

Dimitrova and others v Bulgaria (application no.39084/10)

**WRITTEN COMMENTS OF
THE EUROPEAN ROMA RIGHTS CENTRE
SUBMITTED PURSUANT TO ARTICLE 36 § 2
OF THE CONVENTION**

1. The European Roma Rights Centre (“ERRC”) submits these third-party observations in accordance with the permission granted by the President of the Section.

I. Summary of the Submission

2. These submissions address two matters: a comparative examination of remedies in discrimination cases in Europe; and the standards that apply to the determination of whether a forced eviction of Roma was discriminatory. This summary has been prepared to enable the Court to understand quickly the content of the ERRC’s intervention and to save time for the Court in preparing its own summary for inclusion in the judgment.
3. The ERRC notes that there is a lack of case law at European level on discrimination (particularly race discrimination) by public bodies. The Court rarely receives applications which disclose a violation of Article 14, and the Court of Justice of the European Union has decided very few cases concerning discrimination by public bodies. This lack of case law is at odds with the everyday reality of Europe’s largest ethnic minority, the Roma, who face widespread discrimination from public bodies, such as school segregation, housing segregation (including forced evictions and discriminatory social housing programmes), and police conduct symptomatic of institutional racism. The ERRC attributes the low number of cases at European level, and particularly before the Court, to the obstacles Roma and other minorities face in pursuing discrimination cases before domestic courts. Anti-discrimination law in Europe (particularly as embodied in the EU’s anti-discrimination legislation) is designed to overcome those obstacles, through mechanisms such as: the shift of the burden of proof onto the defendant once the claimant has raised a presumption of discrimination; the prohibition of indirect discrimination and of harassment; and the possibility for NGOs to act on behalf of victims of discrimination. In the ERRC’s experience, though, problems are particularly likely to arise for victims when they complain about discrimination by public bodies in proceedings before administrative courts, a natural forum in many countries for such claims. Based on a comparative analysis of the framework for anti-

discrimination claims in the administrative courts in Bulgaria and selected other EU Member States, the ERRC concludes that anti-discrimination proceedings in administrative courts are, in principle, a well-accepted feature of anti-discrimination litigation. The ERRC expects administrative judges hearing such discrimination cases to ensure that those claiming discrimination are able to do so, both by obeying the relevant provisions of domestic and/or EU law and by otherwise making all procedurally-allowable efforts to facilitate the task of the claimants.

4. The ERRC considers forced evictions of Roma to be one of the most severe expressions of anti-Gypsyism in Europe today, and has provided details of various cases of forced evictions in France, Italy, Romania, Slovakia, Hungary, and Serbia. Forced evictions of Roma amount to a crisis on par with school segregation and other severe human rights violations against Roma. Based on the Court's case law and principles of anti-discrimination law accepted across Europe, the ERRC proposes three principles to assist the Court in determining whether a forced eviction discloses a violation of Article 14 (read with Article 8 or with another provision of the Convention): when a particular eviction only affects Roma, the burden is on the State to show that the eviction does not amount to racial harassment; when a particular eviction only affects Roma, the notion of indirect discrimination is automatically applicable and the burden of proof shifts to the State to show that the eviction was not discriminatory; discriminatory statements by anyone connected to the eviction, particularly State officials and nearby residents, are evidence of harassment and direct discrimination.

II. A comparative examination of remedies in discrimination cases in Europe

a. The Lack of Discrimination Cases at European Level Concerning Public Bodies

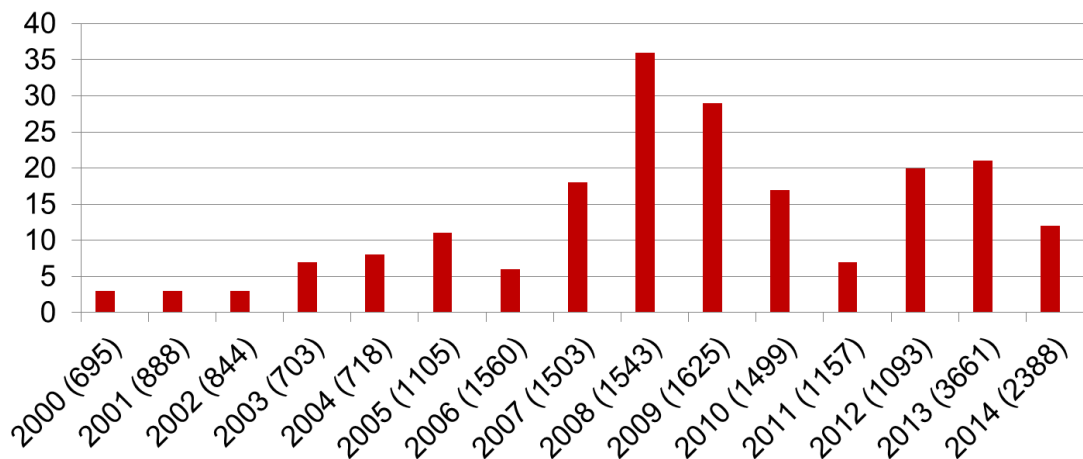
5. Anti-Gypsyism¹ is, sadly, an active force in Europe, manifesting itself in severe and varied forms of discrimination against Roma. As the UN Special Rapporteur on Minority Issues recently said, "*While... the reasons for the marginalization of Roma are complex..., an overarching factor is the deeply embedded social and structural discrimination Roma face worldwide, including anti-Gypsyism*".² The ERRC has been working with Roma to assert their right to be free from discrimination for nearly twenty years, mainly in matters concerning discrimination against Roma by public bodies. Cases of such discrimination abound, including racially-motivated police brutality, school segregation, and residential segregation (through forced evictions, discriminatory social housing criteria and other techniques).³ The ERRC's most difficult task remains choosing among the many cases of discrimination accompanying serious human rights violations in which to invest our scarce resources. The ERRC regularly sees cases of domestic authorities and courts struggling with and misapplying anti-discrimination norms in cases involving discrimination by public bodies.
6. Despite widespread discrimination against Roma by public bodies, very few such cases disclosing violations of anti-discrimination principles make it to the European courts (specifically, to this Court or to the Court of Justice of the European Union). As Roma are Europe's largest minority, and anti-Gypsyism is one of the most oppressive and widespread discriminatory ideologies in Europe, Roma suffer from the lack of case law at this level. The ERRC's experience shows that the reason for this lack of European-level case law is not that cases are resolved at domestic level. The ERRC's work supporting hundreds of discrimination cases around Europe reveals that domestic courts have serious difficulties understanding concepts such as indirect discrimination, harassment, and the shifting of the burden of proof, particularly in relation to public bodies. This compounds the non-judicial problems that hamper the taking of discrimination cases (and which anti-discrimination norms in particular were designed to minimise): victims' fear of retaliation; the difficulties in proving discriminatory intent; and intimidation from powerful discriminators.

¹ The ERRC recognises that not all Roma embrace the term "anti-Gypsyism", which incorporates a word many consider a racist epithet. The ERRC nonetheless relies on the term, particularly in the light of its adoption by various Council of Europe bodies, as capturing the ideology we exist to combat.

² 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".

³ The Court will find extensive, up-to-date information about violations of Roma rights at www.errc.org.

7. The ERRC, naturally, does not have in mind an appropriate number of discrimination cases that should be decided by the Court. The ERRC nonetheless notes that the Court very rarely receives applications which disclose a violation of Article 14, read in conjunction with other articles, as the table⁴ below shows:



8. The total number of judgments in a given year is next to the year in brackets; the bar indicates the number of judgments in any year finding a violation of Article 14. The percentage of cases in which a violation of Article 14 (on any ground) has been found is very small and highly inconsistent (i.e. the number of such judgments does not regularly rise or fall with the total number of Court judgments in a given year); in this fifteen-year period, the percentage of judgments finding a violation of Article 14 out of the total number of judgments delivered ranges from 0.3% to 2.6% in any given year. Of course an even smaller number of these concern Roma. The ERRC does not seek to draw any scientific conclusions from this data, but for Roma (and other minorities) the finding of a violation of Article 14 remains a rare event, at odds with their daily, lived experience of discrimination and their unsuccessful struggle to secure justice in domestic courts.
9. In brief, it is surprising within the Roma rights movement, given the current state of Roma rights around Europe, how seldom the Court is called upon to find that Roma have been victims of a violation of Article 14, read with other provisions of the Convention. The ERRC's explanation, based on our experience, is that the obstacles at domestic level to raising discrimination cases are so great as to prevent such cases from reaching the Court. In some cases, the Court has also found that it is not necessary to consider violations affecting Roma in the light of Article 14. See, e.g., *V.C. v Slovakia* (2011), §§ 176-180. The ERRC understands that this is because of the way the cases have developed domestically: the focus has been on other aspects of the case, and discrimination issues have not been aired at domestic level, usually, in our view, because of the difficulties Roma have had in asserting their right to be free from discrimination before the domestic courts.
10. The experience in Strasbourg is reflected within the European Union legal order and at the Luxembourg court in particular. The instrument of EU law that governs discrimination by public bodies is Directive 2000/43 (the Racial Equality Directive), which requires Member States to prohibit race discrimination in a range of areas (including housing, education, and social protection) by public and private actors. EU Directive 2000/78 also requires Member States to prohibit discrimination in employment on a wider range of grounds, including race. The EU's Fundamental Rights Agency (FRA) has found the application of the EU's Racial Equality Directive problematic. In a 2012 report,⁵ FRA found that awareness of the anti-discrimination framework among minorities is low, making

⁴ The data from 2011 onwards is taken from the Court's "facts and figures" publications. The data from before 2011 was extracted from HUDOC.

⁵ "The Racial Equality Directive: applications and challenges", available at <http://fra.europa.eu/en/publication/2012/racial-equality-directive-application-and-challenges>.

cases where victims pursue justice rare. FRA found that various factors contribute to the reluctance to use complaints procedures: *“legal costs; fear of negative consequences; a perception that the situation would not alter; a tolerance of or failure to recognise discrimination”*. In a 2014 report,⁶ the European Commission also described ongoing “challenges” with “implementation and application” of the EU’s non-discrimination directives with transposition of the Directive. The Open Society Justice Initiative, an NGO, submitted extensive comments to the European Commission in 2012 on problems with application of the Directive.⁷ Naturally, when domestic courts thwart attempts by Roma and other minorities to assert such rights, for example by ignoring discrimination claims against a public body, they exacerbate these problems.

11. Despite widespread violations of Roma rights and the rights of other ethnic minorities by public bodies in the EU, and the difficulties domestic courts have in applying anti-discrimination law, there have only been only two cases referred by national courts to the Court of Justice of the EU about race and ethnicity discrimination by public bodies⁸:
 - a. Case C-391/09 (finding that decisions restricting the way names could be entered into State registries do not fall within the scope of the EU’s Racial Equality Directive).
 - b. Case C-571/10 (confirming that discrimination against someone on the basis of his status as a third-country national does not fall within the scope of the EU’s Racial Equality Directive).

A case (Case C-83/14) about discrimination against Roma in Bulgaria by the monopoly electricity provider in the region is also pending before the Court of Justice. The questions addressed to the Court of Justice indicate the difficulties and novelty of applying anti-discrimination legislation in Bulgaria. The Advocate General has already delivered her Opinion in the matter on 12 March 2015. The European Commission has also recently started infringement proceedings against the Czech Republic and Slovakia for school segregation.⁹ It is surprising to those within the Roma rights movement that few cases about the widespread forms of discrimination Roma face from public bodies would have been referred to the Court of Justice, given the difficulty of applying many aspects of the Racial Equality Directive. The ERRC sees this as a symptom of the various difficulties Roma have in securing access to justice in national courts for discrimination.

b. Remedies in Discrimination Cases against Public Bodies at Domestic Level

12. The ERRC recalls the most salient procedural aspects of discrimination law in Europe which facilitate the bringing of cases by victims, and the corresponding provision of the Racial Equality Directive:
 - a. shifting the burden of proof onto the defendant once the person alleging discrimination has shown facts that give rise to a presumption of discrimination (Article 8 of the Racial Equality Directive);
 - b. allowing plaintiffs to claim indirect discrimination in the absence of evidence of direct discrimination (Article 2(2)(b) of the Racial Equality Directive);
 - c. allowing plaintiffs to claim harassment, a form of discrimination that does not require a comparator analysis (Article 2(3) of the Racial Equality Directive);
 - d. allowing NGOs with a legitimate interest in defending people against discrimination to support the complainant in any judicial or administrative proceedings (Article 7(2) of the Racial Equality Directive).
13. Given the vulnerability of victims of racial discrimination, particularly Roma, without these tools, remedies against race discrimination would be no more than theoretical and illusory. A golden thread runs through these common, European features of anti-discrimination law: courts hearing discrimination cases must make all procedurally possible efforts to ensure that victims of

⁶ The report is available at http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf.

⁷ The document can be found at <http://www.opensocietyfoundations.org/sites/default/files/europe-discrimination-20120501.pdf>.

⁸ There have, however, been more cases referred under Directive 2000/78 about employment discrimination, generally by private employers.

⁹ <http://www.errc.org/article/commission-takes-tougher-stance-on-member-states-discriminating-roma/4359>

discrimination can air their allegations in court. Because of the particularly damaging nature of discrimination,¹⁰ certain procedural advantages must be available to victims of discrimination that might not be available to claimants in other kinds of cases.

14. Problems arise though, in the ERRC's experience, when public bodies are accused of discrimination, particularly in the administrative courts (where in many European jurisdictions claims against such bodies are most appropriately brought). The ERRC has undertaken a selective comparison¹¹ of the practice of challenging the discriminatory conduct of public bodies in this way in Bulgaria, Croatia, the Czech Republic, Hungary, Romania, Slovakia, and Slovenia. These countries all have significant Roma populations facing discrimination, and were all part of the last three waves of accession to the European Union, having had to adjust their legal systems to incorporate the EU's anti-discrimination directives adopted in 2000.
15. **Discrimination claims in administrative court in Bulgaria.** Judicial review of administrative acts is generally available, though there are limitations. Article 130(1) of the Administrative Procedure Code states that "[t]he administrative court shall have discretion to determine whether the case instituted is entertainable thereby or by another authority outside the court system".¹² In theory, this should not preclude administrative courts from reviewing administrative acts on the basis of anti-discrimination claims, as Article 146 of the Administrative Procedure Code states that administrative acts may be contested on grounds of "conflict with provisions of substantive law" and could thereby be challenged for conflict with provisions of the Protection Against Discrimination Act. As for remedies, the court may declare the whole or partial invalidity of the administrative act, wholly or partially repeal that act, or amend the act. If the act is invalid due to the challenged body's lack of competence, the court sends the file to the appropriate authority with compulsory instruction on the interpretation and application of the law.
16. **Discrimination claims in administrative court in Croatia.** Judicial review of administrative decisions is available under Croatian law. This also includes the possibility of challenges on grounds of discrimination, as the Croatian Anti-Discrimination Act has been interpreted to have a very broad scope. It applies universally across the public and private sectors and singles out ten areas for particular care and attention, among them the judiciary and administration, and most public services, such as education, social security, and healthcare. The court may nullify unlawful decisions of public bodies and may additionally resolve the matter itself, except in instances where discretionary power is involved. Where a public body is found to have failed to adopt a decision that it ought to have adopted within a given timeframe, the court may order the decision to be adopted and specify the time limit for doing so. The court can provide a remedy in the form of damages, compensation or the return of material property. The High Administrative Court may repeal general acts of local and regional self-government, legal persons with public powers and legal persons providing public services if it is established the act was not legal.
17. **Discrimination claims in administrative courts in the Czech Republic.** Judicial review is generally available in the Czech Republic: "unless expressly excluded by law, all administrative decisions are subject to judicial review."¹³ The plaintiff may raise discrimination grounds in challenging an administrative act and may be represented by an organisation whose activities, as set out in its statutes, involve protection against discrimination.¹⁴ As for remedies, the court can quash a challenged decision on the basis of general administrative law principles. It may also nullify the

¹⁰ See *Moldovan and others (no.2) v Romania* (2005), § 111.

¹¹ Unless otherwise indicated by reference to footnotes, the source material for this comparison consists of the reports prepared for the European Network of Legal Experts in Gender Equality and Non-Discrimination (for information about anti-discrimination laws), which can be found at www.equalitylaw.eu, and from the Association of the Councils of State and Supreme Administrative Courts of the European Union ("Tour of Europe" reports, for information about proceedings in the administrative courts), available at www.juradmin.eu.

¹² The translation of the Bulgarian legislation is taken from www.customs.bg/document/3179.

¹³ http://www.nssoud.cz/main.aspx?cls=art&art_id=489

¹⁴ Art. 35. 4 of *Zákon č. 150/2002 Sb., soudní řád správní* [Law No. 150/2002 Coll., the Code on Administrative Court Procedure (Collection of Laws 2002, no. 61, p. 3306)].

challenged administrative decision. In future proceedings the administrative authority is bound by the view expressed in the court's judgment. In judicial review of administrative acts, the court will only make decisions regarding costs of proceedings and not on compensation for damages; damages are covered separately under civil proceedings.

18. **Discrimination claims in administrative courts in Hungary.** Judicial review of administrative acts is generally available, and any natural or legal person whose rights are affected by an administrative act may challenge it in the administrative courts. A challenge on anti-discrimination grounds is also available. One mechanism in Hungary for dealing with discriminatory administrative acts is to complain to the regional Government body responsible for overseeing the lawfulness of local administrative acts; that body can then take the local body to court and, in practice, will do so. For example, on the request of the relevant Government body, the Hungarian Supreme Court (*Kúria*) recently quashed¹⁵ as discriminatory a local decree in the city of Miskolc which was widely seen as intended to drive Roma out of the city.¹⁶ As for remedies, where it finds an administrative decision unlawful the court will annul it and if necessary require the relevant authority to carry out a new judicially-mandated procedure.
19. **Discrimination claims in administrative courts in Romania.** Judicial review of administrative decisions is generally available under Romanian law. This includes the ability to challenge decisions on anti-discrimination grounds, as Romanian anti-discrimination legislation is universally applicable to both public and private actors. Discrimination grounds are deemed to fall under the more general abuse of power category and can lead to the administrative act being quashed by the courts. A plaintiff can request the total or partial annulment of an act, for coverage of material damage caused and/or moral damages. The court may also require the public authority in question to adopt an administrative act where a failure to act was the cause of complaint. The ERRC has supported Roma in litigating discrimination cases against public bodies in the administrative courts in Romania and the claimants in those cases faced no admissibility or other procedural issues. In Romania, NGOs are able to take discrimination (and other) claims in their own name in the administrative courts if the matter falls within their sphere of interest as set out in their founding documents.¹⁷
20. **Discrimination claims in administrative courts in Slovenia.** In general, any natural or legal person who believes that her rights or legal interest have been affected by an administrative act or by the failure of an administrative body to act may bring a complaint before the courts. It is also possible to challenge actions based on discrimination: according to Slovenian anti-discrimination legislation, a complainant may file a complaint directly with the relevant administrative authority, or file a lawsuit for damages in civil court, or avail themselves of the possibility of judicial review and the constitutional complaint procedure for the protection of their rights. In judicial review the courts may rule on the legality of the act in question, with the corresponding ability to annul the act in whole or part. Under Slovenian anti-discrimination legislation, damages for discrimination may be sought through a lawsuit in civil court.
21. **Summary of the comparative regional analysis.** It is extremely common in Central and Eastern Europe – particularly in the countries that have joined the European Union since 2004 – for discrimination claims against public bodies to be heard in administrative courts under anti-discrimination laws. In at least two of these jurisdictions – the Czech Republic and Romania – NGOs are explicitly, in domestic law, able to represent the interests of minorities before the administrative courts. In the administrative courts in all of these EU Member States, the full panoply of protections set out above at § 12 should be available in order to ensure that victims of discrimination are able to

¹⁵ <http://www.equalitylaw.eu/content/media/58-HU-ND-Curia%20decision%20on%20municipal%20decree.pdf>

¹⁶ <http://www.errc.org/article/hungarian-city-set-to-expel-its-roma/4293>

¹⁷ Article 2(1) of Law 554/2004 on administrative procedure, which defines “injured parties” in administrative proceedings, includes in that definition “a social entity which claims that the impugned administrative act infringes a public interest or the rights and legitimate interests of specific natural persons” (ERRC translation). The courts normally interpret this provision to cover anti-discrimination NGOs as plaintiffs in administrative proceedings concerning matters that fall within the scope of their activities.

enjoy access to justice despite the inherent problems they face. In these circumstances, the ERRC considers anti-discrimination proceedings in administrative courts a well-accepted feature of anti-discrimination litigation practice and expects administrative judges hearing such cases to ensure that those claiming discrimination are able to do so – both by obeying the relevant provisions of EU and/or domestic law and by respecting the spirit of those provisions, by making all procedurally-allowable efforts to facilitate the task of the claimants.

II. Evaluating Discrimination in Cases of Forced Evictions

a. The crisis of forced evictions of Roma in Europe

22. Perhaps the most visible manifestation of anti-Gypsyism is the acute crisis Roma face in relation to their housing conditions. Roma and Roma-rights NGOs around Europe consistently inform the ERRC that the most pressing problem facing Roma is forced evictions. Below are a few examples 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 France, the ERRC, along with the Ligue des droits de l'homme, another NGO, carries out a census of forced evictions of Roma. In 2011, the census found that 8,455 Roma had been forcibly evicted from their homes. In 2012, the number was 9,404. In 2013, this more than doubled to 21,537.¹⁸ The trend abated in 2014, with 13,483 people evicted. 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, crucially, they usually do not offer those evicted alternative accommodation. The evictions, in the ERRC's view, are an acute manifestation of anti-Gypsyism in France. For example, at the height of the evictions crisis in autumn 2013, for example, France's Interior Minister (the current Prime Minister) publicly declared that Roma cannot integrate and are "destined to return to Romania and Bulgaria".¹⁹
 - b. In 2013, the ERRC counted 14 forced evictions affecting hundreds of Roma in Milan, Italy alone. Although the Italian courts have declared the national "state of emergency" legislation allowing for demolitions of Romani settlements without notice unlawful, the authorities continue to demolish homes without respecting the basic safeguards required under domestic administrative law or the Court's case law.²⁰ The Italian authorities threaten to evict Roma and place them in segregated shelters or "camps"; such a threat is currently hanging over a long-standing Romani settlement in Consenza.²¹
 - c. 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 2010 and 2013, Baia Mare 2012 and 2013, Eforie Sud 2013). According to Romanian law, authorities may demolish informal housing built on public land without notice or prior judicial proceedings. To take only the current month (June 2015) the ERRC is aware of four Roma communities under threat of mass eviction in Focsani, Cluj (Cantonului), Mangalia and Eforie. Local authorities also often neglect their legal obligation to maintain and repair housing leased to Roma and subsequently rely on safety concerns as an excuse to evict them (Iasi 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 2012, Cluj 2010, Tulcea 2006, Miercurea Ciuc, 2004).
 - d. In recent years, a worrying new phenomenon related to the practice of forced evictions has emerged in Slovakia. This is in the context of the movement "Zobudme sa!" (Let's Wake Up!), which was set up in 2011 and has collected the signatures of 402 mayors of Slovak towns and villages. It aspires to coordinate the demolition of Romani settlements in members' municipalities, defining them as illegal waste dumps. The description section of the movement's website²² stated: "*For us, illegal settlements in the outskirts of towns*

¹⁸ More information can be found at <http://www.errc.org/article/violent-unfair-unlawful-and-shameful-france-evicted-close-to-3-romani-settlements-per-week-in-2014/4351> (as well as a full report available at <http://www.errc.org/cms/upload/file/report%20forced%20evictions%20-%20final%20en.pdf>).

¹⁹ See Romeurope's report from 2012-13, available at http://www.romeurope.org/IMG/pdf/rapport_2012_2013_cndh_romeurope.pdf.

²⁰ For more information on the situation, the Court will find various press releases on the ERRC's website, including at <http://www.errc.org/article/milan-authorities-continue-evicting-roma/4254>.

²¹ <http://www.errc.org/article/roma-only-tent-camp-set-up-for-children-and-elderly-in-consenza/4367>

²² The organisation's website was previously located at <http://www.zobudmesa.sk>, although the website appears now to have been disabled.

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!"²³ According to ERRC monitoring, approximately 250 Romani individuals have been evicted from their homes since 2011 in three evictions linked to the movement; the Roma have not been provided with alternative accommodation.

- e. In early 2012, approximately one thousand Roma living in the Belvil district of Belgrade, Serbia were evicted from their homes. The authorities removed those with registered addresses outside Belgrade to the municipalities where they were registered, even though some had not been there for many years. Many were rehoused in degrading conditions in places such as 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.²⁴
 - f. As mentioned above (§ 18), the city of Miskolc in Hungary has been taking measures since last year to evict residents of so-called "low-comfort" social housing.²⁵ These residents are overwhelmingly Roma. The municipal ordinance put in place to evict them was designed not only to evict the residents from their housing but ensure that they resettled outside Miskolc. The ERRC complained to the European Commission about this matter and the Hungarian Supreme Court (*Kúria*), as mentioned above, quashed the municipal ordinance as discriminatory.
23. The Court has already recognised 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. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases".²⁶ In particular in relation to education, the Court has found that "the misplacement of Roma children in special schools has a long history across Europe".²⁷ The ERRC believes that similarly strong statements in relation to forced evictions, going beyond what the Court has already stated in its judgments in *Yordanova v Bulgaria* and *Winterstein v France*, are now appropriate.

b. Determining whether there is discrimination in cases of forced evictions

24. The Court has already offered extensive guidance on the application of Article 8 to forced evictions. The Court has nonetheless not yet provided guidance on how to evaluate whether forced evictions amount to a breach of Article 14 taken with Article 8 or other provisions of the Convention.
25. The ERRC respectfully submits the following principles, developed in accordance with the Court's case law and general principles of anti-discrimination law in Europe, apply to such cases:
- a. **When a particular eviction only affects Roma, the burden is on the State to show that the eviction does not 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 12. It is nonetheless a vital aspect of European anti-discrimination law which, like indirect discrimination, should be considered as part of the Article 14 analysis. Harassment is defined in EU law 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*". A forced eviction is certainly "unwanted conduct", regardless of

²³ <http://www.zobudmesa.sk/o-nas/>

²⁴ <http://www.errc.org/article/serbia-romani-families-face-uncertain-future-one-year-after-forced-eviction-of-belvil-informal-settlement/4135>

²⁵ <http://www.errc.org/article/hungarian-city-set-to-expel-its-roma/4293>

²⁶ *Horvath and Kiss v Hungary*, Application no 11146/11, judgment of 29 January 2013, para 102.

²⁷ *Ibid*, para 115

whether it has a basis in domestic law. As the material set out above (section B.1) attempts to show, 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 only Roma are targeted for such evictions, particularly in the racially hostile environment that exists for Roma in most of Europe.

- 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 affects only Roma (even if not all Roma are affected), there is a case of indirect discrimination to answer. The same applies to forced evictions. Whether the land cleared through a forced eviction was actually used for the stated purpose will be particularly relevant to the question of whether the discriminatory act was justified.
- 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 (*Baczkowski v Poland* (2007), § 100), as has the Court of Justice of the European Union (Case C-54/07; Case C-81/12). Because it is difficult to find a direct comparator in cases of forced evictions of Roma, the ERRC 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.