

USING THE COURTS TO STOP FORCED EVICTIONS OF ROMA

A: GOING TO THE DOMESTIC COURTS

1. Evictions often happen suddenly. They can create panic. Before you are faced with an imminent eviction, try to find a lawyer or someone who understands the law and figure out what the legal basis is on which people can be evicted in your country, region and/or municipality. Create a chart setting out clearly what the bases are in law for various forms of eviction, evacuation and/or demolition. Note what requirements must be met (e.g. written notice) and what rights people have to challenge the eviction. Find lawyers who are experts in making such challenges. Ask your lawyer about the availability of legal aid to challenge the eviction.
2. Read [General Comment No.7 of the UN CESCR](#). Note that in some domestic legal systems the term 'eviction' may be defined more narrowly. If you find that national or local law does not comply with these standards, write to the authorities. You can do this before a threatened eviction but it is likely to be more effective if you do it earlier.
3. The European Court of Human Rights ("the Court") has ruled – mostly recently in [Yordanova and others v Bulgaria](#) (in English) and [Winterstein and others v France](#) (in French) – that the authorities and courts must always consider the proportionality of an eviction. In *Winterstein*, the Court said that Roma should not be forcibly evicted unless they are re-housed (except in exceptional cases). So even if people are living illegally on a piece of land or in a building, the eviction cannot be automatic: it still must be justified in light of the situation and be preceded by court proceedings that examine its justification. Check that this requirement is properly met in your domestic law. Mention these two judgments to the authorities and tell lawyers you are working with to cite them.
4. In many countries going to court to challenge an eviction measure may not stop the authorities from acting. Ask your lawyer about the suspensive effect of a court challenge and if any interim measure is available under domestic law.
5. Save the papers! Precious documents are often destroyed in an eviction, particularly when houses are demolished, making life more difficult in general and making it harder to prove your case in court. Make a folder with copies of all your documents (IDs, correspondence with authorities, taxes paid, utility bills etc.) and give it to a friend for safekeeping.

B: WHEN AND HOW TO USE THE EUROPEAN COURT OF HUMAN RIGHTS IN CASES OF FORCED EVICTIONS

6. The rule is that you cannot go to the Court until you have exhausted all effective national remedies. Whether a remedy is "effective" depends on the circumstances of the case.
7. Rule 39 is part of the "Rules of Court" of the Court. It allows the Court to indicate to a State to do something or not do something. Such an indication is called an "interim measure". Interim measures are only granted if there is an imminent risk of irreparable damage and if there is no effective remedy available at national level. See [Al-Saadoon and Mufdhi v UK](#), para 160.
8. It is unusual for the Court to grant an interim measure to stop an eviction. In *Yordanova* the Court granted an interim measure to stop the eviction of a long-established Romani community, after the community had exhausted all the remedies available in the Bulgarian legal system. [In another case](#), the Court indicated to the Dutch authorities to house a homeless asylum seeker and her child. In other cases, the Court has refused to stop imminent evictions using Rule 39. The Court does not give reasons, but probably refuses because it does not deem the harm of the eviction to be irreparable, for example in the case of the eviction of a recently-established camp.
9. Because of the exhaustion rule, the Court is unlikely to grant a Rule 39 unless those being evicted have already asked a national court for an interim measure. A Rule 39 request will definitely not to succeed if there is still a national remedy with "automatic suspensive effect" (a legal challenge which, when lodged, automatically stops the eviction) that has not been used.
10. If there is no remedy left, or no remedy with automatic suspensive effect, then the Court might indicate an interim measure, but it seems unlikely. The Court will certainly expect the applicant to try to use any national remedy left, so if there is a possibility to ask a national court to stop the eviction, that request should be made before making the Rule 39 request and the Court should be told what is happening with that procedure. If no such procedure is used, include a detailed, convincing explanation about why it is impossible or futile to use that procedure.
11. Describe the severity of the suffering that will result from the eviction showing why, if possible, it is inhuman and degrading. Harm against children is more likely to be considered irreparable.
12. If you think it is appropriate to ask the Court for an interim measure, follow [the instructions on the Court's website, including the practice direction](#), strictly. The ERRC legal team may be able to help you. Email office@errc.org with the subject "URGENT – LEGAL TEAM".