

# Forced evictions and expulsions: a right to be?

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**Author: Lilla Farkas, Human Rights lawyer and PhD Researcher**

## **Introduction**

In Europe, land, houses, flats and other forms of real estate are owned by private individuals, local governments, companies, churches, trade unions, association or the state. In order to have a roof over one's head, one must therefore own or rent a place to live by oneself or with one's family.<sup>1</sup> If an individual does not have sufficient means to buy or rent housing, he/she is dependent on the state or a charity to accommodate him/her and his/her dependents. If he/she moves from one state to another, because of the denial of basic accommodation, his/her expulsion may perpetuate him/her non-right to basic accommodation.

Unless basic accommodation is provided or the accommodation found by the individual is not accepted, he/she cannot stay alive. In other words, without positive measures that ensure basic accommodation, repeated evictions and expulsions may endanger human life and/or cause permanent damage to the human body and soul, as well as to family life and community ties. If a community, such as the Roma, is singled out or disproportionately affected by forced evictions and expulsions, discrimination based on racial and ethnic origin is inflicted on them.

## **The Right to housing in the Council of Europe member States**

In the Council of Europe space, various states ensure the right to housing in their constitutions, but many do not. Public or social housing is inadequate in the majority of member States and the amenities provided for the homeless fall short of the needs - especially of the needs of families and communities broken up by evictions and expulsions. Roma and Travellers often fall through the gaps of legal provisions and social policy measures regulating property and housing rights on the one hand and homelessness on the other. The existence of citizens on their state's territory cannot be banned, in other words, they cannot be expelled and they must be admitted to their country of citizenship.<sup>2</sup> Nor can stateless Roma, in practice because other states are under no obligation to admit them. Citizens - and stateless Roma - therefore have or should have the right to residence and the freedom of movement within their state. Non-citizens' rights can and are often limited. In states that are also members of the European Union (EU), the protection from homelessness and the right to housing of EU migrants is more extensive than other migrant groups'.

## **Council of Europe mechanisms against expulsions**

In practice, forced evictions and expulsions which do not result in some sort of accommodation, question the right of Roma and Travellers to be, to peacefully exist in their country of (ex)citizenship to where they migrated fleeing persecution or lack of basic accommodation. The European Convention on Human Rights and Fundamental Freedoms (ECHR) does not provide a straightforward right to housing, but in line with the considerations above, it guarantees the right to life, to property, to residence and freedom of movement, as well as to private and family life, the prohibition of torture - without discrimination and recourse to an effective remedy.<sup>3</sup>

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<sup>1</sup> According to the Center on Housing Rights and Evictions (COHRE) adequate housing is more than just a roof over one's head. <http://www.cohre.org/resources>

<sup>2</sup> Article 3 Protocol 4 ECHR: prohibition of expulsion of nationals.

<sup>3</sup> Article 2 the right to life, Article 3 prohibition of torture, Article 8 right to respect for private and family life, Article 13 (invokable only in conjunction with other Convention rights) the right to remedy, 14 (evocable only in conjunction with other

The Convention has been interpreted as providing protection from forced evictions from (il)legally occupied land or housing, as well as from expulsion from a member state if that would run contrary to the right to (family) life or the prohibition of torture (*V.M. and Others v Belgium*).<sup>4</sup> The Convention prohibits collective expulsions of aliens (*Conka v Belgium*).<sup>5</sup> In other words, if broadly interpreted, it can ensure the right to exist, primarily understood as basic accommodation of communities, families and individuals. Protocol 12 prohibits discrimination in various fields, covering housing as well, but it has been ratified by only some member States.

In the Human Rights context, the European Court of Human Rights (ECtHR) has provided protection from forced eviction of Travellers from caravan sites that had originally been legally occupied (*Connors v the UK*) or whose legal occupation was rendered impossible by local authorities (*Winterstein et autres c France*). It has also provided protection from the eviction of a long-standing Roma community from land they had occupied for decades prior to sweeping changes in property structures in a state party (*Yordanova and Others v Bulgaria*).<sup>6</sup> The issue of mob violence resulting in demolishing Roma housing has been dealt with by the ECtHR in *Moldovan and others v. Romania* (Nos. 1 and 2), *Kalanyos and others v. Romania*, *Gergely v. Romania* and *Tănase and others v. Romania*.<sup>7</sup>

Travellers are particularly affected by discriminatory patterns in the allocation of planning permission in cases where they purchase private land for the purposes of parking caravans, in access to campsites, hotels and/or other temporary accommodation. The lack of camping sites for Travellers makes it particularly difficult for them to have access to adequate housing in accordance with their itinerant or semi-itinerant lifestyle. In some cases, camping sites for Traveller accommodation have inferior forms of protection of security of tenure than standard housing, an issue which was addressed by the ECtHR in the case of *Connors v. the United Kingdom*.<sup>8</sup> In this case, the Court found that the eviction of the applicant and his family had not been accompanied by the requisite procedural safeguards.

Since the *Yordanova* case, the ECtHR has in a handful of cases imposed interim measures on state parties in order to stop the execution of forced evictions. Interim measures can be asked prior to the exhaustion of effective domestic remedies as well as in cases no effective domestic remedies exist. Domestic remedies are certainly not effective if they cannot stop the execution of evictions or expulsions. An important characteristic of the cases challenging forced evictions and expulsions is that they have been instituted by groups of individuals or communities. This is possible, even though in general the ECHR mechanism is triggered by individual complaints. The Commissioner of Human Rights of the Council of Europe has a mandate to intervene in cases pending before the ECtHR, but his intervention has not yet been sought in cases of evictions and expulsions.

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Convention rights) prohibition of discrimination based on, among others, race, colour, language, religion, national or social origin, association with a national minority, property, birth or other status, Article 1 Protocol 1 protection of property, Article 2 Protocol 4 freedom of movement (including residence).

<sup>4</sup> *V.M. and Others v Belgium*, judgment of 7 July 2015, pending appeal. The case concerns the reception conditions of a family of Serbian nationals of Roma origin seeking asylum in Belgium. Following an order to leave the country, their appeal could not stay the execution. The applicants were left without basic means of subsistence and were obliged to return to their country of origin, where their severely disabled child died.

<sup>5</sup> *Conka v Belgium*, judgment of 5 February 2002. As the ERRC reported: "The applicants, Slovakian nationals of Romani origin, sought political asylum in Belgium on the ground that they were victims of repeated violent assaults by skinheads in Slovakia. Belgian police sent a notice to the applicants and other Slovakian Romani families requiring their presence at the police station to "enable the files concerning their applications for asylum to be completed." There the applicants were served with a new order to leave Belgium, take to a holding centre, and five days later placed on a flight to Slovakia." Available at <http://www.errc.org/article/conka-v-belgium/3860>. Article 4 Protocol 4 ECHR: prohibition of collective expulsion of aliens.

<sup>6</sup> *Yordanova and Others v Bulgaria*, judgment of 24 April 2012. *Winterstein and Others v France*, judgment of 17 October 2013. For more information, see: Factsheet – Roma and Travelers Available at [http://www.echr.coe.int/Documents/FS\\_Roma\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf)

<sup>7</sup> The information has been taken from Romanita Iordache's Report on Measures taken under the RED 2013, available at [http://www.non-discrimination.net/search/apachesolr\\_search/Romania?page=2&filters=](http://www.non-discrimination.net/search/apachesolr_search/Romania?page=2&filters=)

<sup>8</sup> *Connors v. the United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004.

The standards established by the ECtHR are not commensurate to those adopted by other international bodies, but through interim measures, the Court can provide effective protection from homelessness. It remains to be seen whether beyond a right to a roof over one's head the Court will be willing to raise the standards or shape a right to housing in the future. In any case, in relation to forced evictions and expulsions, the ECtHR can and does regularly provide effective remedies which can be looked upon regularly.

Soft law and political responses can also be sought under various other Council of Europe mechanisms. For instance, the Parliamentary Assembly of the Council of Europe can ask questions regarding certain incidents in member States and it can issue reports relating to evictions and expulsions. It has taken political action against evictions and expulsions.<sup>9</sup> Monitoring bodies, such as ECRI, the Advisory Committee of the FCNM and the Commissioner of Human Rights may issue general and country-specific recommendations. ECRI issued General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination. The Commissioner for Human Rights of the Council of Europe has identified the broad issues that may come before courts in Europe in relation to the housing of Roma as follows: (i) discrimination in access to housing, (ii) discrimination in housing policy and practice, (iii) segregation in informal settlements and excluded localities, (iv) substandard housing conditions, (v) security of tenure and forced evictions, (vi) enjoyment of the right to adequate housing by Travellers, and (vii) homelessness.<sup>10</sup>

The Committee of Ministers, in its 2005 Recommendation on improving the housing conditions of Roma and Travellers in Europe, noted that states parties "should undertake a systematic review of their housing legislation, policies and practices and remove all provisions or administrative practices that result in direct or indirect discrimination against Roma, regardless of whether this results from action or inaction on the part of state or non-state actors." It further stressed that "In order to combat the creation of ghettos and segregation of Roma from the majority society, member states should prevent, prohibit and, when needed, reverse any nationwide, regional, or local policies or initiatives aimed at ensuring that Roma settle or resettle in inappropriate sites and hazardous areas, or aimed at relegating them to such areas on account of their ethnicity."<sup>11</sup>

Pursuant to collective complaints that registered regional NGOs submitted, the European Committee of Social Rights has found various member States liable for violating the housing rights of Roma and Travellers.<sup>12</sup>

### **Other international mechanisms against expulsions**

Mechanisms available under the aegis of the United Nations and the EU - particularly preliminary references in domestic proceedings or infringement actions brought by the European Commission against a Member State - may also effectively remedy infringements. The EU's Racial Equality Directive<sup>13</sup> applies to 'access to and supply of goods and services which are available to the public, including housing' (Article 3(1)(h)). EU law on free movement is relevant for the housing of Roma migrants as it contains protection against certain types of discrimination in housing.

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<sup>9</sup> See, for instance Roma migrants in Europe Recommendation 2003 (2012), Roma migrants in Europe Reply to recommendation (Doc. 13162) (2013), Roma migrants in Europe, Report by Mr Ferenc KALMÁR, Doc. 12982 (2013), Roma migrants in Europe, Report by Ms Annette GROTH Doc. 12950 (2012)

<sup>10</sup> Human rights of Roma and Travellers in Europe, Council of Europe, 2012, pp. 137-156.

<sup>11</sup> Committee of Ministers, Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe.

<sup>12</sup> The number of complaints is rather high, including those launched by the European Roma and Travellers' Forum as well as the European Roma Rights Center, available at <http://hudoc.esc.coe.int/eng#>.

<sup>13</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Nationals of a Member State who are employed as workers in another Member State must enjoy all the rights and benefits accorded to national workers in matters of housing.<sup>14</sup> They are equally entitled to join housing lists on a par with nationals. Council Directive 2003/109 gives third-country nationals who are long-term residents the right to equal treatment in the matter of the supply of goods and services made available to the public and procedures for obtaining housing.<sup>15</sup>

Under the Charter of Fundamental Rights of the European Union the right to housing assistance so as to 'ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.' (Article 34(3)) is recognized and respected. In the *Servet Kamberaj* case, the Court of Justice of the European Union noted that this provision must be understood as including the concept of social security, social assistance and social protection as set out in Directive 2003/109/EC.<sup>16</sup> As Ringelheim and Bernard note, "Housing assistance that meets the goals established by Article 34 of the Charter should therefore be considered as part and parcel of core social assistance and social protection benefits, which must be subject to the principle of equal treatment for third-country nationals who are long-term residents (Article 11(4) of Directive 2003/109)".<sup>17</sup>

The bulk of the principles governing housing have been laid down in soft law measures adopted by UN treaty bodies.<sup>18</sup> According to the UN Committee on Economic, Social and Cultural Rights "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or which views shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity."<sup>19</sup> Under Article 31 of the European Social Charter, security of tenure supported by law is part and parcel of the notion of adequate housing. The European Committee of Social Rights has noted that in addition to a housing policy for all disadvantaged groups of people to ensure access to social housing, states must set up procedures to limit the risk of eviction. Procedural safeguards have been developed by, among others, the European Committee of Social Rights and the UN Committee on Economic, Social and Cultural Rights in General Comment No. 7. These include genuine consultation with those affected, reasonable notice and access to legal remedies. Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they own, occupy or lease the land or housing in question. When they take place, evictions must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. Evictions must not render individuals homeless or vulnerable to the violation of other human rights. Compensation for illegal evictions must also be provided. The alternative housing should not result in further segregation.<sup>20</sup>

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<sup>14</sup> Article 9(1) and 9(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (codification), OJ L 141/1 27 May 2011

<sup>15</sup> Article 11(1)(f) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16 of 31 January 2004.

<sup>16</sup> Case C-571/10, *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others*, judgment of 24 April 2012

<sup>17</sup> *Discrimination in Housing*, Julie Ringelheim and Nicolas Bernard, 2013, European Commission

<sup>18</sup> For instance, General Comment 4, adopted by the UN Committee on Economic, Social and Cultural Rights in 1991 - seven criteria of adequate housing

<sup>19</sup> *Ibid.*

<sup>20</sup> *Digest of the Case Law of the European Committee of Social Rights*, pp. 171-2 and CESCR, General Comment No. 7: The right to adequate housing (Article 11.1): forced evictions, 1997.