



12 April 2016

To:

Mr. Dacian Julien Cioloș, Prime Minister of Romania

Cc:

Mr. Petre Tobă, Minister of Internal Affairs

Mr. Ciprian Cătălin Necula, Secretary of State, Ministry of European Funds

Call on the government to commit to legislative changes and immediate actions to prevent forced evictions of Roma

Amnesty International, the European Roma Rights Centre, and Romani CRISS welcome the action taken by the Prefect of Constanța County on 31 March 2016 to challenge in court the decision by the local council of the town of Eforie to evict 10 Romani families from the container dwellings they live in, on the outskirts of the town. The action of the Prefect came immediately after the European Court of Human Rights, upon request from the affected families, intervened and called on the Romanian authorities to stop the threatened evictions.

The swift response by the Prefect stands as a hopeful signal that the Romanian Government and its representatives at the county level recognise the serious human rights violations that result from forced evictions of Romani communities. It also vindicates our organisations' repeated calls on the Romanian authorities to make better use of the Prefects' existing powers to stop forced evictions.

The case of Eforie tragically illustrates Romania's enduring failure to prevent forced evictions of Romani communities, as widely documented and exposed by our organizations over the last 20 years. This would have been the third forced eviction these families would have suffered since 2013, when their long-standing homes were demolished. In the meantime, they have been forced into substandard living conditions, with minimal or non-existent security of tenure. Some families have been placed in segregated containers, on the outskirts of the town, in inadequate conditions and without access to basic services. Many have faced harassment: the authorities have repeatedly told them that new evictions were imminent and have failed to respond to threats proffered by their non-Roma neighbours.

The latest threat by the local authorities in Eforie to forcibly evict 10 families highlights the need for a coordinated and formalised governmental response to prevent forced evictions. To ensure compliance with Romania's international human rights law commitments our organisations propose clarifications to the legal framework and immediate measures to render existing guarantees compliant with the human rights conventions and treaties Romania has ratified, notably Article 8 of the European Convention on Human Rights and Article 11 of the International Covenant on Economic Social and Cultural Rights.

Evictions, including of Romani communities and individuals, should not take place without adequate prior notice, until the people concerned have been genuinely consulted, afforded due process guarantees and provided with alternative accommodation or compensation enabling them to access adequate accommodation¹. Specifically, anyone faced with an eviction should have prior access to a court capable of determining the proportionality of the measure². When an eviction is likely to leave vulnerable people –

¹Concluding observations on Romania, UN Committee on Economic Social and Cultural Rights, 9 December 2014, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fROU%2fCO%2f3-5&Lang=en

²Winterstein v. France, ECtHR, case no. 27013/07, 2013, § 148

including Roma – homeless, a remedy with automatic suspensive effect must be available to them. If such minimum safeguards are not respected, an eviction would amount to a forced eviction, a practice prohibited by international and regional human rights standards.

We call on the government to commit to the following legislative changes:

1. Expand the domestic definition of eviction to the demolition of informal housing

Because of a long history of discrimination and exclusion, Roma in Romania are overwhelmingly more likely to live in informal housing and up to seven times more likely to lack security of tenure³. While our organisations commend the legalisation endeavours described in the National Roma Inclusion Strategy, these are not comprehensive and it will take several years before they are in place. Leaving Roma exposed to forced evictions in the meantime is incompatible with the government's commitments on housing as outlined in the EU Framework for National Roma Integration Strategies up to 2020.

Whereas eviction is defined internationally as the removal from one's home⁴, Romanian law conceives of it only in the context of a landlord-tenant or landlord-occupant relationship. When demolishing informal homes, municipalities act in a mere regulatory capacity. Consequently, the procedural guarantees foreseen in Romanian law for eviction cases⁵, and which ensure compliance with human rights standards, do not apply to cases such as Eforie, which is why the European Court of Human Rights and other international bodies will have to continue to intervene unless the national law is changed. In another example, the homes of a Roma community in Cluj were demolished by the municipality in December 2010, during the winter (December – February) moratorium applicable to evictions.

An expedient solution would be to exempt housing from the expedited demolition procedure for unauthorised buildings on public land⁶, directing these cases through the regular judicial channel. A winter moratorium should also be provided for the demolition of informal housing⁷.

2. Reintroduce a statute of limitations for the demolition of unauthorised housing

The European Court of Human Rights has underlined that homes in long-standing communities, though informal, cannot be treated the same as newly built ones⁸. Romania has been specifically called upon to provide a minimum degree of security of tenure for Roma living in informal settlements.⁹

Since 2001, there is no effective statute of limitations on the demolition of unauthorised housing. It can be demolished for as long it has not been retrospectively authorised and found compliant with applicable regulations¹⁰, no security of tenure being afforded to its inhabitants in the meantime.

This violates the human rights of members of long-established communities who live in perpetual fear of demolition at the whim of local authorities. While all communities, regardless of the number of years of their existence should be protected from arbitrary demolition and therefore forced eviction, a statute of limitation should be re-introduced that recognises long-established communities and provides residents with security of tenure, at least until the completion of meaningful and comprehensive legalisation programmes.

3. Extend consultation requirements to cover mass evictions

Most forced evictions of Romani communities are carried out by local authorities based on administrative acts. Such acts are very rarely communicated to the individuals concerned, who receive brief notices at best or are informed orally by low-level municipal employees of the upcoming actions. This informal treatment of Roma communities facing eviction raises suspicions among the affected people that they are victims of institutional racism.

According to Romanian legislation, formal consultations are only required for normative administrative

³ European Union Agency for Fundamental Rights and UNDP, *UNDP/WB/EC regional Roma survey 2011 data: Romania Country data*, available at: <http://www.undp.org/content/rbec/en/home/ourwork/povertyreduction/roma-in-central-and-southeast-europe/roma-data/>.

⁴ General comment no. 7 on forced evictions

⁵ such as art. 896 of the Civil Procedure Code prohibiting winter evictions or art. 1041 of the Civil Procedure Code requiring prior judicial proceedings

⁶ provided by article 33 of law no. 50/1991 on building permits

⁷ by including in Law 50/1991 a ban on the demolition of housing between December 1st and March 1st

⁸ *Yordanova and others v. Bulgaria*, ECtHR, case no. 25446/06, 2012, § 121

⁹ UN CESCR Concluding observations on Romania, precit.

¹⁰ Demolition is triggered by a finding of non-compliance with Law 50/1991 on building permits. Article 31 provides for a three-year statute of limitation on the authorities making such findings and issuing fines. When this delay starts running from has been a moving target. According to the letter of Article 31 it starts from the date a violation has occurred. Then the supreme court has interpreted such violations to last until the completion of the building. This used to mean the factual date of completion up until 2001. Then article 37 § 2 was amended to include in the definition of completion a certification of compliance by the authorities. Consequently, a building can be found non-compliant, and demolished, at any time until it is finally found compliant.

acts¹¹, whereas evictions and demolitions are deemed to be individual administrative acts.

It is the potential impact on a community that an act or series of acts would have, that should be the trigger for mandatory consultations, not the formal characterisation of the act under the law. The loss of a home is a most extreme form of interference¹². Evictions should always be a matter of last resort, after all possible alternatives have been explored through full consultation and participation of the affected community¹³.

4. Introduce a remedy with automatic suspensive effect against forced evictions, allowing for a full review of their proportionality

Informal housing on public land can be demolished without a court order. While in theory the mayor's demolition order may be suspended by a court, this remedy is rendered illusory by the absence of a mandatory notice period and the difficulties faced by vulnerable persons in securing legal advice. In September 2013 some Roma families from Eforie managed to file a legal challenge against the demolition order. However, due to the lack of an automatic suspensive effect procedure the bulldozers razed their homes while the proceedings were pending.

Evictions from state-owned housing do require a prior judicial procedure¹⁴. Worryingly, local authorities often appear to ignore the need to secure a court order for evicting people from state-owned housing. They simply resort to law enforcement to carry out the eviction, which is illegal. This was the case in Eforie in July 2014, when Roma were evicted from an abandoned school and moved against their will to segregated containers on the edge of town.

Unfortunately, even if judicial proceedings were followed, there are limits to the tenants' or occupants' defence arguments¹⁵, depriving them of a full proportionality review¹⁶. While this may be justified between private individuals, public authorities should be held to a higher standard. Local authorities have legal obligations to provide social support to the same people they are trying to evict;¹⁷ fulfilling those obligations only becomes more burdensome after an eviction takes place.

Immediate measures available to significantly curb forced evictions

The decision of the Constanța Prefect to challenge in court the municipality's plan to evict Roma in Eforie, which automatically suspends the action, shows that it is possible to avoid forced evictions within the current legal framework. Our organisations have long argued that such interventions should become the rule, not an exception triggered by international attention.

Prefects are required to review the legality of all administrative acts by municipalities, including eviction and demolition orders. In reviewing the legality of such orders, they should take into account international and regional human rights standards that the country adheres to.

However, petitions by civil society organisations for the Prefect to suspend evictions until necessary safeguards are in place have generally proven fruitless up to now. As Prefects often lack the full knowledge and understanding of how international and regional human rights standards should be applied in relation to national acts, a useful step forward would be for the Ministry of Internal Affairs to issue guidelines for Prefects instructing them how to undertake such legality reviews.¹⁸

To make the most of existing legal guarantees in determining whether an eviction or demolition order is lawful and does not amount to an excess of power (i.e. is proportional)¹⁹, the Prefect should make sure that all those applicable among the following criteria are met:

1. Any administrative decision concerning an eviction from state-owned housing should either be limited to the initiation of court proceedings or be explicitly based on a final court decision. This would prevent the circumvention of required judicial proceedings²⁰ and the unlawful resort to force.

¹¹ Law 52/2003 on transparency in public administration decision making

¹² Winterstein, §155

¹³ Basic Principles and Guidelines on Development-Based Evictions and Displacement, UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, available at http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

¹⁴ this applies to all evictions from a building carried out by the landlord according to art. 1041 of the Civil Procedure Code

¹⁵ Art. 1043 of the Civil Procedure Code

¹⁶ as required by ECtHR case law, see Winterstein § 148

¹⁷ for instance under law 116/2002 on combating social marginalisation

¹⁸ End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights. Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>

¹⁹ art. 2.1.n of Law no. 554/2004 on administrative proceedings

²⁰ Art. 1043 of the Civil Procedure Code

2. Any decision to demolish housing built on state-owned land should explicitly state the age of the building. This would spare pre-2001 housing, which is exempt from demolition and should be legalised²¹. It would also inform the proportionality analysis when it comes to the demolition of long-standing housing.
3. Any decision to demolish housing built on state-owned land should explicitly state the type of state property (private or public). Long-standing housing built on the private property of the state may fulfil the conditions for acquisitive prescription.
4. Any eviction or demolition order should specify the total number of people affected in practice. A collective eviction is more likely to be racially motivated.
5. Any decision should include an individual determination of the circumstances of those affected, including any particular vulnerability. An effective proportionality analysis is inconceivable in the absence of such information.
6. A decision not to allocate alternative accommodation should be exceptional and should explicitly show that each affected family is in a position to find alternative housing for themselves.
7. To allow for a proportionality assessment, a decision should spell out the public interest it pursues and its reasoning. Particular vigilance is required towards common reasons which often embody racial bias, such as neighbours' alleged complaints about petty crime or nuisance, vague references to public health concerns or the lack of local residence of those evicted²².

Our organisations would like to state their willingness and availability to assist the Ministry of Internal Affairs in finalising the necessary guidelines prior to circulating them to all Prefects.

Forced evictions against Romani communities are not only a violation of the right to adequate housing, but often a form of racial harassment. They create new forms of hardship for those evicted and exact a terrible toll on the most vulnerable.

We encourage the Government to break old habits by acting fast and decisively to end forced evictions.

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²¹ in accordance with art. 37.5 of law 51/1990

²² Art. 12 of Government Ordinance no. 137/2000 prohibits driving people out of an area or town on ethnic grounds