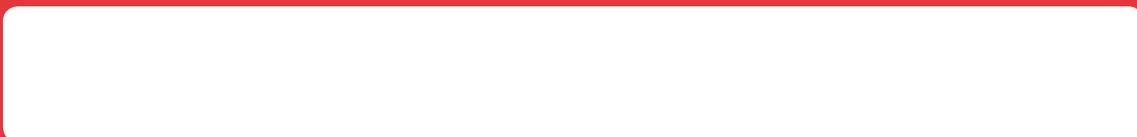


WRITTEN COMMENTS

of the European Roma Rights Centre, Concerning Romania

For Consideration by the Committee on Economic, Social and Cultural Rights
at the 53rd Session (26-30 May 2014).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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The European Roma Rights Centre (ERRC)¹ respectfully submits a list of issues concerning Romania for consideration by the Committee on Economic, Social and Cultural Rights (CESCR) at its pre-sessional Working Group for the 53rd Session, which will be held from 26th to 30th May 2014.

The ERRC has undertaken regular monitoring of the human rights situation of Roma in Romania, and this list of issues reflects the current priorities of the submitting organisation in its work in Romania.

INTRODUCTION

According to current unofficial estimates Roma in Romania make up approximately 9% of the population (approximately 1,700,000). However, a verified and accurate count remains elusive.² According to the final results of the 2011 Census of the Population and Households published on 4 July 2013 by the National Statistics Institute, Romania had a total population of 20.12 million. Among the 18.88 million respondents who self-reported their ethnicity, 621,600 were Roma (3.3%, an increase from 2.46% in the 2002 census).³

The ERRC's research on Roma in Romania⁴ shows that Roma continue facing discrimination in all areas of social life, including housing, education, employment and health. In December 2011, the Romanian Government adopted the Strategy for the Inclusion of the Romanian Citizens belonging to Roma minority for the period 2012 – 2020⁵ in the context of the European Commission's Communication on adopting an EU Framework for National Roma Integration Strategies up to 2020⁶ (*hereinafter* the Strategy). The Strategy focuses on four areas, namely access to housing, access to health, education and employment. However, it has been highly criticised by NGOs, which were not consulted prior to its adoption. Moreover, the Strategy lacks clear indicators on measuring its impact, reducing the possibility of effective implementation and of improving Roma inclusion policies through lessons learnt.⁷

DATA COLLECTION (ARTICLES 2, 3, 6, 7, 8, 9, 11, 12, 13, 15)

While State parties have undertaken to progressively realise the rights guaranteed under the ICESCR, the Committee has highlighted⁸ that the non-discrimination requirement enshrined in article 2 § 2 constitutes an immediate obligation. The availability of data, disaggregated according to the criteria listed in article 2 § 2, is crucial for any assessment on the incidence of discrimination.

Reliable data is required to monitor the situation of Roma in Romania and also to measure the impact of policies aimed at improving the situation of Roma. Data collection also allows for monitoring any positive or negative impact of policy changes.

1 The ERRC is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Additional information about the organisation is available at: www.errc.org.

2 ERRC, Life Sentence. Romani children in institutional care, June 2011, p 7, available at: <http://www.errc.org/cms/upload/file/life-sentence-20-june-2011.pdf>.

3 National Statistics Institute, Central Commission for the Census of the Population and Households, Press release concerning the final results of the Census of the Population and Households, 2011, 4 July 2013, available at: http://www.recensamantromania.ro/wp-content/uploads/2013/07/Press-release-no-159_2011-Population-census-rezults.pdf.

4 See ERRC *Romania Country Profile*, available at: <http://www.errc.org/cms/upload/file/romania-country-profile-2011-2012.pdf>.

5 Strategy of the Government of Romania for the Inclusion of the Romanian citizens belonging to Roma Minority for the period 2012 – 2020, available at: http://ec.europa.eu/justice/discrimination/files/roma_romania_strategy_en.pdf.

6 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – an EU Framework for National Roma Integration Strategies up to 2020*, April 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:HTML>.

7 European Roma Policy Coalition, *Analysis of the National Roma Integration Strategies*, March 2012, available at: http://www.ergonetwork.org/media/user-files/media/Final%20ERPC%20Analysis%2021%2003%2012_FINAL.pdf.

8 Committee on Economic, Social and Cultural Rights, General Comment no. 14 on the Right to the Highest Attainable Standard of Health, § 30 « States parties have immediate obligations in relation to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2.2) ».

Romanian legislation on personal-data protection lacks clarity, leading to a perception that the collection of ethnic data is completely prohibited. However, there are numerous exceptions under which the collection of such data can be permitted. Furthermore, under EU directive 95/46/EC, collection of sensitive data, which includes data about ethnicity, is not prohibited if safeguards are in place and are respected.⁹ The need for collection of data has also been emphasized by civil society in the monitoring report on the implementation of the Strategy and Decade Action Plan in 2012 in Romania.¹⁰ In their report, civil society stressed that the Romanian government must “ensure the initiation of a systematic data collection process on the situation of the Roma, in order to follow the progress of the Strategy”.¹¹

The research carried out in Romania in 2013 by the European Roma Rights Centre and its partner Gallup, focusing on the health of Roma, uncovered significant hidden discrimination, and vividly illustrates the need for and the State’s duty to collect ethnically disaggregated data in order to develop effective policies for improving the situation of the Roma. This research is discussed below. Some of the results were striking: Roma generally live 16 years less than the majority population; 62% of Roma women have never heard of mammography; 4 times more Romani children have never been vaccinated as compared to majority children, etc.

Even though various authorities collect some information relating to ethnicity and health, the significant health inequalities between Roma households and the general population, and indirect discrimination in relation to access to public services uncovered by the ERRC research remain hidden because the existing information is not made available and not used in formulating public policy. Policies cannot effectively address inequalities without the collection, publication and use of disaggregated data.

Suggested questions for the Government:

- In what domains (e.g. housing, education, health, and employment) are data disaggregated by ethnicity available and in what way are these data used to shape public policy?
- What are the barriers in collecting, using and publishing such data and what steps are undertaken by the Romanian authorities to overcome these barriers (e.g. guidelines on data collection, information campaigns to encourage self-identification as Roma)?
- What data does the Romanian State use to measure progress in relation to the implementation of the Strategy for Roma Inclusion, in relation to the requirements of the EU Framework on National Roma Integration Strategies and towards fulfilling its obligations under the ICESCR?
- Is there a domestic legal obligation or consistent practice of gathering data in order to design and assess public policies aimed at combating long-standing discrimination against Roma?

HOUSING (ARTICLE 11)

A. THE NEW CIVIL PROCEDURE CODE¹² LIMITS JUDICIAL CONTROL OVER EVICTIONS

The new Civil Procedure Code (the Code) entered into force on February 15, 2013. The Code narrowly interprets eviction according to its provisions (art.1033-1048) as the removal of current or former tenants or of occupants of a property owned by the person seeking eviction. For instance the domestic interpretation of eviction does not appear to cover the clearing of informal housing by public authorities as described below. Furthermore, the provisions of article 1042 are particularly worrisome as they limit the grounds on which an eviction can be reviewed in the courts to formal aspects such as the ownership title of the evictor or the expiry of the lease. The limitations introduced by article 1042 appear to exclude for instance a proportionality analysis of the effects of the eviction, a retrogressive development from previous legislation.

⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>.

¹⁰ Civil Society Coalition, *Civil Society Monitoring Report on the implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Romania*, Budapest 2013, available at: http://romadecade.org/cms/upload/file/9270_file24_ro_civil-society-monitoring-report_en.pdf.

¹¹ *Ibid.*

¹² Law no. 134/2010, which entered into force on 15 February 2013.

The General Comment no.3 explains in paragraph 9 that States have an obligation to take all measures so as to respect all rights enshrined in the Covenant. Any retrogressive measures taken by the state have to be fully justified in the context the totality of rights in the Covenant and its maximum available resources.

In this respect it should be noted that the European Court of Human Rights has recently highlighted that any person facing eviction should be able to have the proportionality of the measure examined by a tribunal (*Winterstein v France*¹³).

General Comment no.9 explains that the rights enshrined in the Covenant must be guaranteed by effective remedies.¹⁴ Therefore, it is important that the right to be heard is respected and also that the other attributes of an effective remedy are available if a right has been violated. As emphasized by the Committee, this is fundamental to the relationship between human rights and the rule of law.¹⁵ The recently adopted provisions on evictions contained in the Civil Procedure Code risk constituting a setback in this respect.

The Romanian legal framework on eviction particularly affects vulnerable groups such as Roma in that it does not provide enough time to challenge the eviction notice and obtain a remedy. There are no legal remedies in place with automatic suspensive effect in the case a potential eviction. For example, in February 2014, approximately 70 people were threatened with eviction in Caracal, Olt County, Romania. The people have been living in the building for decades and have their identity documents registered at that address on the basis of social housing contracts. Their social housing contracts expired on February 01, 2014 and the municipality refused to renew them. The people were served an eviction notice on February 11, 2014 and asked to vacate the building by March 15, 2014. They now remain but are at constant risk of a forced eviction. No alternative housing has been offered to them by the authorities.

So far, the experience of the ERRC in Romania shows that whenever the authorities evict Roma they always move them to the periphery of the city, usually in environmentally hazardous places. Examples of this can be found in Cluj county (Cluj – Pata Rât), in Tulcea county (Cazacliu), and most recently Constanța county (Eforie Sud).¹⁶

The European Court of Human Rights has recently explained in *Winterstein v. France*¹⁷ that whenever an eviction takes place, the authorities must carry out a proportionality test. Therefore, the people cannot be forcibly evicted unless they are re-housed in adequate housing. The ERRC respectfully submits that the same is true under the Covenant and that Romania's new, retrogressive legal framework is not compatible with this requirement.

B. LOCAL AUTHORITIES CONTINUE TO CIRCUMVENT EVICTION SAFEGUARDS

The ERRC has closely monitored evictions of Roma communities in several areas of Romania. In many cases no suitable alternative accommodation was provided. Roma have been moved to physically isolated and remote areas which are often polluted and environmentally hazardous. The living conditions in these areas are entirely unsuitable and fail to meet national and international standards.

On September 27, 2013 in Eforie Sud 101 Roma, including 55 children, were made homeless in severe weather conditions (low temperatures, high winds and rain), after their houses were demolished ostensibly due to lack of building permits. No remedy was available to suspend the eviction, pending judicial review. The local council, which carried out the eviction, did not provide any alternative accommodation.¹⁸ The people were forced to spend four days outdoors in makeshift shelters in particularly bad weather.¹⁹ Following pressure from NGOs and media, the local authorities placed these people in an abandoned high school, where they are still forced to

13 *Winterstein v. France*, application no. 27013/07, para 148 (e), available at (in French only): <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126910>.

14 See: <http://www.chrgj.org/publications/docs/wp/NolanPorterLangford.pdf>, page 4.

15 *Ibid*, paras 3,14.

16 Pata Rat: <http://www.errc.org/article/three-years-on-roma-evicted-from-cluj-napoca-call-for-justice/4237>, Eforie: <http://www.errc.org/article/romania-eviction-leaves-100-people-homeless-in-dangerous-conditions-%E2%80%93-authorities-must-act-urgently/4204>, Cazacliu: <http://www.errc.org/article/romania-authorities-forcibly-evict-roma-in-romania/2780>.

17 *Winterstein v. France*, application no. 27013/07, para 148 (e), available at (in French only): <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126910>.

18 ERRC, 'Romania Eviction Leaves 100 People Homeless in Dangerous Conditions – Authorities Must Act Urgently', Press Release, 2 October 2013, available at: <http://www.errc.org/article/romania-eviction-leaves-100-people-homeless-in-dangerous-conditions-%E2%80%93-authorities-must-act-urgently/4204>.

19 The National Meteorological Administration issued a "code orange" alert for dangerous weather phenomena consisting in very strong winds and heavy rains.

endure cold, insanitary conditions and overcrowding. To date, the evicted Roma have not been provided with suitable alternative accommodation and the local authorities have no clear plan to do so.

On December 17, 2010 almost 200 people from 56 Romani families were evicted from Coastei Street, Cluj-Napoca. 40 families were given accommodation in 18 m² modular shelters on the site of the city rubbish dump at Pata-Rât.²⁰ The others were given no accommodation. The accommodation is overcrowded, far from the city, and in an area totally unsuitable for human habitation. Four families share one bathroom, and there is no adequate ventilation or heating, cooking facilities or hot water. Romani families were given just one day's notice of the evictions. Many had been living in Coastei Street for over 20 years. The families were evicted in mid-December, despite a ban on wintertime evictions in Romania. The evicted families have been offered no suitable accommodation and there is no plan in place to address the housing issue.

In December 2013 the Cluj-Napoca County Court (Tribunal) found that the Mayor's decision to forcibly evict the families was illegal. The court ordered the city authorities to pay damages to the Romani applicants for their eviction and relocation to Pata-Rât, and for the inadequate conditions of that housing. The Court also required the city to provide the applicants with adequate housing in line with the minimum standards set out in Romanian law. However, the decision is being appealed by the city authorities. In the meantime, nothing has changed for the families.

These examples disclose a pattern of local authorities using discretionary powers under planning legislation²¹ to demolish informal or unauthorized buildings, while avoiding procedural safeguards applicable to evictions under domestic law. Thus, the definition of eviction under domestic law and its accompanying safeguards appear limited to landlord-tenant relations or to situations where the person seeking eviction has a property right over the relevant; this is far narrower than the definition provided in General Comment no. 7 on forced evictions. Moreover, there is no prior consultation with the people before evictions take place.

The situations in Eforie Sud and in Pata-Rât, Cluj-Napoca are not unique, and are in fact repeated across Romania. Roma frequently live in isolated locations which are not fit for human habitation, face threats of eviction or evictions, and face difficulties in accessing suitable alternative housing, including social housing. In Hădăreni, Romania, several families are still waiting for the government to implement elements of European Court of Human Rights judgments from 2005 and 2007, including the construction and/or renovation accommodation for some complainants. An investigation carried out by the National Council for Combating Discrimination from 2013 revealed that most of the houses have not been repaired by the government and the houses that were destroyed as a result of the 1993 pogrom have not been rebuilt.²² The ERRC is closely monitoring the implementation of the general measures in Hădăreni case and reports to the Committee of Ministers on the progress made by the Romanian government.

C. LACK OF INFO ABOUT INFORMAL BUILDINGS/SETTLEMENTS

According to information provided by the Romanian Government to the UN Special Rapporteur on housing “In 2013 the Ministry of Regional Development and Public Administration (MRDPA) has initiated a study “Analysis on informal settlements in Romania – the assessment of the current situation in view of substantiating new regulations and intervention instruments”. The study, which is due at the end of 2014, aims to obtain a map and a register of informal settlements in Romania that will offer an image showing the demographic and territorial dimension of the informal settlements in Romania. The study will also present diachronically the framework and the historical, social, economical and juridical factors leading to the appearance and the development of informal settlements in Romania and will suggest typological classifications of these settlements.” It remains unclear whether this research will include data disaggregated by ethnicity and whether the specific situation of Roma will be addressed. Given that many Roma live in informal settlements, it is vital both that this study is carried out in a timely manner, and that it includes data on Roma and informal settlements.

20 European Roma Rights Centre, Taken from the City: Romanian Roma Evicted to a Rubbish Dump, December 2012, available at: <http://www.errc.org/cms/upload/file/romania-report-pata-rat-17-dec-2012-en.pdf>.

21 Law no. 50/1991 on the Authorisation of construction works.

22 The NCCD carried out the investigation as a result of a case that had been brought to its attention by some of the applicants in Hadareni case. In the petition addressed to the NCCD, the applicants claimed that it was because of discrimination that their houses have not yet been constructed. As part of its administrative procedure, the NCCD investigated the actual state of houses. Picture of the houses can directly be obtained from the NCCD (case file 101/05.06.2013, page 46-47).

Suggested questions for the Government:

- How does national law define an eviction? In what situations can people be removed from the places where they are living without the protections the UN and international law prescribes for evictions? What safeguards in particular are in place for protecting the rights of the inhabitants during the clearing of informal settlements, where Roma often live?
- What measures does the Romanian State take to ensure that evictions of any kind are carried out in compliance with the international standards on forced eviction²³ in light of article 11 of the International Covenant on Economic, Social and Cultural Rights?
- What are the remedies that the Romanian legal system offers in case of forced evictions of any kind? Are there remedies available with automatic suspensive effect (i.e. to ensure that a court reviews the lawfulness of the eviction before it takes place), so as to ensure those evicted will not be subjected to inhuman or degrading treatment? In what kinds of situations are those remedies available?
- What is the Government doing to eliminate obstacles (financial, administrative, legal etc) that preclude Roma from regularizing the legal status of the houses they have lived in for long periods of time?

HEALTH (ARTICLE 12)

In 2013 as part of a wider project on health and disaggregated data, the ERRC commissioned research²⁴ on health inequalities in Roma communities in Romania. The results of the survey show significant inequalities between Roma and the rest of the population. The average age at death is 16 years lower in Roma households. The mortality rate in those under the age of 10 was three times higher in the Roma population sample. The average time between first diagnosis of a condition and death is 3.9 years in the Roma population compared with 6.8 years for the remaining population. 11% of Roma respondents reported that in the last year they had needed healthcare but did not receive it, compared to 5% of the general population. Romani individuals are significantly more likely to be diagnosed with serious medical conditions and at a younger age, and face more difficulties and obstacles in accessing necessary medical care and affording medication. They are significantly more likely to take less of a prescription or interrupt the prescription in order to save money or because they cannot afford it. Roma are less likely to receive vaccinations or access preventive screening programmes.

Recent changes to the Roma Health Mediator (RHM) programme have had a detrimental impact on its capacity. By 2008 there were over 600 RHMs working across Romania, but in 2008 and 2009 a process of decentralization of the health system was carried out, and RHMs were transferred from county health authorities to local public administrations.²⁵ Following this process, RHMs are now either integrated into the social work services or the local mayor's office. However, the process has not gone smoothly. Although legal provisions grant both security of employment and of income, the legal provisions have not been applied uniformly by all local administrations.²⁶ The number of RHMs in 2011 was reported to be 380. Various reasons were given for this – some RHMs who left the position were not replaced, while in some localities RHMs were not rehired due to financial concerns.²⁷ RHMs also collect data on health as part of their job. However, there has been criticism of the fact that these data are not sufficiently used.²⁸ Research published in 2014 has also shown that Roma are more than three times more likely not to have health insurance (49.3% vs. 14.7% for Non-Roma).²⁹

23 In particular, General Comment no.7 of the International Covenant on Economic, Social and Cultural Rights.

24 The research was carried out by Gallup Romania. The sample size was 1,100 Roma households and 800 households for the non-Roma sample.

25 World Health Organisation, *Roma health mediation in Romania*, Roma Health – case study series, No. 1, Copenhagen, 2013, p vii.

26 World Health Organisation, *Roma health mediation in Romania*, Roma Health – case study series, No. 1, Copenhagen, 2013, p 8.

27 Open Society Foundation, *Roma Health Mediators: successes and challenges*, Roma Health Project, Open Society Foundation, October 2011, p 51.

28 World Health Organisation, *Roma health mediation in Romania*, Roma Health – case study series, No. 1, Copenhagen, 2013, p viii.

29 Kuhlbrandt, Footman, Rechel and McKee, *An examination of Roma health insurance status in Central and Eastern Europe*, European Journal of Public Health, 2014.

Suggested questions for the Government:

- What steps are in place to ensure that decentralization of the health system does not continue to have a negative impact on the work and success of the Roma Health Mediator programme?
- What steps are planned to increase the number of Roma Health Mediators and to ensure that mediators are employed in all regions?
- What steps are planned to ensure that authorities make appropriate use of data collected by RHMs?