



CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



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## CENTRE ON HOUSING RIGHTS & EVICTIONS

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### To: Mr. Radu Mircea Berceanu

Minister of Transport, Constructions and Tourism  
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Honourable Minister Berceanu,

The European Roma Rights Centre (ERRC) is an international non-governmental organisation undertaking a range of activities aimed at ending the systemic human rights abuse of Roma in Europe. The Centre on Housing Rights and Evictions (COHRE) is a leading international non-governmental human rights organization committed to promoting practical legal and other solutions to endemic problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of economic, social and cultural rights. Both organisations have extensive expertise in matters concerning housing law.

The ERRC and COHRE are writing to express deep concern over the draft of a “Law regarding the relations between owners and tenants and the obligations incumbent on them with regard to housing administration and maintenance” (hereafter “Law on Rent”) made available for public comment recently on the website of the Romanian Ministry of Transport, Constructions and Tourism<sup>1</sup>. It is apparently part of a more substantial legislative package that would also include sizable amendments to Law 114/1996 on Housing. If adopted in its current form, the draft Law on Rent would regulate, *inter alia*, relations between owners and

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<sup>1</sup> <http://www.mt.ro/transparenta/2007/Proiect%20Legea%20chiriilor%2005%2003%202007.pdf>

tenants, the lease contract, social housing, and the administration and maintenance of rental housing.

The bill cannot be adopted in its current form without seriously compromising Romania's compliance with its international law obligations. The present communication sets out a number of areas of concern with the bill currently available for public comment, although the issues set out below are by no means all matters of concern in the current draft bill. We urge withdrawal of the current draft bill, such that it can be reconceptualised in such a way as to meet the complementary goals of (i) adapting Romania's housing regulations to European standards; (ii) complying with international human rights law standards; and (iii) effectively delivering social support to marginalised groups and/or individuals, a Romanian Constitutional requirement<sup>2</sup>, as well as a matter flowing from international treaties by which the Romanian state is bound. The organisations presenting this communication stand ready to assist with that project. A non-exhaustive list of very problematic areas of the present bill follows below.

### **1. Definition of "Housing"**

The current draft bill provides, apparently as a statement of underlying philosophy, that "housing is an economic investment placed on the market for obtaining profit, and not an element of social protection".<sup>3</sup>

Such an approach is at odds with positions expressed by the European Court of Human Rights, the European Committee of Social Rights, and the United Nations Committee on Economic, Social and Cultural Rights, three bodies competent for supervision of Romania's international and regional human rights law obligations in this area.

The United Nations Committee on Economic, Social and Cultural Rights, which reviews states' compliance with the International Covenant on Economic, Social and Cultural Rights, has provided in its General Comment 4 on the right to adequate housing:

*"[T]he right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity [...] irrespective of income or access to economic resources. Secondly, the reference in article 11(1)<sup>4</sup> must be read as referring not just to housing but to adequate housing."*

Further, the European Court of Human Rights has held, as part of its binding case law, that housing can "concern rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community".<sup>5</sup> Article 8 of the European Convention on Human Rights secures protection encompassing a range of areas including but not limited to rights of

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<sup>2</sup> Article 47§1 of the Romanian Constitution: "The State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens."

<sup>3</sup> Sections 2 and 3 of the explanatory preamble to the Law on Rent.

<sup>4</sup> Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides: "The States Parties to the present Covenant recognise 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. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent."

<sup>5</sup> European Court of Human Rights, Decision in *Connors v. United Kingdom*, (Application no. 66746/01), 27 June 2004, para. 82.

access<sup>6</sup>, occupation<sup>7</sup>, and the right not to be expelled or evicted, and is thus intimately intertwined with the principle of legal security of tenure.<sup>8</sup> The Court has repeatedly found states including Romania in contravention of the Convention in cases involving substandard housing and related dignity issues.<sup>9</sup>

The European Committee of Social Rights, charged with oversight of the European Social Charter and Revised Charter, Europe's premiere social rights instruments, has elaborated extensively on the key role of housing in social protection, and has defined these as fundamental rights flowing to individuals as a result of the Charter and Revised Charter's binding force:

- Article 16 of the European Social Charter and Revised European Social Charter guarantees that “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development. With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.” Specifically with respect to the “social protection” aspects of housing, the Committee has held that “Article 16 requires states to assist families with childcare, housing, and appropriate social services.”<sup>10</sup>
- Article 30 of the Revised European Social Charter provides that “Everyone has the right to protection against poverty and social exclusion. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: (a) to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.”
- Article 31 of the Revised European Social Charter specifically guarantees the right to housing. Article 31(3) provides: “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to make the price of housing accessible to those without adequate resources.” The Committee has interpreted this provision to mean: “An adequate supply of affordable housing must be ensured. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. It is incumbent on states to:
  - adopt appropriate measures for the construction of housing, in particular social housing; ensure access to social housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.
  - introduce housing benefits for low-income and disadvantaged sections of the population. Housing allowance is an individual right: all qualifying households

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<sup>6</sup> *Wiggins v. United Kingdom*, No. 7456/76, 13 D & R 40 (1978).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Cyprus v. Turkey*, 4 EHRR 482 (1976).

<sup>9</sup> See for example *Lopez Astra v. Spain*, decision of 23 November 1994.

<sup>10</sup> See Council of Europe, European Committee of Social Rights, *Digest of the Case Law of the ECSR*, March 2005, p.148.

must receive it in practice; legal remedies must be available in case of refusal.”<sup>11</sup>

The Committee has further held that, “Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.”<sup>12</sup>

Furthermore, concerning Romania’s compliance with European Union processes, housing has comprised a key component of the European Union’s social inclusion policy frameworks under the so-called “Lisbon Strategy”, adopted at the Lisbon European Council in 2000. The first Joint Report on Social Inclusion, adopted in December 2001 and presented at the Laeken-Brussels European Council, stressed that for all EU Member States, the need to guarantee everyone access to decent housing was one of the eight core challenges of their policies against poverty and social exclusion: “Access to good quality and affordable accommodation is a fundamental need and right. Ensuring that this need is met is still a significant challenge in a number of Member States. In addition, developing appropriate integrated responses both to prevent and address homelessness is another essential challenge for some countries.” Subsequent reports have elaborated from that starting point.

As part of a recent assessment with Romania’s compliance with its European Social Charter obligations, the European Committee of Social Rights expressed concern that since the Government has sold a considerable part of its housing stock to private owners since 1990, most of the dwellings available in Romania are privately owned, which makes it very difficult to cope with urgent demand of housing at low rental. Furthermore, the Committee noted that it was not aware of any specific measures to take steps to fill the gap of the lack of adequate housing for families. The Committee singled out the situation of the Romani families as a particular source of concern. According to the Committee, the supply of housing appropriate to the size and needs of Romani families is inadequate, and Roma continue to suffer discrimination and to be driven out to the edges of cities.

According to World Bank data dating from 2005, 12.7% of the Romanian population lived below the poverty threshold of 2 USD/day<sup>13</sup>. Some sectors of the population have been particularly hit by the transition from communism. According to recent data published by the Open Society Foundation, 8% of the Roma living in urban areas and 3% of those living in rural areas live in abandoned/improvised housing (as opposed to 0% of the majority population).<sup>14</sup> The average income of a Romani individual in October 2007 was of 150 ROL, as opposed to 370 ROL – the income of an individual belonging to the majority group. 29% of the Romani households in Romania had an irregular status, as opposed to 17% of the majority population.

Should the current bill be adopted, the Government would effectively abdicate its responsibilities toward poor persons unable on their own to access adequate housing on the mainstream market.

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<sup>11</sup> See Digest of the Case Law of the ECSR, Op.cit., p. 224.

<sup>12</sup> Ibid.

<sup>13</sup> <<http://www.worldbank.org.ro/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ROMANIAEXTN/0,,menuPK:287320~pagePK:141132~piPK:141109~theSitePK:275154,00.html>>

<sup>14</sup> Open Society Foundation, Roma Inclusion Barometer, 2007, available at [http://www.osf.ro/ro/documente.php?id\\_document=365](http://www.osf.ro/ro/documente.php?id_document=365)

## **2. Definition of “Household”**

The definition of a “household”<sup>15</sup> is problematic in the current draft bill since it includes conditions related to the existence of family ties between the members of a household, as well as to the fact that members of the household have to be legally registered at the respective address. Many Romani families live in consensual, common law or traditional marriages and therefore would not comply with the legal definition of household included here. On the other hand, as also evidenced from the statistical data included above, Roma tend to live in informal/illegal settlements. As a result, they run the risk of being excluded from goods or entitlements that are defined or linked by reference to “households”, such as social housing itself.

## **3. Provisions on Eviction**

A particularly harmful provision of the current draft bill is the third paragraph of Article 22, which regulates the eviction of those persons who occupy houses without a lease contract. According to this paragraph, such persons may be evicted based simply on a request filed by the owner or his/her representative “without prior notice, and without the obligation to provide, in any form, alternative accommodation”. At present, under Romanian domestic law, any eviction request is subject to court scrutiny in adversarial proceedings, regardless of the status of the persons whose eviction was sought. The proposed expedited eviction procedure would not contain any safeguards for protecting the rights of all parties involved, and is open to abuses with very damaging impact on marginalized groups such as the Roma.

The proposed procedures contravene a number of aspects of international law. The Committee on Economic, Social and Cultural Rights and related relevant international oversight bodies have held that forced evictions constitute a primary harm in the context of Article 11 and related law. An eviction is “forced” and therefore illegal under international human rights law if: (i) due process is not observed; (ii) alternate accommodation is not provided; and/or (iii) any form of discrimination infects procedures or outcomes. The current draft of the proposed Law on Rent would both eviscerate all due process guarantees, as well as the requirement to provide alternate accommodation, so as to avoid homelessness. Aggregate obligations in this area include not only that a state respect and protect the rights at issue (in this case the right to adequate housing), but that a state act to fulfil them. It is difficult to see how the Romanian state might meet this requirement while simultaneously removing two key levels of protection central to exercising the right at issue.

## **4. Concept of Social Housing**

The Law on Rents operates a major overhaul of the social housing system in Romania, which is currently regulated by Law 114/1996 on Housing. In the preamble to the law, the authors confusingly explain that, should the draft Law on Rent be adopted, there will no longer be any housing formally designated as “social housing”. Rather, housing available on the market will be rented to marginalized families and the rent will be subsidized by the state<sup>16</sup>. The apparent underlying rationale of the law is that once rents charged from socially marginalized families is at the level practiced on the open market, it should become attractive for private and public investors, who would then have an incentive to invest in social housing.

The scheme introduced by the Government is not likely to work for several reasons. The rent charged from poor families is supposed to be “moderate”<sup>17</sup> in quantum, i.e. it should cover the

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<sup>15</sup> Article 2§1 p)

<sup>16</sup> Section 2 of the explanatory preamble to the Law on Rents

<sup>17</sup> Article 53§1 c).

very least the costs incurred by the owner with maintaining the building. At the same time, in order to become attractive for private owners, it has to be profitable<sup>18</sup>. It cannot, however, under the terms of the draft bill, be so profitable as to become “speculative”<sup>19</sup>. The likely consequence of this legislative imprecision is that it will be impossible to keep rent at a low (“moderate”) level, due to market forces. On the contrary, owners will seek to maximize their profit. As a result, the amounts required for subsidizing rents for the many impoverished families in Romania will be so considerable, that, as currently envisaged, it is likely that the scheme would collapse. Another likely scenario is that the scheme will encourage favoritism and corruption, as a large number of people who would not otherwise be entitled to the advantages offered by the law will attempt to take advantage of them.

In addition, the sources for subsidized rent are not clearly identified in the draft law. In the government’s conception, significant funding support for social housing would be provided by non-governmental organisations and/or other charitable agencies. However, the subsidies required would appear to be beyond the means of the state itself, let alone the civil sector.

Current Romanian domestic law binds local governments to develop and invest in social housing, and requires the central government to allocate funds annually for building social housing<sup>20</sup>. There are no such obligations in the present draft bill. It is unclear why private investors would choose to build and rent social housing with insignificant profit given the massive shortage of housing on the market in Romania, likely to be aggravated by the migration of the rural population to urban areas. The obligation of local and central government to subsidize rents is insufficiently precise and is not binding in the draft bill.

Here again, these concerns give serious rise to whether Romania would comply with international law were the draft bill adopted in its present form. The United Nations Committee on Economic, Social and Cultural Rights has, in Article 14 of General Comment 4 on the right to adequate housing specified has allowed that: “Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate.” However, the Committee has specified that strategies to encourage private participation in the provision of affordable housing must not neglect the fact that the State is legally obligated to demonstrate that the aggregate of public and private sector measures “...are sufficient to realize the right [to adequate housing] for every individual in the shortest possible time in accordance with the maximum of available resources.”<sup>21</sup>

## **Conclusion**

As noted in detail above, although the objective of facilitating private and public investment in social housing is laudable, the law’s most likely outcome will effectively be to dismantle social housing altogether, leaving the poor to fend for themselves. If adopted, such acts would render highly questionable Romania’s compliance with international law.

The ERRC and COHRE urge you to withdraw the present draft altogether. A sweeping reform of legislation in the field of housing in Romania is sorely needed. This reform should however not be piecemeal, but rather be comprehensive, with all relevant laws (including the Housing Law, the Law on Rental and the Law for Preventing and Combating Social

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<sup>18</sup> Section 2 of the introductory preamble to the Law on Rents.

<sup>19</sup> *Idem*.


<sup>20</sup> Law 114/1996 on Housing.

<sup>21</sup> Office of the High Commissioner for Human Rights, *The right to adequate housing (Art.11 (1))*: . 13/12/91. CESCR General comment 4. (General Comments), para. 14.

Marginalization) examined at the same time. Moreover, any such reform must ensure that all of Romania's international law obligations are upheld.

As noted above, we stand ready and willing to assist with the elaboration of a bill more likely to secure Romania's compliance with international human rights law, as well as with European social inclusion objectives.

Sincerely,



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