

Application Number 6142/16

Third-Party Intervention of the European Roma Rights Centre

1. The European Roma Rights Centre (“ERRC”) submits these comments in accordance with the permission granted by the President of the Section.
2. In order to assist the Court in summarising the intervention for inclusion in the judgment, the ERRC has prepared the following summary:

The ERRC said that the time had come for the Court to use the term “antigypsyism” to describe the specific forms of discrimination that Roma face, citing, in particular, the use of the term in the recent recommendation of the Committee of Ministers of the Council of Europe to the member States on improving access to justice for Roma and Travellers (CM/Rec(2017)10). The ERRC explained how as a result of historical and ongoing antigypsyism, Roma are poor and socially excluded. The ERRC provided data about poverty and the housing situation of Roma across Europe and about the close relationship between this situation and discrimination against Roma. Instead of being viewed as the product of a long history of exclusion, the housing conditions of Roma were instead, in keeping with stereotypes common to antigypsyism, commonly taken as “evidence” of a culture or lifestyle that is incompatible with that of the majority population. This stereotype must be named and contested. See Judge Motoc’s concurring opinion in *Carvalho Pinto de Sousa Morais v Portugal* (2017), §§ 12-19. The ERRC went on to describe the crisis of forced evictions of Roma in Europe, providing data from Albania, France, Hungary, Italy, the former Yugoslav Republic of Macedonia, Romania, Slovakia, and Serbia. The ERRC urged the Court to view and describe the widespread forced evictions of Roma in Europe as a manifestation of antigypsyism and a form of intimidation and population control of Romani people. Failing to see forced evictions of Roma as a manifestation of antigypsyism would risk seeing these events through the eyes of discriminators, who blame the Romani people they are evicting and ignore the circumstances that have left Roma vulnerable to eviction. The ERRC noted the importance of addressing forced eviction of Roma under Article 14 of the Convention, and not treating such events on an equal footing with other evictions. The ERRC proposed that the following principles should apply when examining complaints about forced evictions of Roma under Article 14 taken with Article 8 of the Convention: the Court must determine whether forced evictions of Roma amount to racial harassment, that is, unwanted conduct related to racial or ethnic origin that takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment; when a particular eviction only affects Roma, the notion of indirect discrimination is automatically applicable and the burden of proof shifts to the Respondent State; and discriminatory statements by anyone connected to the eviction (particularly State officials and nearby residents) are evidence of harassment and direct discrimination. The ERRC also submitted that the following principles, if made explicit in the Court’s case law, would solidify the convergence between existing case-law on Article 8 and the relevant international standards: people facing eviction must have access to remedies with automatic suspensive effect; the decision process leading to the eviction must meet certain minimum criteria; and the nationality and residence status of those being evicted is irrelevant.

A. The time has come for the Court to use the term “antigypsyism”

3. As the UN Special Rapporteur on Minority Issues has put it, “*While ... the reasons for the marginalization of Roma are complex..., an overreaching factor is the deeply embedded social and structural discrimination Roma face worldwide, including anti-Gypsyism*”.¹ The word “antigypsyism” (which is spelled with or without a hyphen) is now widely used by intergovernmental institutions to describe the specific forms of discrimination Romani people face. The Committee of Ministers used the word eight times in its recently approved recommendation to the member States on improving access to justice for Roma and Travellers in Europe.² The time has come for the Court to use the term as well.

4. According to the European Commission Against Racism and Intolerance, “*anti-Gypsyism*” is “*a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination*”.³ The Alliance Against Antigypsyism, of which the ERRC is a member, defines the concept as follows:

*Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma ‘gypsy’ or other related terms, and incorporates: 1. a homogenizing and essentializing perception and description of these groups; 2. the attribution of specific characteristics to them; 3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages.*⁴

B. As a result of historical and ongoing antigypsyism, Roma are poor and socially excluded

5. As a consequence of centuries of exclusion and discrimination linked to antigypsyism – including slavery in Romania that only ended towards the end of the 19th century⁵ – Roma are Europe’s most economically and socially excluded ethnic minority. The fact that many Roma live in informal housing, leaving them vulnerable to forced evictions, is not a “natural” or merely unfortunate phenomenon; it is one of the clearest manifestations of antigypsyism in Europe today.

6. A recently published EUROCITIES report⁶ details how Roma face a higher risk of poverty, experience more severe forms of poverty, and are more likely to be born into poverty. Roma are more likely to live in overcrowded and precarious housing. Roma are also more likely to be unemployed and are at higher risk of certain health conditions. The report rightly stresses how these challenges are interdependent, and discrimination is a factor common to all of them.

¹ UN General Assembly, A/HRC/29/24, 11 May 2015, *Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism*.

² CM/Rec(2017)10, adopted on 17 October 2017.

³ General Policy Recommendation No.13, CRI(2011)37.

⁴ The Alliance’s paper, published in June 2016 and updated in June 2017, can be downloaded at www.antigypsyism.eu.

⁵ See, e.g., Viorel Achim, *ROMA IN ROMANIAN HISTORY* (Central European University Press 1998).

⁶ EUROCITIES, *Roma Inclusion in cities – Mapping of the situation of Roma in cities in Europe*, 17 October 2017, available at <http://www.eurocities.eu/eurocities/documents/EUROCITIES-report-maps-the-situation-of-Roma-in-cities-in-Europe-WSPO-AS8CQ2>

7. Many Roma from the European Union's newest Member States are living in worse material conditions than when their countries joined the Union in the 2000s.⁷ A survey by the European Union Fundamental Rights Agency ("FRA") of over 16,000 Romani households in 11 EU Member States found that 90% of Roma surveyed had an income below the national poverty threshold and more than half lived in segregated areas in housing that fell below minimum housing standards.⁸ FRA also found that 40% of Romani children lived in households struggling with malnutrition and hunger. According to data collected by the United Nations Development Programme ("UNDP"), Roma are twice as likely as their non-Roma neighbours to be unemployed.⁹ UNDP found that lower levels of educational achievement among Roma could not explain this gap: after controlling for education and experience levels, Roma are still less likely to be employed and receive lower wages compared with non-Roma. In fact, the gap between the unemployment rates of Roma and non-Roma was largest for those with the highest levels of education. UNDP found that an increase in Roma educational participation from 2004 to 2011 had not led to a corresponding increase in relative employment prospects.

8. In Eastern Europe, 71% of Roma live in deep poverty.¹⁰ In **Romania**, Roma are three times more likely to be born into poverty than other Romanians and have a life-expectancy at least six years lower than non-Roma;¹¹ the ERRC's own research revealed a 16-year life-expectancy gap.¹² Ninety percent of Roma live in households facing severe material deprivation. Only 32% of Romani children are enrolled in preschool, compared with 77% of their non-Roma neighbours, and only 10% of Roma complete secondary education, compared with 58% of non-Roma. The employment rates for non-Roma in Romania are 66% for working-age men and 53% for women; yet only 42% of working-age Romani men and 19% of women have jobs, including jobs in the informal sector. Employed Roma earn a fraction of what their non-Roma neighbours earn: the labour income of Romani men is only 20% of that of the general population and for Romani women it is only 12%. The World Bank has concluded that Roma in Romania have the same desire to work as their non-Roma neighbours, but, because of barriers including educational disparities and discrimination, Roma "*do not have access to the tools that could help them escape poverty*".¹³ Roma in **Bulgaria** live in similarly severe poverty. UNICEF research has found that 92% of Romani children in Bulgaria are living in poverty, more than twice the percentage of non-Roma

⁷ George Soros, *Europe Needs a Roma Working Class*, THE GUARDIAN (26 November 2015), available at <https://www.theguardian.com/business/2013/nov/26/europe-roma-working-class-george-soros>

⁸ FRA, *Poverty and Employment: The Situation of the Roma in 11 EU Member States* (2011), available at http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-employment_en.pdf.

⁹ Niall O'Higgins, United Nations Development Programme Roma Inclusion Working Papers, *Roma and non-Roma in the Labour Market in Central and South Eastern Europe* (2012), available at <http://www.aiel.it/Old/bacheca/Capua/papers/OHiggins1.pdf>.

¹⁰ The World Bank, *Brief: Roma* (24 February 2015), available at <http://www.worldbank.org/en/region/eca/brief/roma>.

¹¹ The World Bank, *Breaking the Cycle of Exclusion for Roma in Romania* (7 April 2014), available at <http://www.worldbank.org/en/news/feature/2014/04/07/breaking-the-cycle-of-exclusion-for-roma-in-romania>.

¹² European Roma Rights Centre, *Hidden Health Crisis: Health Inequalities and Disaggregated Data* (2013), available at <http://www.errc.org/cms/upload/file/hidden-health-crisis-31-october-2013.pdf>, page 6: "*the cumulative effect of susceptibility to a variety of conditions leads to the outcome that Roma die 16 years younger and live less healthy lives overall*".

¹³ See above, note 11, page 9.

children.¹⁴ Eighty-five percent of Roma aged 18-25 in Bulgaria have not completed secondary education, compared with 32% of non-Roma. Roma life expectancy rates are more than 10 years below the average life expectancy in Bulgaria. Only 33% of Romani people with a primary education are employed, more than 10 percentage points lower than the average for similarly educated non-Roma. The European Commission Against Racism and Intolerance (“ECRI”) has described Roma as one of “*the main targets of racist hate speech*” in Bulgaria.¹⁵

9. This situation is no accident. It is the product of accumulated generations of exclusion promoted, ignored, and/or left to fester by officials. The results are peculiar patterns of residential settlement that reflect Romani poverty. To give just a few examples:

- a. A survey conducted by UNDP in 2011 shows that 35% of Roma in **Hungary** live in insecure housing conditions; 18% of Roma in Hungary do not have access to an improved water source, and based on the available data, 72% of Roma live in segregated neighbourhoods.¹⁶
- b. **Italy** has gone so far as to establish official “camps” for Roma. These camps are racial ghettos with substandard living conditions and with inadequate access to water and electricity. A domestic court in Italy has condemned one of these camps as violating domestic and EU anti-discrimination laws.¹⁷
- c. In **Macedonia**, ECRI recently reported that “*In spite of 10% of new social housing units being reserved for Roma (see § 62), the housing problem has not been resolved and around 28% of Roma still live in informal settlements, such as Cicino Selo near Skopje, the living conditions of which have been criticised by the Ombudsman*”.¹⁸
- d. According to the 2015 Roma Inclusion Index, 16% of Roma in **Serbia** have no drinking water at home and 3% do not have electricity. Sixty-five percent of Roma in Serbia live in segregated neighbourhoods. In many cases Roma do not have valid property documentation for their homes.¹⁹

10. The situation of Roma in **Poland** is no exception. The UN Committee on the Elimination of Racial Discrimination (“the CERD Committee”) expressed its concern regarding the high rate of school dropout, the large number of Romani children in special schools, continuing negative stereotypes and discrimination, as well as barriers that prevent Roma from accessing the labour market. The CERD Committee highlighted the poor living conditions of Roma, including de facto segregation and threats of eviction.²⁰ The UN Committee on the Rights of the Child has expressed its concerns about the situation of

¹⁴ Ron Haskins, *Helping the Roma in Bulgaria: Recommendations to the Board of America for Bulgaria Foundation* (2011), available at https://www.brookings.edu/wp-content/uploads/2016/06/0819_roma_haskins.pdf.

¹⁵ ECRI, *Report on Bulgaria*, CRI(2014)36, page 15.

¹⁶ Tatjana Peric, *The Housing Situation of Roma Communities*, available at <http://www.undp.org/content/dam/rbec/docs/Policy-brief-Roma-housing.pdf>; Decade of Roma Inclusion, *Roma Inclusion Index 2015*, available at <http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>.

¹⁷ The decision was taken by the Court of Rome on 4 June 2015. Information is available in English at <http://www.errc.org/cms/upload/file/la-barbuta-asgi-v-roma-capitale-court-decision.pdf>.

¹⁸ ECRI *Report on the Former Yugoslav Republic of Macedonia* (fifth monitoring cycle), CRI(2016)21, § 66.

¹⁹ Decade of Roma Inclusion, *Roma Inclusion Index 2015*, available at <http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

²⁰ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twentieth and twenty-first periodic reports of Poland*, CERD/C/POL/CO/2021, 19 March 2014

Roma in Poland, in particular with reference to: stigma and discrimination against Roma, resulting in violence and hate speech; forced evictions of Romani families with children living in informal communities; and difficulties faced by Romani migrant children from Romania in accessing social protection services and social integration programmes.²¹ In its report on Poland, ECRI²² relied on the opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities adopted in November 2013. The latter report²³ described an alarming situation facing Romani children in schools (including overrepresentation in special schools), a high unemployment rate (30% for Roma compared to 11% nationwide), discrimination in access to social housing and healthcare, racial profiling by police, discriminatory attitudes from the administration and law enforcement, and biased media reporting that has on occasion turned local conflicts violent. The report also pointed to cases of planned evictions of Romanian Roma as indicative of discrimination and a lack of social integration strategies.

11. Instead of being viewed as the product of a long history of exclusion, the housing conditions of Roma are instead adduced as “evidence” of a culture or lifestyle that is incompatible with the culture of the majority population. This stereotype is a significant trope of antigypsyism which must be named and contested. See Judge Motoc’s concurring opinion in *Carvalho Pinto de Sousa Morais v Portugal* (2017), §§ 12-19. Forcibly evicting Roma from their homes taps into deep-rooted, long-standing, vicious racist stereotypes about Roma.

C. The crisis of forced eviction in Europe is a manifestation of antigypsyism

12. Perhaps the most visible manifestation of antigypsyism is the acute crisis of forced evictions. Below is a non-exhaustive list of practices that fly in the face of the Court’s case law (particularly the principles set out in *Winterstein v France* (2013), §§ 148, 159):

- a. **In Albania**, many Roma have been unable to regularise their homes under the 2014 law on the legalisation of property, which allowed “illegal constructions” to be demolished. In July 2015, seventy families’ houses were demolished in Selita, Tirana, during a forced eviction to make way for road construction; most of those affected were Romani people.²⁴
- b. **In France**, the ERRC, along with the Ligue des droits de l’homme, another NGO, carries out an annual census of forced evictions of Roma. In the past several years tens of thousands of Romani people have been forcibly evicted from their homes there; most are citizens of Bulgaria or Romania.²⁵ The impact on individual lives is devastating. As a general rule, the authorities do not conduct any social assessment of those being evicted, they do not provide social support, and,

²¹ Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Poland*, CRC/C/POL/CO/3-4, 30 October 2015, §§ 46-47

²² ECRI *Report on Poland* (fifth monitoring cycle), CRI(2015)20, §§ 66-78.

²³ See also Amnesty International *Threats of forced evictions to Roma continue* (28 June 2013), available at https://ua.amnesty.ch/urgent-actions/2013/04/083-13/083-13-1?ua_language=en.

²⁴ More information can be found at <http://www.errc.org/cms/upload/file/submission-on-roma-inclusion-in-enlargement-countries-may-2017.pdf>.

²⁵ Our 2017 census was released on 6 February 2018 and is available at <http://www.errc.org/cms/upload/file/france-evictions-census-2017.pdf>. It includes data from previous years.

crucially, they usually do not offer those evicted alternative accommodation. Some evictions happen following a court order, but many take place on the basis of administrative decisions that have not been reviewed by judges. These evictions, in the ERRC's view, reflect a climate of antigypsyism in France. For example, at the height of forced evictions of Roma in autumn 2013, France's Interior Minister (who later became Prime Minister) publicly declared that Roma cannot integrate and are "*destined to return to Romania and Bulgaria*".²⁶

- c. **In Hungary**, in the city of Miskolc, the authorities have been taking measures for the past several years to evict residents of so-called "low-comfort" social housing.²⁷ These residents are overwhelmingly Roma. The municipal ordinance put in place to evict them was designed not only to evict the residents from their homes but to ensure that they resettled outside Miskolc. The ERRC complained to the European Commission about this matter and the Hungarian Supreme Court quashed the municipal ordinance as discriminatory,²⁸ but evictions continue.
- d. **In Italy**, Roma are under constant threat of eviction and are often victims of repeated evictions. Usually no alternative accommodation is provided. When offered, solutions are racially segregated and substandard, not providing any prospect of decent living conditions or social inclusion. In Milan, according to data provided by the municipality, 1,284 evictions took place between 2013 and 2015. In Rome, between 2013 and 2015, 168 forced evictions occurred which affected around 4,000 Romani people.²⁹ Between November 2016 and June 2017, civil society monitored 28 forced evictions which affected approximately 500 Romani people.³⁰ In Naples, in 2017 the ERRC monitored the eviction of around 1,300 Roma living in informal housing. Of those 1,300 people, only around 130 were offered alternative accommodation in a segregated container camp. The others were left homeless and repeatedly evicted from one location to another.³¹ Similar evictions have occurred in other Italian cities such as Turin, Cosenza, and Foggia.³²
- e. **In Macedonia**, there is widespread racial segregation and 28% of Roma live in informal housing,³³ making them an easy target for forced evictions. On 1 August 2016, for instance, approximately 130 Roma, including 70 children, were evicted without any previous warning or notice. Some of those

²⁶ See Romeurope's report from 2012-13, available at

http://www.romeurope.org/IMG/pdf/rapport_2012_2013_cndh_romeurope.pdf.

²⁷ More information can be found at <http://www.errc.org/article/hungarian-city-set-to-expel-its-roma/4293>.

²⁸ More information can be found at <http://www.errc.org/blog/miskolc-mayor-remains-defiant-on-roma-evictions-despite-latest-court-ruling/96>.

²⁹ See ERRC, Parallel Report for Consideration by the Human Rights Committee at its 117th session (20 June – 15 July 2016), available at <http://www.errc.org/cms/upload/file/italy-iccpr-25-april-2016.pdf>.

³⁰ See Associazione 21 Luglio, *Il Ritorno delle Ruspe* (July 2017), available at <http://www.21luglio.org/21luglio/wp-content/uploads/2017/07/IL-RITORNO-DELLE-RUSPE.pdf>.

³¹ More information can be found at <http://www.errc.org/article/italy-around-150-roma-in-naples-again-at-risk-forced-eviction--homelessness/4588>.

³² More information can be found at <http://www.errc.org/cms/upload/file/italy-iccpr-8-february-2017.pdf> and <http://www.errc.org/article/eu-executive-fails-to-act-as-pregnant-romani-women-and-infants-are-rendered-homeless-in-italy/4583>.

³³ See above, note 18.

evicted were pregnant women; some of the children evicted were infants. Most of them had been living there for nine years.³⁴

- f. **In Romania**, the ERRC is aware of a number of recent forced evictions or threats of eviction. Local authorities often demolish houses for lack of building permits, claiming that this does not constitute an eviction (Cluj in 2010 and 2013, Baia Mare in 2012 and 2013, and Eforie Sud in 2013). According to Romanian law, authorities may demolish informal housing built on public land without notice or prior judicial proceedings. Local authorities often neglect their legal obligation to maintain and repair housing leased to Roma and then rely on safety concerns as an excuse to evict the tenants (Iași 2013, Bucharest 2013). Authorities have either failed to provide alternative accommodation or have provided inadequate housing at the periphery of the city, often in environmentally hazardous places (Baia Mare in 2012, Cluj in 2010, Tulcea in 2006, and Miercurea Ciuc in 2004).
- g. **In Slovakia** the movement “Let’s wake up!” (*Zobud’me sa!*) was set up in 2011 and collected the signatures of 402 mayors of Slovak towns and villages. It aspires to coordinate the demolition of Romani neighbourhoods in members’ municipalities, defining them as illegal waste dumps. The description section of the movement’s website³⁵ stated: *“For us, illegal settlements in the outskirts of towns are just ‘black’ [i.e. illegal] waste dumps and illegal constructions whose owners violate valid laws and the constitutionally guaranteed right to protection of property. Gentlemen, state officials, do not therefore expect anything else but that we will involve cleaning machinery and bulldozers in the process, if you finally will not wake up!”* According to ERRC monitoring, approximately 250 Romani individuals have been evicted from their homes since 2011 in three evictions linked to the movement. Those evicted have not been provided with alternative accommodation.
- h. **In Serbia**, in early 2012, approximately one thousand Romani people living in the Belvil district of Belgrade were evicted from their homes. Those who had registered addresses outside Belgrade were taken to the municipalities where they were registered, even though some had not been there for many years. Many were rehoused in degrading conditions, notably in Niš. Those who were able to remain in Belgrade were often rehoused in metal containers. The ERRC and other NGOs complained about the failure to meet international standards on forced evictions.³⁶

13. The crisis of forced evictions of Roma in Europe is now a major preoccupation of intergovernmental actors. The United Nations Office of the High Commissioner on Human Rights, the Organization for Security and Cooperation in Europe, the European Network of Equality Bodies, the European Network of National Human Rights Institutions, the European Union Fundamental Rights Agency, and the Council of Europe issued a joint statement on 29 June 2016 expressing concern about forced evictions of Roma and Travellers, reminding States of their legal obligations. The statement recalls the human rights obligations

³⁴ There is a case pending before the Court about this eviction: *Bekir and others v Macedonia* (application number 46889/16).

³⁵ The organisation’s website was previously located at <http://www.zobudmesa.sk>, although the website appears now to have been disabled.

³⁶ More information can be found at <http://www.errc.org/article/serbia-romani-families-face-uncertain-future-one-year-after-forced-eviction-of-belvil-informal-settlement/4135>.

of national and local authorities, stressing that forced evictions are only permitted in “*the most exceptional circumstances*” and urging States to find long-term solutions to the accommodation problems that Roma and Travellers face.³⁷ The Council of Europe Commissioner for Human Rights has expressed his concern about the issue and published an article entitled “Roma Evictions: Europe’s Silent Scandal”.³⁸ He also wrote to ministers in Albania, Bulgaria, France, Hungary, Italy, Serbia, and Sweden in early 2016 expressing concerns about forced evictions of Roma.³⁹

14. When Roma are forced from their homes or are threatened with eviction, they feel a link to a broader pattern of historical and ongoing exclusion. The Court has recognised this pattern, finding that, “*as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection*” (e.g. *Horváth and Kiss v Hungary* (2013), § 102). This applies a fortiori in the context of housing, where the authorities are directly “uprooting” Romani people. The ERRC urges the Court to view and describe the widespread forced evictions of Roma as a manifestation of antigypsyism. Forced evictions are a means of intimidation and population control of Roma. Such evictions are easily available to public authorities because of longstanding exclusion of and discrimination against Roma that has left Roma literally on the margins of cities and towns, living in places where they lack security of tenure, or any tenure at all. Any case where Roma are being evicted must be understood in this context of forced evictions across Europe. Otherwise, there is a risk of seeing these events through the eyes of discriminators, who blame the Romani people they are evicting and ignore the circumstances that have left Roma vulnerable to eviction.

D. The Court must consider discrimination when deciding whether forced evictions of Roma are compatible with the Convention

15. Forced evictions of Roma, like the misdiagnosis of Romani pupils as having intellectual disabilities, or violent crimes that have a specifically racist character, are “*particularly destructive of fundamental rights*” (*Sečić v Croatia* (2007), § 67) and must take into account the broader situation of Romani people in the country where they occur and in Europe in general. Treating evictions of Romani people on an equal footing with other evictions is not sufficient, a point the Court made in *Winterstein and others v France* (2013), § 159 when noting “*the necessity, in the event of the forced eviction of Roma and travellers, of providing them with alternative housing, except in cases of force majeure*”. The Court has already offered guidance on the application of Article 8 to forced evictions, but has not yet ruled on how to evaluate whether forced evictions amount to a breach of Article 14 taken with Article 8 or other provisions of the Convention.

³⁷ The statement can be found at http://www.equineteurope.org/IMG/pdf/opre_joint_statement_on_evictions_of_roma_and_travellers_in_europe_29_06_2016.pdf.

³⁸ The article, published on 29 June 2016, can be found at <https://www.opendemocracy.net/can-europe-make-it/nils-mui-nieks-michael-georg/roma-evictions-europes-silent-scandal>.

³⁹ The letters can be found at: <https://www.coe.int/en/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma>.

16. We respectfully submit, in the light of what is set out above, that evictions of Romani families must be analysed in the light of the Convention's protection against discrimination. In particular, we propose that the following principles apply:

a. **The Court must determine whether forced evictions of Roma amount to racial harassment.**

The Court has not yet had the opportunity (as far as the ERRC is aware) to apply the notion of "harassment" under Article 14 or Protocol no.12. It is a vital aspect of European anti-discrimination law which, like indirect discrimination, should be considered as a form of discrimination prohibited by the Convention. Harassment is defined in EU law (and therefore in domestic law throughout the EU) as occurring when "*an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment*".⁴⁰ A forced eviction is certainly "unwanted conduct", regardless of whether it has a basis in domestic law. As the material set out above shows, forced evictions have the effect of violating the dignity of Roma and creating the kind of environment to which this definition refers. Whether the conduct is "related to" ethnicity clearly does not require explicit racist intent; it is enough to show that Roma are targeted for such evictions, particularly in the racially hostile environment that exists for Roma in most of Europe. This is similar to the question of whether an action was "contaminated" by reference to a protected characteristic such as ethnicity; in accordance with the Court's case law, when an action is so "contaminated", that action is discriminatory, regardless of whether there were also legitimate reasons for taking it. *E.B. v France* (Grand Chamber, 2008), §§ 73, 80. Consideration of harassment does not require a comparator analysis.

b. **When a particular eviction only affects Roma, the notion of indirect discrimination is automatically applicable and the burden of proof shifts to the State.** As the Court pointed out in *Oršuš and others v Croatia* (2010), § 153, statistical evidence is not the only means of showing indirect discrimination; if a practice only affects Roma (even if not all Roma are affected), there is a case of indirect discrimination to answer. The same applies to forced evictions.

c. **Discriminatory statements by anyone connected to the eviction (particularly State officials and nearby residents) are evidence of harassment and direct discrimination.** The Court has already ruled on the relevance of discriminatory statements to a finding of discrimination (*Bączkowski v Poland* (2007), § 100), as has the Court of Justice of the European Union.⁴¹ Because of the position in which antigypsyism has left Roma, it can be difficult to find a direct comparator in cases of forced evictions of Romani people. The ERRC therefore urges the Court to pay particular attention to the statements of officials and non-Roma residents, whose views will have influenced those responsible for the eviction.

17. The ERRC further submits that the following principles, if made explicit in the Court's case law, would solidify the convergence between existing case-law on Article 8 and the relevant international standards:

⁴⁰ Directive 2000/43, Article 2 § 3.

⁴¹ Case C-54/07 *Firma Feryn*, judgment of 10 July 2008; Case C-81/12 *ACCEPT*, judgment of 25 April 2013.

- a. **People facing eviction must have access to remedies with automatic suspensive effect.** A three-judge committee of the Court found in 2016 that “*dans des circonstances exceptionnelles comme celles de la présente affaire, où les requérantes ont été confrontées à un risque soudain de perte de leur domicile, en application d’un acte de l’administration adopté sans aucune forme de contrôle judiciaire préalable et en l’absence d’une alternative de logement (voir Connors c. Royaume-Uni, no 66746/01, §§ 94-95, 27 mai 2004), l’absence de caractère suspensif d’un remède interne donné pourrait exempter le requérant de l’obligation d’épuiser les voies de recours internes et s’analyser sur le terrain de l’article 13 de la Convention*”. *Petrache and Tranca v Italy* (decision, 2016), § 30. This is a crucial point, in line with the idea that the loss of one’s home is a particularly serious breach of Article 8, placing on States a set of procedural obligations in cases of forced evictions. *Winterstein v France* (2013), § 148. The ERRC urges the Court to establish definitively in its case law that particularly vulnerable people facing eviction from their homes are entitled to a remedy with automatic suspensive effect, and that the failure to have in place such a remedy exempts them from exhausting domestic remedies and implies a violation of Article 8, taken on its own and/or with Article 13.
- b. **The decision process leading to the eviction must meet certain minimum criteria.** In order for the ‘*processus décisionnel ayant débouché sur des mesures d’ingérence*’ (*Winterstein*, § 148) to be just and to respect the rights of minority groups facing forced evictions, it must include, at a minimum: genuine consultation with the community; adequate and reasonable notice for those affected, in a language they can understand; information on the proposed eviction and, where applicable, on the alternative purpose for which the land or housing is to be used; and the presence of identified public officials at the eviction or demolition. These principles are set out in more detail in General Comment no.7 of the UN Committee on Economic, Social, and Cultural Rights,⁴² which the ERRC urges the Court to consider and cite.
- c. **The nationality and residence status of those being evicted is irrelevant.** The Court’s previous case law on evictions has generally dealt with forced evictions of people who have the nationality of the State in which they are residing. That factor has never been essential to the Court’s reasoning. It is important for the Court to clarify that the standards that apply in forced evictions are not affected by the nationality or residence status of those being evicted.

The European Roma Rights Centre
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⁴² E/1998/22, 20 May 1997.