homeless registered at the territory of the Sagarejo Municipality, and also the citizens arbitrarily living in the buildings registered on the balance of the Municipality and monitoring the implementation” (hereinafter referred to as Sagarejo municipality resolution №38”), №38, Appendix №1, Article 6 (25 September 2015).

Some municipalities are more likely to accommodate the homelessness criteria to the international standards and include persons who are temporarily living with relatives;⁶⁰ victims of domestic violence, persons who are newly released from prison or those who are on probation and have no property or shelter;⁶¹ the elderly who are guardians of their children or grandchildren;⁶² a family whose member or members died in the fight for Georgia's territorial integrity and veterans who fought for Georgia's territorial integrity.⁶³ On the other hand, criteria for homelessness approved by some municipalities are substantially narrow.⁶⁴

There is also a non-uniform approach in terms of the importance of the certain criteria, for example regarding the rating scores;⁶⁵ in some cases, even the scores for the identical sub-criteria are not similar.⁶⁶ The approaches to determining the prerequisites for homeless registration also differ. Some municipalities state the following criteria: residency, although its duration varies (2 years for Samtredia Municipality, 5 years for Sagarejo Municipality);⁶⁷ the family should not own living space in Georgia or abroad and their housing should not meet the minimum living conditions (in ruins);⁶⁸ the fact of the loss of housing should not be registered outside the administrative boundary of the relevant municipality.⁶⁹

Given the above, it is clear that the Law of Georgia “On Social Assistance” does not establish a uniform definition of a homeless person and the criteria for being considered homeless (operational categories).⁷⁰ There is no clear legislative regulation that the municipality should set operational criteria for homelessness, while local authorities build fragmented experience with different homeless groups and in some cases do not register homeless people at all.

⁶⁰ Kharagauli Municipality Council Resolution No 18, Annex 1, Article 5, Paragraph 1, Sub-Paragraph o) (1 July 2019).

⁶¹ Ibid. Article 5, Paragraph 1, Subparagraph k).

⁶² Ibid. Article 5, Paragraph 1, Subparagraph z).

⁶³ Ibid. Article 5, Paragraph 1, Subparagraph e).

⁶⁴ Ambrolauri Municipality Council Resolution “On Approval of the Procedure for the Homeless Registration and Provision of Temporary Housing to a Person Registered and Permanently Residing in the Municipality of Ambrolauri”, No. 15, Annex 1, Article 2, Paragraph 4 (April 22, 2019).

⁶⁵ For example, in the case of Kharagauli municipality, the threshold is 100,000 points, whereas in the case of Samtredia municipality the figure is 200,000 points. See Samtredia Municipality Council Resolution No. 19, Annex No. 1, Article 1, Paragraph 3, Article 4, Paragraph 2 (17 August 2017); Kharagauli Municipal Council Resolution №18, Annex 1, Article 5(1), Sub-paragraph (a) (1 July 2019).

⁶⁶ Kharagauli Municipal Council Resolution, N18. Annex 1, Article 5, Paragraph 1(g) (July 1, 2019); Samtredia Municipal Council Resolution, N19 Annex 1, Article 4, Paragraph 2(g) (August 17, 2017).

⁶⁷ Sagarejo Municipality Resolution N38, Annex 1, Article 6 (September 25, 2015).

⁶⁸ Ibid. Article 6.

⁶⁹ Samtredia Municipality Resolution N19, Annex 1 (August 17, 2017).

⁷⁰ The concept of homelessness enshrined in the Law of Georgia on Social Services covers the conceptual category of the roofless from the European Typology (ETHOS). The concept of homelessness is not fully covered (for example, it may not cover people living in women's shelters. It is unclear to what extent this definition covers individuals who are expecting to leave the institution). As for the conceptual group of people living in hazardous environments, which combines four operational categories, only one group has the potential of falling into the category of homeless (people who receive long-term support for homelessness). Under the current definition, people who live in a dangerous environment, are at risk of eviction or are at risk of violence are not regarded as homeless. It is not clear to what extent the definition of homeless people applies to people living in temporary/alternative housing, a place that is unfit for living or in overcrowded conditions.

3.3. The Need for a Uniform Approach to the Notion of Homelessness

The vulnerability of homeless people is recognized at the national level. In particular, under the legislation of Georgia, a homeless person is considered to be among those at social risk.⁷¹ However, it is clear from the analysis of the legislative framework as well as the practice that a certain category of homeless people is not recognized and hence their rights are not visible in the country. Against this background, non-discrimination is a fundamental principle of law. This section will show how to have a uniform approach to homelessness among different homeless groups. Such a mechanism could provide a detailed definition of the concept of homelessness at the national level. In order to establish effective support programs and considering the best practice,⁷² it is appropriate to define a notion of homeless persons, as well as persons at risk of homelessness. Both of them should cover the full spectrum of European typology (ETHOS).

The notion of homelessness should at least cover the operating categories defined by ETHOS Light; more specifically, the concept of the roofless persons - this is the minimum standard that any definition covers in Georgian reality. It is essential that the definition of homelessness fully take into account the conceptual category of houseless people; specifically, people who use housing for the homeless and people who live in women's shelters. Among others, reports of the Public Defender of Georgia on this matter indicate that their rights are not adequately protected; there is the inability to provide housing for victims after they leave the shelter;⁷³ as well as people who live in immigrant shelters; people who are due to leave the institution, including penitentiary system, medical facilities and children's institutions/homes. No effective steps has been taken in recent years to address this issue. Long-term hospitalization in medical psychiatric establishments is one example, when persons, who do not require treatment cannot leave the facility due to, *inter alia*, lack of proper accommodation in the community.⁷⁴ The notion of homelessness must include persons who are temporarily living with their relatives or acquaintances, as well as those living in alternative (non-conventional) housing.

In addition, it is essential that beyond the notion of homelessness, legislation incorporates concept of persons under the risk of homelessness, which would cover persons living in an insecure environment, as well those persons living in the inadequate environment, who did not fall in the homeless category (such as, people who receive long-term support for homelessness; people living in the insecure environment; people who are due to be evicted; people who are under the risk of violence; people living in inadequate housing or overcrowded conditions). Thus, the state can identify different categories of homelessness and inadequate living (homeless, under the risk of homelessness) and match relevant support programs to them.

⁷¹ Law of Georgia "On Social Work", Article 2 (k) - this group includes "persons addicted to drugs, alcohol and/or gambling, socially disadvantaged persons, persons with disabilities, elderly, minors, big families, single parents, internally displaced persons, homeless persons, persons in conflict with the law, persons with poor health, support recipients, victims of violence, the other persons with a similar situation".

⁷² Homelessness Handbook, David Levinson, Marcy Ross (Eds), Berkshire Publishing Group, 30 (2007).

⁷³ Report of the Public Defender of Georgia on the State of Protection of Human Rights and Freedoms in Georgia, 136 (2018).

⁷⁴ Ibid. 75.

In addition to the aforementioned operational categories, the Georgian legislation needs to take into account the concepts of chronic and episodic homelessness;⁷⁵ therefore, the scale of protection provided to the homeless will become more measurable for policymakers.

It is clear that by merely providing definitions, the problems of homeless people cannot be solved. However, the purpose of defining the concept is to see the scale of the problem, the persons concerned and their needs, and to measure the progress. After the elaboration of the definition of homeless people, support programs should be developed. In their implementation, the state must show continued progress and the realization of the right to adequate housing should be a permanent goal.

Less effective, though alternative, mechanism for defining the notion of homelessness at the national level may be putting in place a local self-governmental coordination mechanism⁷⁶ that would, in comparison with the current reality, ensure prevention of unequal treatment of some homeless groups across different administrative units of the country.

Conclusion and Recommendations

Thus, there are no clear criteria for determining a person's status as homeless at the national level. Their absence makes it illusory to estimate the number of homeless people, identify the causes of homelessness, plan further policies and measure their potential effectiveness. Therefore, it is important to consider the following recommendations:

To the Parliament of Georgia:

- When developing the notion of homelessness, legislators should take into account that homelessness has several structural dimensions (physical, legal and social). In line with international standards and good practice, this means that the notion of a homeless person should not be limited to the rooflessness. Accordingly, people living in inadequate housing should not be left out of the homelessness definition. To combat homelessness, the relevant degrees can be distinguished, in particular, the notion of a homeless person, on the one hand, and, on the other hand, definition of a person at risk of homelessness;
- It is essential to develop a clear definition and criteria for the homeless person. The definition of a homeless person should cover the following groups together with the roofless people: people who

⁷⁵ For an explanation of the concepts of chronic and episodic homelessness and the difference between them, see the Appendix, section on Canadian legislation.

⁷⁶ In turn, the effectiveness of the coordination mechanism is particularly relevant due to the following circumstances: Local governments, within their powers, provide homeless persons with shelter and register them. In addition, since 2021 the municipality will carry out social work on its territory, including active identification of homeless people, identification of their needs, problems and provision of an assessment, providing information to relevant sectoral institutions. Implementation of social work is a delegated power to local self-government bodies and its implementation will be overseen by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. See Law of Georgia on Social Work, sub-paragraph a) of Article 56(1), paragraph 2; Article 17, subparagraph d. On this issue, see above. Combating Homelessness – Institutional Framework and Separation of Powers between Different Levels of Government, Human Rights Education and Monitoring Center (EMC) (2020).

utilize facilities/shelters for the homeless; people who live in women's shelters; people who live in immigrant shelters; people due to leave the institutions, including penitentiary institutions, medical institutions and children's institutions/homes; people who are temporarily living with relatives or acquaintances, as well as those who live in alternative (non-conventional) housing;

- It is important to develop a definition and criteria for persons at risk of homelessness. The concept should cover the following groups: people who receive long-term support for homelessness; people living in insecure housing; people on the verge of eviction; people who are at risk of violence; people living in unfit housing; people living in overcrowded housing;
- Georgian legislation needs to take into account the notions of chronically homeless and episodically homeless persons.

To the Government of Georgia:

- It is essential that, within the applicable statutory regulation, the executive branch of government collect information on the number of homeless persons to, at least, ensure the visibility of homeless persons and their rights;
- It is important that a national homelessness strategy, appropriate action plan(s) are developed and duly implemented, and a system for assessing the effectiveness of combatting homelessness is introduced.

To Local Government Bodies:

- It is advisable for municipalities to enforce their own authority to register homeless persons and develop appropriate methodology before the relevant legislative changes are implemented. This should be implemented in the frames of the enactment of the coordination mechanism of the local authorities.

Annex

Concept of homelessness under the laws of Finland, Norway, Sweden, Denmark and Canada:

Finland
In Finland, persons are considered homeless ⁷⁷ if they have no home (rented or owned) and reside (1) outdoors, on the streets or at the overnight shelter - this category means that persons do not have permanent residence and use different shelters and spaces; (2) dormitories or boarding houses - persons in this category receive social assistance vouchers; (3) a housing service unit, a rehabilitative unit, a hospital or any other institution – it does not cover the persons who are beneficiaries of the housing support programs, as well as persons who reside at social housing and (a) have a rental contract under the social or other type of institutional housing, or (b) are being treated and the issue of housing is not relevant for them, (4) those living with acquaintances or relatives - this category does not include youth living with parents. ⁷⁸
Norway
<p>In Norway, the notion of disadvantaged in the housing market is defined. This includes several groups of persons: (1) persons without housing (2) persons at risk of losing their homes; (3) People living in inadequate housing or environment.⁷⁹ As the definitive description of these groups indicates, Norway views the issue conceptually and considers the rights of the wider group (those who do not have adequate housing or may face similar problems in the future) when planning the ways to solve the problem.</p> <p>The first category covers the following sub-category: people without a roof over their head for the next night; people who are referred to emergency or temporary accommodation, such as overnight service, boarding house, shelter; people who are in the correctional services and due for release within two months and have never owned or rented a home; people in institutional care, who are due for release within two months and have never owned or rented a home; people who live temporarily with friends, acquaintances or relatives; people, with residence permits, living in asylum centres (three months for unaccompanied minors and families with children, six months for adults without children) regarding whom the final decision is not taken, though the deadline has passed.⁸⁰</p> <p>In the second category are persons who received eviction notice or persons residing in the area subject to compulsory sale; persons whose tenancy agreement is not valid; people with living expenses disproportionate to their income.</p> <p>The subcategories of the third category cover the following groups: persons living with parents/guardians and the situation is being undesirable or perceived as problematic by either party; people living in homes of a poor physical</p>

⁷⁷ The said definition is used by the Housing Finance and Development Centre of Finland (ARA), which determines the number of homeless persons.

⁷⁸ Finland: Homelessness in 2018, Report 3/2019, The Housing Finance and Development Centre of Finland, 14 (2019); ob. A Home of Your Own: Housing First and ending homelessness in Finland, Y-Foundation (2017) <https://ysaatio.fi/assets/files/2018/01/A_Home_of_Your_Own_lowres_spreads.pdf> (17.12.2019).

⁷⁹ Norway's Response To Questions From The Special Rapporteur On Adequate Housing <<https://www.ohchr.org/Documents/Issues/Housing/Homelessness/States/29102015-Norway.Pdf>> (17.12.2019).

⁸⁰ Housing For Welfare: National Strategy For Housing And Support Services (2014-2020), 30 <https://www.regjeringen.no/globalassets/upload/kmd/boby/housing_for_welfare_national_strategy_for_housing_and_support_services_2014_2020.pdf> (17.12.2019).

standard; people living in homes not adjusted for their special needs; people living in homes that are too small; people living in an at-risk area.

It is essential to focus on that part of the strategy that addresses individuals who will become homeless upon leaving the institution.⁸¹ A coordination mechanism was introduced between the health institutions and municipalities. Coordination agreements include guidance documents covering co-operation schemes for the rehabilitation, training, etc. of the homeless person. It is the responsibility of municipalities to provide individuals who need a long-term and varied service, including from other institutions, with an individual plan and coordinator. This obligation is valid irrespective of whether the person concerned wishes for an individual plan and has a need for a coordinator.⁸²

Sweden

The scale of homelessness in Sweden is assessed by the Swedish National Board of Health and Welfare,⁸³ which divides the four main categories of the homeless: the first category includes people who use shelters, emergency housing or are roofless (acute homelessness). The second category covers persons who are living in a probation or treatment facility and have three months left before leaving the facility and the person concerned has no alternative residence.⁸⁴ The third situation involves people using municipality-administered housing, namely transitional housing, emergency shelters, and supported houses, while the person does not have the option of permanent housing or renting a home - cannot use the main, contribution-based welfare system (long-term housing issue).⁸⁵ The fourth category includes persons temporarily living with friends, acquaintances or relatives.⁸⁶

Denmark⁸⁷

At the national level in Denmark, the following definition applies: "Homeless persons are those who do not own or rent housing or rooms but are forced to use temporary housing or live with relatives, friends or acquaintances without a tenancy agreement. Persons who do not have a shelter for the next night are also considered homeless".⁸⁸ This is the concept of homelessness, which in turn translates into different operating categories.

Canada

Canada does not have a uniform official definition of homelessness at the federal level. Criteria for homelessness are established through a community-based approach - priorities are underlined through active community engagement. Nevertheless, the beneficiary groups are identified at the Federal level. Specifically, in line with the government's strategy, the priority is to relocate chronically and episodically homeless people from the streets and

⁸¹ According to one of the recent surveys, 15 percent of homeless people live in institutions, *ibid.* 18.

⁸² *Ibid.* 18-19.

⁸³ Homelessness in Sweden 2017, National Board of Health and Welfare <<https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/ovrigt/2018-6-19.pdf>> (17.12.2019).

⁸⁴ Centrum for Sociala Rattigheter, Response to Questions from the Special Rapporteur on Adequate Housing, <[https://www.ohchr.org/Documents/Issues/Housing/Homelessness/Csos/13112015-Centrum For Sociala Rattigheter Sweden.Pdf](https://www.ohchr.org/Documents/Issues/Housing/Homelessness/Csos/13112015-Centrum%20For%20Sociala%20Rattigheter%20Sweden.Pdf)> (17.12.2019).

⁸⁵ Extent and Profile of Homelessness in European Member States, EOH Comparative Studies on Homelessness, Brussels, 17 (December 2014).

⁸⁶ Centrum for Sociala Rattigheter, Response to Questions from the Special Rapporteur on Adequate Housing.

⁸⁷ It is important to look at the Danish experience as the number of homeless people increased by 8 per cent during 2015-2017, which is one of the lowest rates in Europe. Fourth Overview of Housing Exclusion in Europe 2019, FEANTSA - Fondation Abbé Pierre, 98 (2019) <https://www.feantsa.org/public/user/Activities/events/OHEEU_2019_ENG_Web.pdf> (17.12.2019).

⁸⁸ EOH Comparative Studies on Homelessness, No. 4, 96 (December 2014).

homeless shelters to permanent housing.⁸⁹ A person, who is currently homeless and has been homeless for the past 6 or more, is considered chronically homeless. The concept of episodic homelessness refers to a person who is homeless at the point in time and has had three or more episodes of homelessness for the past year. The concept of the episode implies a situation when a person is living in a homeless shelter or in an unfamiliar environment for a certain period of time and returns to that space 30 days later.

It is noteworthy that some provinces and territories, in some cases, cities, define the concept of homelessness.⁹⁰ Strategic documents often use the following informal definition: “Homelessness is a human or family situation when a person does not have a reliable, permanent and appropriate housing or the prospect and opportunity to access it. This is the result of systemic or social barriers, lack of appropriate and affordable housing, financial, mental, cognitive, behavioral or physical challenges to individual and housing, and/or racism and discrimination. Most people do not opt for homelessness, and the experience is usually negative, uncomfortable, and stressful”.⁹¹

⁸⁹ Canada’s Response to Questions From The Special Rapporteur on Adequate Housing <<https://www.ohchr.org/Documents/Issues/Housing/Homelessness/States/09112015-Canada.Pdf>> (17.12.2019).

⁹⁰ Ibid.

⁹¹ A Housing and Homelessness Research Strategy for Alberta: Supporting a Plan for Alberta: Ending Homelessness in 10 Years, 5 <https://www.homelesshub.ca/sites/default/files/attachments/Housing%20and%20Homelessness%20ResearchStrategy_Oct2014.pdf> (17.12.2019).