

Aydarov and others

APPLICANTS

v

Bulgaria

RESPONDENT STATE

THIRD-PARTY INTERVENTION

**I. Introduction**

1. The European Roma Rights Centre (“the ERRC”) submits these written comments in accordance with the leave to intervene granted by the President of the Section.
2. The ERRC notes at the outset the similarity between the present case and the case of *Dimitrova and others v Bulgaria* (application no.39084/10), which is also pending before the Court and in which the ERRC was also granted leave to intervene. The ERRC urges the Court to read these comments alongside the comments we submitted in that case, particularly in relation to the dearth of case law at European level concerning discrimination by public bodies.
3. In order to assist the Court in summarising the intervention for inclusion in its judgment, the ERRC has prepared the following summary:

The ERRC made two points. The first was that there is a crisis of forced evictions of Roma in Europe, linked to residential exclusion and segregation of Roma, and symptomatic of widespread anti-Gypsyism. The ERRC set out the evidence concerning the dramatic extent of Romani poverty in Europe, including data showing that the vast majority of Roma in Eastern Europe live in deep poverty. The ERRC’s purpose in presenting this information was to stress that the fact that many Roma live in informal housing, leaving them vulnerable to forced evictions, is not a “natural” or merely unfortunate phenomenon, but one of the clearest manifestations of anti-Gypsyism in Europe today. According to the ERRC, this situation was the product of accumulated generations of exclusion promoted or, at best, ignored and left to fester by officials. The threat of forced eviction was the most visible of a series of tools that authorities used to intimidate and control Romani populations, alongside the threat of taking Romani children into care, the segregation of Romani children into separate, inferior schools or classes, police brutality and intimidation, and restrictions on access to social assistance. The ERRC urged the Court to view and describe the current practice of forced evictions of Roma as a manifestation of anti-Gypsyism. The ERRC’s second point was that the Court should adopt a specific approach when assessing claims of race discrimination in the context of forced evictions. The ERRC proposed three principles, which emerged from the Court’s case law and anti-discrimination law in Europe more generally: 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 Respondent Government; and discriminatory statements by anyone connected to the eviction (particularly public officials and nearby residents) are evidence of harassment and direct discrimination.

## II. There is a crisis of forced evictions of Roma in Europe, linked to residential exclusion and segregation of Roma, and symptomatic of widespread anti-Gypsyism

4. As a consequence of centuries of exclusion and discrimination – including slavery in Romania that only ended towards the end of the 19<sup>th</sup> century<sup>1</sup> – Roma are not only Europe's largest ethnic minority, but also the continent's most economically and socially excluded minority group. This section sets out some data on Romani poverty in Europe. The ERRC's purpose in presenting this information is to show that 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 anti-Gypsyism in Europe today.
5. 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.<sup>2</sup> 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 that more than half lived in segregated areas in housing that fell below minimum housing standards.<sup>3</sup> It 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.<sup>4</sup> 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 face lower wages in employment 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.
6. In Eastern Europe, 71% of Roma live in deep poverty.<sup>5</sup> 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;<sup>6</sup> the ERRC's own research revealed a 16-year life-expectancy gap.<sup>7</sup> 90% of Roma live in households facing severe material deprivation.<sup>8</sup> In these conditions, deprivation begins early. 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 nearby. 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

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<sup>1</sup> See, e.g., Viorel Achim, *Roma in Romanian History* (Central European University Press 1998).

<sup>2</sup> 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>.

<sup>3</sup> 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](http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-employment_en.pdf).

<sup>4</sup> 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).

<sup>5</sup> The World Bank, "Brief: Roma" (24 February 2015), available at <http://www.worldbank.org/en/region/eca/brief/roma>.

<sup>6</sup> 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>.

<sup>7</sup> 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*".

<sup>8</sup> The World Bank Group, "Human Development and Sustainable Development Team, Diagnostics and Policy Advice for Supporting Roma Inclusion in Romania" (2014), available at <http://documents.worldbank.org/curated/en/149471468333037165/pdf/866710WP0P14500naI0Report00English0.pdf>.

educational gaps and discrimination, Roma “do not have access to the tools that could help them escape poverty”.<sup>9</sup>

7. 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 children.<sup>10</sup> 85% of Roma aged 18-25 in Bulgaria had not completed secondary education, compared with 32% of non-Roma.<sup>11</sup> Roma life expectancy rates are more than 10 years below the average life expectancy in Bulgaria.<sup>12</sup> Only 33% of Roma with a primary education (i.e. the majority of Roma in Bulgaria) 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.<sup>13</sup>
8. This situation is no accident. It is the product of accumulated generations of exclusion promoted or, at best, ignored and left to fester by officials. The results are peculiar patterns of residential settlement that reflect Romani poverty. To give just a few examples:
  - a. Approximately 50-70% of Roma in urban areas in **Bulgaria** live in illegally built homes or in shelters. Almost 40% of Roma live in houses without any plumbing and 80% do not have a toilet. On average, Roma have half the dwelling space of non-Roma.<sup>14</sup>
  - b. 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.<sup>15</sup>
  - c. **Italy** is the only country in Europe that has established official “camps” for Roma. These camps have become ghettos with substandard living conditions and with inadequate access to water and electricity. There is also a common practice of demolishing and forcibly evicting illegal settlements without prior notice to their Romani inhabitants.<sup>16</sup>
  - d. In **Macedonia**, ECRI reported this year 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*”.<sup>17</sup>
  - e. In **Romania**, the World Bank has provided extensive details about the poor housing conditions of Roma: “*Although the socio-economic conditions for Roma and non-Roma households are quite similar at the neighborhood level, the actual housing and infrastructure conditions for Roma households are consistently worse than for the comparator non-Roma households*”.<sup>18</sup>
  - f. According to the Roma Inclusion Index, 16% of Roma in **Serbia** have no drinking water at home and 3% do not have electricity. 65% of Roma in Serbia live in segregated

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<sup>9</sup> Ibid., page 9.

<sup>10</sup> 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](https://www.brookings.edu/wp-content/uploads/2016/06/0819_roma_haskins.pdf).

<sup>11</sup> World Bank, “Roma Inclusion: An Economic Opportunity for Bulgaria, Czech Republic, Romania and Serbia,” Policy Note (September 2010), available at [http://siteresources.worldbank.org/INTRROMA/Resources/Policy\\_Note.pdf](http://siteresources.worldbank.org/INTRROMA/Resources/Policy_Note.pdf).

<sup>12</sup> Roma Education Fund, “Bulgarian Country Assessment 2015”, available at [http://www.romaeducationfund.hu/sites/default/files/publications/bg\\_country\\_assessment\\_2015\\_web.pdf](http://www.romaeducationfund.hu/sites/default/files/publications/bg_country_assessment_2015_web.pdf).

<sup>13</sup> ECRI Report on Bulgaria, CRI(2014)36, page 15.

<sup>14</sup> Roma Education Fund (2015).

<sup>15</sup> 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.romadecade.org/cms/upload/file/9810\\_file1\\_roma-inclusion-index-2015-s.pdf](http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf).

<sup>16</sup> European Roma and Travellers Forum (ERTF), “Fact sheet on the Situation of Roma and Sinti in Italy” (June 2015), available at [http://barabal.eu/images/The\\_situation\\_of\\_Roma\\_in\\_Italy\\_13062015.pdf](http://barabal.eu/images/The_situation_of_Roma_in_Italy_13062015.pdf).

<sup>17</sup> CRI(2016)21, § 66.

<sup>18</sup> World Bank (2010).

neighbourhoods. In many cases Roma do not have relevant property documentation for their homes.<sup>19</sup>

9. When ERRC staff and consultants talk to Roma around Europe about what legal problems they face, they almost universally cite the threat of forced eviction or other interferences with their homes. The threat of forced eviction is the most visible of a series of social-control tools that authorities use to intimidate and control Romani populations, alongside the threat of taking Romani children into care (see *B.T. v Hungary*, pending, application no.4581/16), the segregation of Romani children into separate, inferior schools or classes (see *D.H. and others v Czech Republic* (Grand Chamber, 2007); *Horváth and Kiss v Hungary* (2013)), police brutality and intimidation (see, e.g., *Stoica v Romania* (2008)), and restrictions on access to social assistance (see *Negrea and others v Romania*, pending, application no.53183/07).
10. 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. Forcibly evicting Roma from their homes taps into deep-rooted, long-standing, vicious racist stereotypes about Roma. In some cases, there is no attempt to hide the link between forced evictions and these stereotypes. For example:
  - a. According to a census of forced evictions of Roma in **France** conducted by the European Roma Rights Centre and the Ligue des Droits de l'Homme, there were: 8,455 such evictions in 2011; 9,404 such evictions in 2012; 21,537 such evictions in 2013; 13,483 such evictions in 2014; and 11,128 such evictions in 2015.<sup>20</sup> NGOs there have forcefully made the connection between stigmatisation of Roma by politicians and evictions of Roma from their homes. In early 2014, Romeurope, a collective of French NGOs, published their report “Harcèlement et stigmatisation : politiques et paroles publiques aggravent la précarité des habitants des bidonvilles”.<sup>21</sup> The report details the actions of the authorities in relation to those living in slums and squats on the edges of France’s major cities and concludes that life for those living in slums has only become worse. The report draws particular attention to the comments in September 2013 by the Interior Minister (now Prime Minister), stating that Roma were “destined to return to Romania and Bulgaria”, because their lifestyle is incompatible with that of French people.<sup>22</sup>
  - b. In 2014, **Hungary**’s fourth-largest city, Miskolc, set about evicting Roma from social housing concentrated in one part of the city, the so-called “numbered streets”.<sup>23</sup> The plans to evict the population and demolish the “low-comfort” social housing in which they were living were preceded by stigmatising statements from the police chief and the mayor about “gypsy criminality” and “anti-social Roma”.<sup>24</sup> The authorities were partially thwarted in their plans when Hungary’s Supreme Court invalidated a municipal ordinance intended to make the evictions easier.<sup>25</sup>
11. The crisis of forced evictions of Roma in Europe has taken on such proportions that it is now a major preoccupation of intergovernmental actors.

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<sup>19</sup> Decade of Roma Inclusion, “Roma Inclusion Index 2015”, available at

[http://www.romadecade.org/cms/upload/file/9810\\_file1\\_roma-inclusion-index-2015-s.pdf](http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf).

<sup>20</sup> The reports are published at the beginning of each year and can be found on the ERRC’s website ([www.errc.org](http://www.errc.org)). For example, the 2015 report is available at <http://www.errc.org/article/more-than-11000-roma-migrants-forcefully-evicted-in-france-in-2015/4442>.

<sup>21</sup> The report is available at [http://www.romeurope.org/IMG/pdf/rapport\\_2012\\_2013\\_cndh\\_romeurope.pdf](http://www.romeurope.org/IMG/pdf/rapport_2012_2013_cndh_romeurope.pdf). A further report, covering the year 2014, was published in September 2015, and shows similar findings (available at [http://www.romeurope.org/IMG/pdf/rapport\\_d\\_observatoire\\_-\\_cndh\\_romeurope\\_-\\_septembre\\_2015\\_.pdf](http://www.romeurope.org/IMG/pdf/rapport_d_observatoire_-_cndh_romeurope_-_septembre_2015_.pdf)).

<sup>22</sup> See also “Pour Valls, «les Roms ont vocation à rentrer en Roumanie ou en Bulgarie»”, LE FIGARO (24 September 2013).

<sup>23</sup> European Roma Rights Centre, “Hungary City Set to ‘Expel’ its Roma” (25 June 2014), available at <http://www.errc.org/article/hungarian-city-set-to-expel-its-roma/4293>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Amnesty International Public Statement, “Hungary: Supreme Court finds forced evictions in Miskolc to be unlawful”, AI Index: EUR 27/1672/2015 (18 May 2015).

- a. 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 and reminding States of their legal obligations in this respect.<sup>26</sup> The statement recalls the human rights obligations 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.
  - b. On the same day that the statement was published, the Council of Europe Commissioner for Human Rights published an article entitled “Roma Evictions: Europe’s Silent Scandal”.<sup>27</sup> The issue has been receiving particular attention from the Commissioner. Earlier this year (on 26 January 2016), he wrote individually to ministers in Albania, Bulgaria, France, Hungary, Italy, Serbia, and Sweden expressing concerns about forced evictions of Roma.<sup>28</sup>
12. 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”. See, e.g., *Horváth and Kiss v Hungary* (2013), § 102. Many Roma sum up the deep-rooted structural prejudices they face in a single word. According to ECRI, “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*”.<sup>29</sup> The Alliance Against Antigypsyism, of which the ERRC is a member and which spells the term without a hyphen, 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.*<sup>30</sup>

13. The ERRC urges the Court to view and describe the current practice of forced evictions of Roma – which has reached crisis proportions in Europe – as a manifestation of anti-Gypsyism. 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.

<sup>26</sup> 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](http://www.equineteurope.org/IMG/pdf/opre_joint_statement_on_evictions_of_roma_and_travellers_in_europe_29_06_2016.pdf).

<sup>27</sup> The article can be found at <https://www.opendemocracy.net/can-europe-make-it/nils-mui-nieks-michael-georg/roma-evictions-europes-silent-scandal>.

<sup>28</sup> The letters are linked to the following page: <http://www.coe.int/en/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Ffrance>.

<sup>29</sup> See General Policy Recommendation No.13, CRI(2011)37.

<sup>30</sup> The Alliance’s paper, published in June 2016, can be downloaded at [www.antigypsyism.eu](http://www.antigypsyism.eu).

### III. The Court should adopt a specific approach when assessing claims of discrimination in the context of forced evictions

14. The Court has already offered extensive guidance on the application of Article 8 and Article 1 of Protocol no.1 to forced evictions. See, e.g., *Ivanova and Cherkezov v Bulgaria* (2016). The Court has nonetheless not yet had the opportunity to consider fully how to evaluate when forced evictions amount to a breach of Article 14 taken with Article 8 or other provisions of the Convention. Given the scale of forced evictions of Roma, guidance from the Court on this matter will have a potentially tremendous impact on thousands of Roma across Europe at risk of forced eviction in circumstances they believe to be discriminatory.
15. 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 a form of discrimination prohibited by the Convention. 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*".<sup>31</sup> A forced eviction is certainly "unwanted conduct", regardless of whether it has a basis in domestic law. As the material set out above 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 across 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 Respondent Government.** 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 there are other Roma who are not 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 public 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 (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.

The European Roma Rights Centre  
4 October 2016

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<sup>31</sup> EU Directive 2000/43, Article 2(3).