Uzbekistan: Forced evictions in Uzbekistan: families at risk

Olga Abdullayeva and her family at imminent risk of forced eviction

Unlawful forced evictions have formed a widespread pattern of human rights violations in Uzbekistan for many years, depriving thousands of people of their property and driving them into poverty and homelessness.

AHRCA and IPHR monitoring shows that the Uzbekistani authorities continue the practice of forced evictions, working under the influence of private enterprises - and often with interference of the regional government structures (Khakimyat - the municipality) in the proceedings.

Since 2017, victims of forced evictions and illegal demolitions have begun to emerge in connection with the Tashkent City Project and similar construction projects unfolding in other cities in Uzbekistan. From Tashkent alone, our organisations have received more than 30 appeals from victims. We represent the interests of those people who have attempted to seek legal redress and attract the attention of the public and the media.

We have observed that during litigation in almost all courts, these people have been confronted with a biased judiciary, which has worked in collusion with developers and representatives of the khokimiyats. The courts have made decisions which violated the constitutional principle of protecting private property, under the pretext that developers are carrying out construction of public importance. They have used the provisions of the Law “On Procedures for Seizure of Land Plots for Public Needs with Compensation” (approved by the Senate on 28 May 2022), which states that the concept of “public and state needs” is not contrary to the guarantees of property protection.

The Anti-Corruption Agency and the Presidential virtual reception office have to date proved ineffective in protecting victims of illegal demolitions, as they lack the authority to investigate allegations of corruption and violations of the law by state authorities. Instead, requests are forwarded to these same authorities and often delay the procedure of defending the victims.

Cases of persecution of lawyers defending the interests of demolition victims have also been recorded; in some cases they have been forced to withdraw from some demolition cases, and in others their lawyer’s licence has been revoked.

On a positive note, expert assessments by the Constitutional Court, the Ministry of Justice and the Office of the Ombudsman were heard in some cases and referred to in official letters, although they were unfortunately not taken into account in the courts’ final rulings.
As a result, the applicants find themselves unable to access effective remedies in Uzbekistan. Many of them additionally report that their phones have been tapped by the security services, or that they have been warned that their names are already on “political” lists.

UN CONCERN

The UN Committee on Economic, Social and Cultural Rights (CESCR) considered the Third Periodic Report of Uzbekistan on 22-24 February 2022, and adopted concluding observations on 4 March 2022. The Committee expressed concern about violations of the right to adequate housing and called on the Uzbekistani authorities to “(a) Ensure that evictions are carried out only as a last resort, and in accordance with the law and in conformity with the provisions of the international Covenants on human rights; (b) If eviction does take place, ensure that procedural protections and safeguards are respected, such as conducting genuine consultation, ensuring adequate and reasonable notice, and ensuring the availability of alternative accommodation in a reasonable time, and the provision of legal remedies; (c) Ensure the availability of and accessibility to affordable legal aid for residents affected; (d) Prevent homelessness in cases of evictions by ensuring the availability of adequate alternative housing; (e) Consider its general comment No. 7 (1997) on forced evictions.”

Prior to the hearing, IPHR had submitted a joint report to the Committee in January 2022 with recommendations to the Uzbekistani authorities regarding forced (housing) evictions.

CASE OF OLGA ABDULLAYEVA

The following case of Olga Abdullayeva illustrates the arbitrary and illegal nature of court decisions to annul the registration of private property rights and seizure of private property, the dependence of the judiciary on local power structures, intimidating means used by powerful companies to pressure owners of apartments to sell against their will, unfair trials when people try to defend their right to own property, and the injustice of inadequate offers of compensation.

Olga Abdullayeva was one of the first victims of illegal demolitions and appealed to the public for support, using national and international remedies. Defending her interests, she began to blog about her fight on her Facebook page and describe each stage, making suggestions to other people in a similar situation. On 10 February 2023, she received the decision of the Supreme court (last instance), which rejected her request for the restoration of her right to property, of which she was deprived under illegal grounds.

There follows a chronology of events which illustrates how Olga Abdullayeva was deprived of the property rights for property she legally owns:

In 2018 Olga Abdullaeva and her family learned that their privately owned apartment on S.Azimova Str., 3, Yashnabadsy district, Tashkent, was to be demolished because the property had been allocated to a private company: On 27 March 2018 the Tashkent municipality (Khokimiyat) allocated a plot of land (2,1 hectares) to the private company “Training project” in the area of S.Azimova Str 2,3 and 5 Yashnabadsy

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District of Tashkent without Abdullayeva’s approval.³ Thereby, the Khokim of Tashkent exceeded his authority by taking a decision contrary to existing safeguards to protect private property. National law stipulates that in cases of land allocation and demolition of houses the owner must be consulted and give their consent.⁴ The Ministry of Construction gave the company permission to build residential and administrative buildings in that area, although the “Training Project OOO” is registered as a retail company with no connection to the construction or real estate development industry. The building plans were approved by the Administration of Architecture and Construction of Tashkent.

As Abdullayeva opposed the decision, the developer filed a lawsuit against her, in order to forcibly relocate her and her family to another dwelling of the developer’s choice on Tepakurgan St., 2, Yunus-abadskii district, Tashkent. Both the decision of the inter-district Mirabad Court from 11 October 2019 and the appeal decision of the Court of Tashkent from 13 March 2020 satisfied the demand of the plaintiff. Thus, the Mirabad Court decision is seen by housing rights activists as an arbitrary decision, treating the dwelling owned by Olga Abdullayeva as a municipal dwelling rather than private property. The latest court order obliged the “Training Project” company to pay 268,730,911 UZS (21,700 EUR) in compensation to Abdullayeva, a sum for which one can no longer buy property of equivalent standard in the centre of Tashkent.

On 11 August 2020, the Deputy Ombudsperson issued a statement on the case highlighting that several national norms and laws had been violated and that the eviction orders issued by the courts were consequently to be cancelled. On 16 November 2020 the Ombudsperson sent a communication to the Supreme Court about the case, pointing to the failure to comply with national provisions and regulations, and highlighting the need for an assessment to determine the market value of Abdullayeva’s property. On 15 December 2020 the UN Special Rapporteur on Adequate Housing also addressed the Court raising concerns that no solution compatible with international human rights law had been found in the case.

On 29 December 2020 a panel of judges on civil cases to the Supreme Court of Uzbekistan ruled to annul previous decisions and send the case for re-trial. The company “Training Project” also lodged another complaint against Abdullayeva for unauthorised occupation of a plot of land. Since February 2021 both cases have been heard as one case. In the new review of the case, Abdullayeva lodged a complaint against “Training Project” and against Tashkent Land Resources and State Cadastre Administration demanding, inter alia, that the eviction be declared unlawful, and asking for adequate compensation. However, both Mirabad Court and the Court of Tashkent ruled in favour of the private company and rejected Abdullayeva’s complaints in decisions issued on 7 May 2021 and 12 October 2021 respectively. Moreover, the courts ruled that Abdullayeva should pay “state duty fees” of 10,749,233 UZS (869 EUR).

Abdullayeva then filed a cassation appeal which was finally rejected by the Supreme Court on 10 February 2023. The hearing was marked by numerous procedural violations, including the following:

- The Supreme Court’s referred to non-legal acts as the basis for its decision, such as the mayoral decision on eviction instead of a legislative act or regulation.
- The decision violates national law, namely article 53 of the Constitution which establishes that private property, like other forms of property, is inviolable and is under the protection of the state; articles 7 and 32 of the Law “On property in the Republic of Uzbekistan” provide that the

³ By municipality decision No. 488
⁴ Ministerial Decree No. 54 lays out a checklist for authorities for the fulfilment of certain criteria, including consulting the owner of the property.
owner can be deprived of his/her property only in cases and in the manner provided by law - that Uzbekistan ensures the constitutional rights of the owner, and does not allow forcible seizure of property. Moreover, article 7 of the Law “On the Protection of Private Property and Guarantees of the Rights of Owners” establishes that in the relationship of the owner with state bodies, the principle of priority of the rights of the owner applies, according to which all contradictions and uncertainties arising in connection with the implementation of the rights to private property set out in law are to be interpreted in favour of the owner. In addition, according to articles 4 and 5 of the Urban Planning Code of the Republic of Uzbekistan, the urban planning activities of legal entities and individuals should be limited if they impede and encroach on rights and legitimate interests of the owners and users of these plots of land.

• The Supreme Court failed to consider the argument that the municipality's decision was unlawful because the owner's opinion was not sought beforehand. As justification the Court stated that this question is out of the jurisdiction of the Supreme Court.

• The Supreme Court rejected Abdullayeva’s claim that her property was not initially included in the allocated area to “Training Project” but was later unlawfully added, referring to the opinion of the Administration of Architecture and Construction of Tashkent and to the written statements from the Ministry of Construction. According to the Supreme Court the statements of both authorities are “reasonable and convincing” because these bodies possess “the necessary qualifications and competences”. The Supreme Court ignored a letter from the Ministry of Justice which stated that the allocation of land to “Training Project” was made without legal permission. After assessment of the compliance of the processes preceding the decision of the municipality with legal requirements, the Ministry of Justice declared the demand of “Training Project” for allocation of land unfounded.

• From the Supreme Court’s arguments, it is clear that the topographic map of the allocated land to “Training Project” was made after the municipality’s allocation decision. In the architectural plan there are two different maps regarding the disputed land area. In the first one Abdullayeva’s property on S. Azimova St., 3 is not included in the land allocated to “Training Project” but the map included the carriageways of streets, particularly S. Azimova St. 4.

In the second, adjusted, map the carriageways of streets are excluded from the land allocated to “Training Project” but Abdullayeva’s property is included. The Supreme Court argued, based on a letter of the Ministry of Construction, that the first map was only preliminary and that the ‘definitive’ second map, and its adjustments were made by the Chief Architectural and Planning Department without changing the size of the plot of land, which makes it lawful. Additionally, the Supreme Court referred mainly to non-legal acts (such as the letter from the Ministry of Construction) in order to judge the lawfulness of the architectural plan.

• Regarding compensation the Supreme Court also decided, based on state technical expertise, that the value of the proposed alternative apartment on Tepakurgan St., 2 in Yunusabadsky district, Tashkent (64,600 EUR) corresponded to that of the value of Abdullayeva’s property on S. Azimova St., 3 (86,000 EUR). However, this conclusion was based on cadastral documents and a state technical expertise and not conducted by a professional real estate evaluator as established by law. An independent market value calculation, commissioned by Abdullayeva with the private company UHY Appraisers, estimated the value of her flat to be more than double: 2.381.587.655 UZS (193.000 Euro).

Thus, the apartment offered by the developer as alternative accommodation falls far short of being of equivalent value to Abdullayeva’s previous flat and cannot be considered as adequate compensation.
Furthermore, Abdullayeva was not consulted as to whether the new flat's location was suitable for her and her child's needs. The Company “Training Project” also lodged a complaint against Abdullayeva for “unauthorised occupation of a plot of land”, which was rejected by the Supreme Court on the grounds that after the Abdullayev family's eviction, the plot of land will be available again.

With this final decision from the Supreme Court from 10 February 2023 all national remedies have been exhausted and AHRCA and IPHR are concerned that Olga Abdullayeva and her family are at imminent risk of a forced eviction from their property. At the time of writing, Abdullayeva still considers her eviction unlawful and has not accepted the alternative accommodation offered by the company “Training Project”.

Olga Abdullayeva has written dozens of complaints to various instances: the judiciary, the Prosecutor’s Office, the Cabinet of Ministers, the Virtual Office of the President of Uzbekistan and a number of public organisations. The Constitutional Court, the Ministry of Justice and the Office of the Ombudsman all issued opinions in support of Olga Abdullayeva in 2020, concluding that her house was not on the list reflected in the Tashkent City Council decision and therefore was not subject to demolition. However, the conflicting party, represented by the developer, used falsified and forged documents, as well as false witnesses, in order to obtain the area in the city centre where Olga Abdullayeva’s house is located.

Olga Abdullayeva has now exhausted all legal remedies and is in imminent danger of forced eviction. In this regard, the intervention of the international community and authoritative public and political figures is extremely important.

**This case deserves the attention of investors and investment companies as it illustrates the risks and consequences of the lack of guarantees to private property in Uzbekistan.**

**RECOMMENDATIONS TO UZBEKISTAN:**

- Uzbekistan should comply with its international commitments, including those to the right to private property under the framework of the EU GSP+ trade scheme.
- Uzbekistan should protect the right to adequate housing and take steps to restore justice to Olga Abdullayeva.
- Uzbekistan should carry out evictions only as a last resort, once all other feasible alternatives have been explored and in compliance with international standards, inter alia to carry out genuine consultation with the people affected, give reasonable notice, making all plans transparent and informing all those affected, providing alternative housing, compensation and access to legal support.