



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

17 March 2014

Case Document No. 1

European Roma and Travellers Forum (ERTF) v. Czech Republic
Complaint No. 104/2014

COMPLAINT

Registered at the Secretariat on 3 March 2014



EUROPEAN ROMA AND TRAVELLERS FORUM
EVROPAKO FORUMO E ROMENGO THAJ E PHIRUTNENGO
FORUM EUROPÉEN DES ROMS ET DES GENS DU VOYAGE

Subject: Complaint submitted by the European Roma and Travellers Forum against the Czech Republic in respect of a violation of Article 11 and Article 16 of the European Social Charter of 1961, alone or in conjunction with the non-discrimination principle stated in the Preamble of the Charter.

February, 2014
Strasbourg

Evropako Forumo e Romengo thaj e Phirutnengo
European Roma and Travellers Forum
Forum européen des Roms et des Gens du voyage

Secretariat of the European Social Charter

Directorate General of Human Rights – DG II

Council of Europe

67075 Strasbourg CEDEX

France

Subject: Complaint submitted by the European Roma and Travellers Forum against the Czech Republic in respect of a violation of Article 11 and Article 16 of the European Social Charter of 1961, alone or in conjunction with the non-discrimination principle stated in the Preamble of the Charter.

Table of Contents

I. Admissibility	4
II. Statement of Facts	7
III. Conclusions	33

I. Admissibility

1.1 Competence of ERTF, the Complaining Organisation

The Forum is a non-profit-making legal entity governed by the legislation in force in France. Its purpose is to oversee the effective exercise by Roma and Travellers of all human rights and fundamental freedoms as protected by the legal instruments of the Council of Europe. It shall promote the fight against racism and discrimination and facilitate the integration of these population groups into European societies and their participation in public life, as specified in Article 2 of the Statute of the Forum. The Forum pursues this aim notably by proposing, in order to contribute to the improvement of the conditions of the said populations, the implementation of initiatives at the most relevant levels, primarily with regard to housing, health, education and employment. Additional information about the ERTF is available on our website at www.ertf.org.

1.2 Applicability to the Czech Republic of the revised European Social Charter and of the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints.

The Czech Republic signed the European Social Charter of 1961 on 27 May 1992, and ratified it on 3 November 1999. The Czech Republic ratified the 1995 Additional Protocol providing for a system of Collective Complaints on 4 April 2012. On 4 November 2000 the Czech Republic signed the revised European Social Charter but has not yet ratified it.

1.3 Applicability to the Czech Republic of Article 11 and Article 16 of the European Social Charter of 1961.

According to the declarations contained in the instrument of ratification of the European Social Charter of 1961 deposited by the Czech Republic on 3 November 1999, the Czech Republic considers itself to be bound by Article 11 and Article 16 of the European Social Charter of 1961.

2. Compliance by the European Roma and Travellers Forum with the criteria of the Additional Protocol

2.1. Compliance with Article 1 (b) of the Additional Protocol of 1995

The ERTF submits this collective complaint to the Executive Secretary¹ acting on behalf of the Secretary General of the Council of Europe, pursuant to the collective complaint mechanism established by the Council of Europe on 9 November 1994 with the purpose of ensuring the full realisation by all of social rights.²

Unlike bodies coming under Article 1(c) and Article 2 § 1 of the Additional Protocol, international non-governmental organisations entitled to submit complaints need to come within the jurisdiction of the High Contracting Party at issue. The ERTF is therefore entitled to bring a collective complaint against those countries having ratified the European Social Charter, or revised European Social Charter, or both, that have also agreed to be bound by the collective complaint mechanism, without prejudice to any admissibility requirement.

The ERTF has consultative status with the Council of Europe and is on the Governmental Committee list of international non-governmental organisations allowed to submit collective complaints.

2.2. Compliance with Article 3 of the Additional Protocol of 1995

The activities of the ERTF give it the necessary competence in the matters about which it is complaining.

Article 2 of the Statute provides as follows:

¹ Pursuant to Rule 22, Part VIII, of the Rules of Procedure of the ECSR, entry into force on 29 March 2004, replaces the Rules of 9 September 1999.

² See Additional Protocol to the European Social Charter providing for a system of collective complaints, European Treaty Series No. 158 (hereinafter "the Additional Protocol").

- The aim of the ERTF is to promote the effective exercise by the populations mentioned in Article 1.2 of all human rights and fundamental freedoms as protected by the legal instruments of the Council of Europe and other international legal instruments where applicable. It shall promote the struggle against racism and discrimination and facilitate the integration of these populations into European societies and their participation in public life and decision-making processes;
- The Forum shall make proposals to contribute to the improvement of the social conditions of the said populations, both sedentary and itinerant;
- The aim of the Forum shall be non-profit-making and all proceeds shall be invested in the activities of the Forum in accordance with the aim indicated in paragraph 1 above.

The ERTF is also committed to carrying out any other lawful activity which may be of benefit to the Roma and Traveller populations. In that respect, **it calls for all European Roma and Travellers to be protected from discrimination in respect of their social and human rights.**

The ERTF plays an active part in the INGO activities at the Council of Europe and is competent in the areas of activity connected with social rights and the European Social Charter. Furthermore, the standing of the ERTF before the ECSR is well-established, as it has successfully submitted complaint No. 64/2011 against France,³ which led to the adoption of resolution ResChS(2013)1 on 5 February 2013 by the Committee of Ministers.

3. Compliance with Rule 1 of the rules of procedure of the collective complaints system

Article 8.3 (i) of the Statute of the ERTF states that the President shall represent the Forum in all its functions, or shall delegate such tasks to members of the Executive Committee.

³ Council of Europe, No. 64/2011 European Roma and Travellers Forum v. France, (No. 64/2011 European Roma and Travellers Forum v. France) registered on 28 January 2011; lodged on 24 January 2012 and resolution ResChS(2013)1 adopted on 5 February 2013 by the Committee of Ministers, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC64CaseDoc1_en.pdf

II. Subject matter of the Complaint

The issue addressed in this Collective Complaint is the housing situation of Roma in the Czech Republic in combination with their right to health. At issue in this Collective Complaint are residential segregation, substandard housing conditions, forced evictions and other systemic violations of the right to adequate housing and the right to health falling disproportionately against Roma in the Czech Republic, as banned under international law provisions to which the Czech Republic is a party, including but not limited to Article 11 and 16 of the European Social Charter of 1961, alone or in conjunction with the non-discrimination principle stated in the Preamble of the Charter.

Housing is fundamental to the development of family life, as it constitutes the centrepiece of a family's health and prosperity. The Czech Republic has undertaken, under Article 16 of the ESC, to promote the economic, legal and social protection of family life by means such as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly-married, and other appropriate means. Current housing conditions for Roma in the Czech Republic are an important indicator of their social exclusion, as these conditions powerfully affect other dimensions of social life, such as health or employment and education opportunities.

Additionally, under the European Social Charter the Czech Republic is obliged to ensure the right to health by removing as far as possible the causes of ill-health, by providing advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health, and by preventing as far as possible epidemic, endemic and other diseases (article 11 §1,§2,§3 of the ESC).

1) The right to housing

a) International legal standards relating to the right to housing

Housing is fundamental for the development of family life but, unlike in some European countries, the right to adequate housing is not constitutionally established in the Czech Republic.

Basic legal regulation of the right to adequate housing can be found in international legal instruments such as the United Nations International Covenant on Economic, Social and Cultural Rights, as well as the Czech Republic's *Charter of Fundamental Rights and Basic Freedoms*, which states in Article 1 that "[a]ll people are free, have equal dignity, and enjoy equality of rights. Their fundamental rights and basic freedoms are inherent, inalienable, non-prescriptible, and not subject to repeal." The *European Convention for the Protection of Human Rights* in Article 8, Paragraph 1, provides a right to respect for one's private and family life, one's home and one's correspondence. Furthermore, according to Article 14, the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁴

The Czech Republic is also bound by the *International Covenant on Civil and Political Rights* which took effect on 23 March 1976.⁵ Specifically, Article 11, paragraph 1 of the Covenant states: "The States, parties of the Covenant, recognise the right of everyone to an adequate standard of living. This includes, but is not limited to, the right to adequate food, clothing, housing, and the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."⁶

⁴ Czech Republic/209/1992

⁵ Czech Republic/120/1976 (10.05.1976)

⁶ Ibid

The right of access to adequate housing, according to Article 11 paragraph 1 of the Covenant, needs to be interpreted alongside Article 2 paragraph 2 of the Covenant. This guarantees that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)⁸ in Article 8 *inter alia* provides the following rights: the right of access⁹, the right of occupation¹⁰ and the right not to be expelled or evicted, and is thus intimately bound with the principle of legal security of tenure.¹¹ Furthermore, according to Article 14, the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

b) Discrimination against Roma in Czech Republic in the field of housing:

Legislation related to housing, residential segregation and forced evictions

Large numbers of Roma in the Czech Republic today live segregated from non-Roma, in violation of international human rights norms banning racial segregation¹². The right of housing for Roma or other minorities is not specifically dealt with in Czech legislation and their rights regarding housing are the same as for all other citizens. Nevertheless, we can state that Roma are the most vulnerable group in regard to inadequate housing, partly because of direct or indirect discrimination and partly because of their predominantly low economic status.

⁷ Czech Republic/120/1976 (10.05.1976)

⁸ Czech Republic ratified it on 18/3/1992

⁹ Wiggins v United Kingdom, Application No. 7456/76, 13 D & R 40 (1978), 8 February 1978, available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74362#{"itemid":\["001-74362"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74362#{)

¹⁰ Ibid

¹¹ European Commission of Human Rights, Cyprus v Turkey, Application No. 6780/74 and 6950/75, 26

May 1975, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-74811>

¹² http://www.gac.cz/userfiles/File/nase_prace_vystupy/GAC_MAPA_Socially_Excluded_Roma_Localities_in_the_CR_en.pdf?langSEO=en&parentSEO=documents&midSEO=nase_prace_vystupy&submidSEO=GAC_MAPA_Socially_Excluded_Roma_Localities_in_the_CR_en.pdf

There is no systematic policy on social housing in the Czech Republic. The previously centralised state housing stock has been transferred to the administration of regional and local authorities through decentralisation policies. Since the 1990s, most of the regional and local authorities have decided to privatise their housing capacities, and consequently many socially disadvantaged people have found themselves in a vulnerable position in relation to private owners and their housing-market interests.

. Social housing legislation and instruments are still lacking in the Czech Republic. Social housing programmes are almost non-existent, and municipalities do not receive funding from the government for this purpose.¹³ Municipalities do not have enough resources to build and create adequate living conditions for all of the socially vulnerable.

The current system of state housing subsidies does not facilitate access to the housing market for many vulnerable Romani families; moreover, in many communities they only available premises are low-quality, overpriced residential hostels, and this leads to their residential segregation. Tenants in this kind of housing also enjoy a lower level of legal protection. This type of housing is usually based on short-term contracts with the possibility of immediate termination.¹⁴ The allocation of housing subsidies for tenancy in such accommodation is at the discretion of the local authorities, and this money is most often paid directly to the landlords of the residential hostels. The state support is calculated as a proportion of the rent, depending on the subjective assessment of a local official, and there is currently no cap on the amount of rent that can be charged.¹⁵

In relation to social housing for the most socially disadvantaged groups of society, the Czech legal framework cannot be considered systemically-conceived. In 2007, the drafting of a Social Housing Act was part of the official government programme and was to be

¹³Pavla Boučková: *Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC, Country Report 2011 – Czech Republic*, p. 56.

¹⁴ERRC, *Czech Republic. A report by the European Roma Rights Centre, Country profile 2011-2012*, p. 33, <http://www.errc.org/cms/upload/file/czech-republic-country-profile-2011-2012.pdf>

¹⁵ Czech Radio, *Interview with Martin Šimáček, Director of the Agency for Social Inclusion*, available at: http://www.rozhlas.cz/zpravy/politika/_zprava/za-nefungujici-kanalizaci-v-prednadrizi-muze-mesto-ostava-rika-martin-simacek--1101638

prepared by the Ministry of Regional Development as of February 2009, but in the end this was completely abandoned. In July 2011, the Government adopted Resolution No. 524, Concept of Housing in the Czech Republic until 2020,¹⁶ which addresses the issue of social housing. This concept aims at improving the accessibility of housing for groups at risk of social exclusion by stimulating supply and demand. Accordingly, the state will focus *inter alia* on supporting the construction of flats, removing barriers to accessing existing flats, and strengthening the legal framework for social housing.

Although the Concept of Housing in the Czech Republic until 2020 was welcomed by the Commissioner¹⁷, he noted that *"the concerns expressed by ECRI that the proposals included in the Housing Concept have remained largely on paper and [...] the housing projects being carried out in practice are isolated and depend on the political will of municipalities, who exercise devolved powers in this area. The United Nations Committee on the Elimination of Racial Discrimination has been particularly concerned at the possibly limited effectiveness of the government's response to some of the decisions and acts of local and regional authorities in respect of evictions or the allocation of housing"*¹⁸

As ECRI noted in its Conclusions for Czech Republic on 2012, *"...the proposals made in July 2011 remain largely theoretical; for the moment, the projects being carried out in practice are isolated, dependent on the political will of municipalities and mostly in the form of pilot projects implemented in practice by NGOs."*¹⁹

¹⁶ Government Resolution No. 524 of 13 July 2011

¹⁷ REPORT by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Following his visit to the Czech Republic from 12 to 15 November 2012, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2324044&SecMode=1&DocId=2037440&Usage=2>

¹⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination - Czech Republic, CERD/C/CZE/CO/8-9, 14 September 2011.

¹⁹ ECRI Conclusions on the implementation of the recommendations in respect of the Czech Republic subject to interim follow-up, Adopted on 23 March 2012, p.7, available at:

http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-IFU-IV-2012-027-ENG.pdf

c) Territorial segregation of Roma and bad living conditions

As mentioned above, there is increasing segregation of Roma in marginalised communities. Although there are no exact recent official data that would make it possible to map the developments of recent years, there are state officials, such as the head of the Agency for Social Inclusion (the Agency), who state that the number of segregated locations has increased in recent years. A detailed mapping was conducted in 2005 by Gabal Analysis and Consulting, which described the character of the identified locations and gave information about the services provided by municipalities and NGOs to their residents. According to this study, 67,500 Roma (about one-third of the Roma in the Czech Republic) were living in 330 socially excluded localities in 2005.²⁰

As ECRI noted in its conclusions in 2012 *"the number of socially excluded localities is reported to have increased since ECRI's fourth report to 400 and that such issues continue to be at the heart of tensions between the majority population and Roma in some parts of the Czech Republic, in particular where municipalities are doing little to improve the situation of Roma living in segregated areas."*

While some of these locations are whole neighbourhoods or streets, which are often on the outskirts of the municipality or physically separated from the rest of the built-up environment, others are single structures surrounded by other buildings.

There is no co-ordinated national policy to promote spatial de-segregation. The Agency has declared access to housing as one of its stated objectives, yet its possibilities for intervention are very limited.

Focusing on those municipalities where the Agency has established local partnerships, the Agency tries to persuade local decision-makers to come up with strategies for de-segregation and the improvement of the housing situation of the poor.

²⁰For more information please visit the web-page dedicated to the project of the Ministry of Labour and Social Affairs on the "Map of socially excluded or at risk of social exclusion of Roma communities in the Czech Republic"
<http://www.esfcr.cz/mapa/index.html>

One obstacle to such plans is the limited number of municipal flats, which, if they exist at all, tend to be occupied by long-term tenants. The second obstacle is the lack of interest among local decision-makers in desegregating neighbourhoods and their fear of public opinion should they do so.

As a result, most Czech municipalities do not develop any systematic desegregation policies. Indeed, some municipalities have actively pursued policies that lead to segregation, while others remain passive and allow segregation to happen without intervening.

Since 2003 the Ministry for Regional Development has been implementing the "Construction of Supported Flats" programme. The official objective of this programme is "to offer social housing for persons with difficulties in accessing housing due to special needs related to their unfavourable social situation – age, health state or social conditions of their life".²¹

A grant from this programme covers 80% of either the acquisition or the construction of a flat by the municipality or the refurbishment of a municipal flat. Currently it is not possible to combine both acquisition and refurbishment. There are many places where a flat can be bought at a very low price, i.e., for around 7,500 EUR, so the co-financing by the municipality would not be expensive. However, due to a number of problems, municipalities are in general reluctant to implement this measure.

According to the Commissioner for Human Rights of the Council of Europe, the authorities should further develop the current Concept of Housing Policy until 2020 so as to put in place a comprehensive strategy incorporating clear and enforceable obligations

²¹ See the web page <http://www.mmr.cz/cs/Stavebni-rad-a-bytova-politika/Bytova-politika/Programy-Dotace/Programy-podpory-bydleni/Programy-podpory-bydleni-pro-rok-2013/Podprogram-Podpora-vystavby-podporovanych-bytu> [only in Czech], cited in Decade of Roma Inclusion Secretariat Foundation, *Updated Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and 2013 in the Czech Republic*, 2013, p. 31, http://www.romadecade.org/cms/upload/file/9270_file29_cr_updated-civil-society-monitoring-report.pdf.

for the authorities to reduce territorial segregation and improve the availability of social housing through the active involvement of Romani communities in this process.

In 2010 in the town of Kladno, Roma living in ethnically mixed inner-city neighbourhoods were coercively moved by the municipality to segregate housing in isolated locations on the edge of town.²²

"Allegations by the town that all of the evictees owed the town money or voluntarily wanted to live with other Roma did not reflect reality. Many of the Roma concerned did not owe back rent and did not wish to live in an all-Roma neighbourhood. Despite these facts, they were pushed into environments where their ethnicity is all that connects them with the other inhabitants".²³

In Kladno, a location called "Masokombinat" ("*Meat Packing Plant*" in English) is currently inhabited only by Roma living in substandard conditions while paying high rents to the town. Two Romani families were expelled from their previous housing, due to the town's plan to turn the building into a retirement home (in one case) and due to inadequate safety, as one building was allegedly falling into ground that had been undermined (in the other case). Both of the families were only offered the option of living in the Masokimbinat, even though they were able to afford rent in regular city housing and showed great interest in living among the majority population.

These families were moved into the Masokombinat complex only because of their ethnicity, disregarding the impact the move might have on their private and family life. The Masokombinat flats are in very bad condition. "They are damp, mouldy, and experience low temperatures from autumn until spring. The location is excluded from the life of the city, has no access to infrastructure, services, education, or medical care, and is a source of extensive and permanent stigmatization. All tenants living at Masokombinat are stigmatized in the eyes of the other citizens of Kladno, as for many years the locality has

²² Eurofond; Living conditions of the Roma: Substandard housing and health, p.36

²³ Housing Rights Watch, *Housing Rights of Roma and Travellers Across Europe A Special Housing rights Watch issue*, winter 2010, p. 4, http://www.noticiasps.org/IMG/pdf/3870_roma_issue_en.pdf.

been considered a "prisoner's colony", i.e., a place inhabited only by criminals, prostitutes and drug addicts".²⁴

Due to discrimination in the housing market,²⁵ many Roma are obliged to live in residential hostels. They move into these hostels because they have a very low chance of signing a lease contract elsewhere due to discrimination, since the owners of normal flats usually demand the equivalent of three months' rent in advance, and amount of money that Romani tenants usually cannot provide all at once.

The Roma who are applying to rent or purchase flats are excluded as applicants because of their nationality, not on the basis of their actual financial resources. This refusal is often expressed in advertisements pre-emptively rejecting "minorities",²⁶ or stems from the demands of other inhabitants of a block of flats.²⁷

Discrimination in the housing market and the resulting inability to enter into standard rental contracts pressures many Roma into accepting long-term accommodation in residential hostels, which are often in dilapidated condition. Since those who cannot enter into ordinary rental agreements have little choice but to accept the terms of these lodging-houses, the rent in some of them exceeds the local market rent for flats, even though the facilities being offered are poor.²⁸

Hostels without private bathrooms and kitchens do not set rents by the size of the occupied unit, but by the number of accommodated persons (usually 1 200 CZK per person). The living conditions in these hostels are inadequate,²⁹ since there is only one

²⁴ *Ibid.*, pp. 4-5.

²⁵ ENAR Shadow Report 2011-2012; *Racism and related discriminatory practices in the Czech Republic*, Linda Janků, Miroslav Knob, Václav Krajčanský, Anna Matušinová, Zuzana Melcrová, Hubert Smekal, the Czech Centre for Human Rights and Democratization

²⁶ Czech Television, 168 hodin, Hledám pronájem – jsem slušný, nejsem menšina, <http://www.ceskatelevize.cz/ct24/regiony/137909-hledam-pronajem-jsem-slusny-nejsemmensina/>, accessed 13 July 2012

²⁷ Czech Helsinki Committee, Zpráva o stavu lidských práv v České republice za rok 2011, p. 42.

²⁸ ENAR STÍNOVÁ ZPRÁVA 2011-2012, *Rasismus a diskriminace v České republice*, p. 19, http://www.romea.cz/dokumenty/SR_CR-2012.pdf.

²⁹ ROMEA, *Czech Republic: Residential hotels in Příbram fail inspection, are a "time bomb"*, Příbram, 14 August 2013. <http://www.romea.cz/en/news/czech/czech-republic-residential-hotels-in-pribram-fail-inspection-are-a-time-bomb>

shower and two toilets for an entire floor which will usually be used by 50-60 persons. The owners of the residential hotels collect disproportionate amounts of money from public budgets, since, as described above, part of the tenants' social benefits (housing supplements) may be paid directly to the account of the owner or operator of the real estate.

According to a recent survey³⁰ in five European countries mapping the opportunities available to various marginalized population groups seeking housing, the Czech Republic is the country with the highest level of discrimination in the rental housing market on the basis of a prospective tenant's membership in the Romani minority. In the Czech Republic, Romani people were discriminated against in 62 % of the cases reviewed.

The bad living conditions of the Romani population in the Czech Republic are a major problem. According to the EC/UNDP/WB 2011 Regional Roma Housing survey, only 11 % of Romani households (compared to almost half of the non-Romani households living in their geographic proximity) resided in property they own; almost 10 % of Roma households have no choice but to use wood for cooking; 30 % of Roma households do not have their waste collected regularly; and some even draw their potable water from a single faucet shared by many families.

d) Repetitive, illegal actions of evictions without respecting the dignity of the persons concerned and without alternative accommodation being made available

The European Committee of Social Rights has established that since the focus of Article 16 is the maintenance of family ties, it guarantees the right of families to an adequate supply of housing. It also requires that their needs be taken into account when framing and implementing housing policies and when ensuring that existing housing is of an adequate

³⁰ *Survey finds Czech Republic worst for ethnic discrimination on the housing market.* Prague/Ústí nad Labem, Zdeněk Ryšavý, translated by Gwendolyn Albert, Romea.cz, available at: <http://www.romea.cz/en/news/czech/survey-finds-czech-republic-worst-for-ethnic-discrimination-on-the-housing-market>

standard and includes essential services.³¹ In this respect the Committee has stated that the destruction of, or forced eviction of families from, residential areas is not in conformity with Article 16.³²

Current legislation allows a flat owner to evict a tenant without obtaining a court ruling solely on the grounds of sanctioning of alleged misbehaviour, and it is the tenant who must sue in a case of unjustified eviction. In the new Civil Code No. 89/2012, Coll., which will become effective in 2014, an owner will be free to evict a tenant from a flat for any reason without obtaining a court decision - for example, on the grounds that the owner needs the flat for his/her own (or a relative's) use.

Two significant cases of forced evictions which demonstrate the procedures applied by the authorities and the consequences for the affected Romani tenants are those of Přednádraží Street in Ostrava and the Předlice quarter of Ústí nad Labem.

On the morning of 3 August 2012, the head of Ostrava's Construction Office delivered an eviction notice to the 80 Romani families who were living in rental housing on Přednádraží Street in Ostrava, giving them just over 24 hours to leave the premises voluntarily or face eviction. If the inhabitants had failed to leave, they risked having the police come to enforce the eviction order.

The Construction Office of Ostrava municipality justified the eviction on the grounds that the buildings were unfit for human habitation, as their structure was unsafe, their electricity supply was faulty, and their sanitation system did not function.

The local authorities, the owner of the buildings, and the state (specifically, Czech Railways, which owned the land), failed to carry out adequate maintenance of the sewerage system, and as a result, many of the buildings were polluted with raw sewage. Fourteen families decided to move out immediately after receiving the eviction order, as they had been

³¹ ERRC v Greece (15/2003) paragraph 24; ERRC v Bulgaria (31/2005) admission decision 10 October 2005 paragraph 9; also ERRC v Bulgaria (31/2005) paragraph 34

³² ERRC v Greece (15/2003) paragraph XX and ERRC v Bulgaria (31/2005) paragraph 57

provided with contracts for alternative housing in residential hostels, despite concerns raised by NGOs over the affordability of and overcrowding in that accommodation. However, the remaining 30 families were not provided with any alternative housing arrangements and faced the imminent threat of becoming homeless.

The housing offered to the 14 Roma families who moved away, according to research by Amnesty International³³ and the ERRC, did not meet international standards for adequacy of housing, particularly in relation to access to adequate space and affordability.

In most cases, each family (some of which included up to nine people), was provided with one room. The cooking and sanitation facilities had to be shared among several families. The rent the families had to pay for a room in this new housing was twice or more what they used to pay for their flats, raising serious concerns as to whether they would be able to afford it.

In response, both the Czech Government and the Mayor of Ostrava declared that it was not their responsibility to resolve these problems. The private owner was requested to refuse tenants access to the buildings. When he appealed the demolition order and refused to secure the buildings³⁴, municipal employees taped over the access points for most of the buildings.³⁵

After receiving the eviction notice, the remaining Romani families started doing some repairs to the buildings, including cleaning up the public areas and closing the entrance to the cellar where the broken sewer pipes were housed, in an attempt to demonstrate that

³³ Amnesty International, *Urgent action - Czech Republic: Roma families at risk of forced eviction*, 6 August 2012, <http://www.fightdiscrimination.eu/take-action/sign-in-our-web-actions/urgent-action-czech-republic-roma-families-risk-forced-eviction?page=32>

³⁴ Romea, "Czech Republic: Ostrava ghetto landlord appeals demolition order", available at: <http://www.romea.cz/en/news/czech/czech-republic-ostrava-ghetto-landlord-appeals-demolition-order>

³⁵ Romea, "Czech municipality gets tough on Ostrava ghetto residents again", available at: <http://www.romea.cz/en/%20news/czech/czech-municipality-gets-tough-on-ostrava-ghetto-residents-again>

they wanted to stay there and ensure the accommodation was suitable for human habitation.

More than 140 Romani people had been living in legal uncertainty there for a number of months when the Regional Court in Ostrava announced on 26 April 2013 that the eviction notice issued to the tenants had not been either procedurally correct or sufficiently precise. Recent court decisions show that public authorities cannot arbitrarily evict people from their homes.

Eviction is a responsibility of the public authorities, not of private owners, and the authorities have to respect the legal criteria for issuing eviction orders. The eviction procedure in the case of Přednádraží Street had been faulty. The appeals court overruled the financial penalty assessed by the municipality against the owner (a private firm) for not evicting the tenants from his premises. The court found that it had been impossible to be put the eviction order into effect as it was vague – the number of evictees and the owner's responsibilities were not specified.³⁶

In the second case, on 2 November 2012, Romani families (36 adults and 27 children) living in a building in Předlice,³⁷ a predominantly Romani neighbourhood in the town of Ústí nad Labem, received two weeks' eviction notice from the Construction Office. The municipality argued that the building was uninhabitable due to structural hazards and its poor overall condition as a result of its neglect by the private owner who had bought the building from the town two years previously. The owner was charging his Romani tenants high rents; residents of the building were not able to find any other accommodation on the open housing market.³⁸

³⁶ *Positive Decision on Roma Evictions in Czech Republic*, 3 May 2013, Sinan Gökçen Media and Communications Officer, European Roma Rights Centre <http://www.errc.org/article/positive-decision-on-roma-evictions-in-czech-republic/4138>

³⁷ Amnesty International, Rapport 2013 on the situation of Human Rights in the Czech Republic, <http://www.amnesty.org/fr/node/39067>

³⁸ Konexe NGO, "Disaster Předlice", available at: <http://oskonexe.wordpress.com/2012/10/27/predlicka-katastrofa/>.

The Construction Office assessed the building following an incident at another building in the area which collapsed and killed one Romani woman and injured another.³⁹ Residents and local activists alleged that the evictions were carried out without adequate consultation and that the municipality failed to provide adequate alternative housing to the evictees, who were moved temporarily to the gymnasium of a local primary school and then eventually transferred to unaffordable, unsuitable workers' hostels.

Besides providing a van for transporting their belongings, a container for trash, and some storage space, neither the private owner nor the public authorities assisted the evicted families in finding alternative accommodation.⁴⁰ The evictees also experienced difficulties accessing schools and other municipal services from their new addresses.

The Agency for Social Inclusion urged the municipality to actively support the evicted families and to refrain from moving them into residential hostels outside the town limits, stating that would be not be an adequate or responsible solution.⁴¹

A week later, Romani families moved from the gym to a residential hostel in the town district of Krasné Březno, which they had previously rejected due to poor sanitary conditions and high rents.⁴²

The municipality repeatedly failed to suggest alternatives, instead putting the blame for the situation on the evictees.⁴³ Activists ultimately managed to find alternative housing for

³⁹ "Ústí chce zbourat dům, kde spadl strop a zavalil ženu" 162 Aktualne.cz, "Ústí intends to demolish the house where a collapsed ceiling buried a woman", available at: <http://aktualne.centrum.cz/domaci/regiony/ustecky/clanek.phtml?id=760896>.

⁴⁰ Romea, "Romani tenants removed from dangerous building to gym", available at: <http://www.romea.cz/en/news/czech/czech-republic-romani-tenants-removed-from-dangerous-building-to-gym>.

⁴¹ Agency for Social Inclusion, " Tiskové prohlášení Agentury k uzavření ubytovny v Ústí nad Labem " [Statement on the situation of the closure of the residential hostel in Usti], available at: <http://www.socialni-zaclenovani.cz/tiskove-prohlaseni-agentury-k-uzavreni-ubytovny-v-usti-nad-labem>.

⁴² Romea, "Romani evacuees leave gym for residential hostels", <http://www.romea.cz/en/news/czech/czech-repub-lic-romani-evacuees-leave-gym-for-residential-hotels>.

⁴³ Romea, "Vedení Ústí nad Labem: Rodiny z ubytovny se do špatné situace dostaly vlastní vinou " [Ústí municipality: families from residential houses are fully responsible for their situation], Ústí nad Labem, 1 February 2013, available at: <http://www.romea.cz/cz/zpravodajstvi/domaci/vedeni-usti-nad-labem-rodiny-z-ubytovny-se-do-spatne-situace-dostaly-vlastni-vinou>.

all of them.⁴⁴ However, the temporary rental contracts they signed included a built-in-termination note which prolongs their vulnerable housing situation. It also should be recalled that evictions during winter are incompatible with international human rights standards.

2) The Right to Health

a) International law instruments

Health is a fundamental human right indispensable to the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

The right to health is guaranteed by a number of international law instruments. Article 25.1 of the Universal Declaration of Human Rights affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services". The most comprehensive statement is provided by the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁵ According to Article 12.1 of the Covenant, States parties recognise "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

To clarify and operationalize the above provisions, the UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, adopted General

⁴⁴ Romea, "Czech initiative finds housing for Romani residential hotel evictees", available at: <http://www.romea.cz/en/news/czech/czech-initiative-finds-housing-for-romani-residential-hotel-evictees>.

⁴⁵ The Czech Republic ratified the ICESCR on 22 February 1993

Comment No 14 on the Right to Health in 2000. The UN Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health, as defined in Article 12.1, as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.” The General Comment lists the following components of the right to health:

- Availability: Functioning health care facilities, services and programmes must be available in sufficient quantity within the country. These include safe and potable drinking water, adequate sanitation facilities, health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.
- Accessibility: Accessibility has four overlapping dimensions:
 - Non-discrimination: health facilities, goods, and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact. For example, investments should not disproportionately favour expensive curative health services, which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population.
 - Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially for vulnerable or marginalized groups such as women. Medical services, safe and potable water, and adequate sanitation facilities must also be within safe physical reach of those living in rural areas and for persons with disabilities.
 - Economic accessibility: health facilities, goods, and services must be affordable for all. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.
 - Information accessibility: everyone has the right to seek, receive and impart information and ideas concerning health issues.

- Acceptability: All health facilities, goods and services must be respectful of medical ethics and sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned.
- Quality: Health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

Every State has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State to take whatever steps are necessary to ensure that everyone has access to health facilities, goods and services so that they can enjoy, as soon as possible, the highest attainable standard of physical and mental health.

This requires the adoption of a national strategy to ensure to all the enjoyment of the right to health, based on human rights principles which define the objectives of that strategy as well as the formulation of policies and the corresponding indicators and benchmarks for the right to health. The national health strategy should also identify the resources available to attain the defined objectives, as well as the most cost-effective way of using those resources.

By virtue of Article 2.2 and Article 3, the Covenant proscribes any discrimination in access to health care and the underlying determinants of health, as well as the means and entitlements for their procurement on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.

CESCR General Comment 14 provides that resource constraints cannot be a justification for not protecting vulnerable members of society from health-related discrimination, stressing that "many measures, such as most strategies and programmes designed to

eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information”.

Equality of access to health care and health services must be emphasized with respect to the right to health. States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health.⁴⁶

The prohibition of discrimination in the exercise of the right to health is further set out in the International Convention on the Elimination of All Forms of Discrimination (ICERD), the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).⁴⁷

b) The right to health in the framework of the Council of Europe

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights, as interpreted by the case-law of the European Court of Human Rights, by imposing a range of positive obligations designed to secure the effective exercise of that right.⁴⁸

In its Conclusions XVII-2/2005, the Committee made the following observation regarding Article 11 of the Charter:

In assessing whether the right to protection of health can be effectively exercised, the Committee pays particular attention to the situation of disadvantaged and vulnerable groups. Hence, it considers that any restrictions on this right must not be interpreted in

⁴⁶ Paragraphs 18 and 19 of CESCR General Comment 14

⁴⁷ Succession of Czech Republic on 22 Feb 1993

⁴⁸ Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11 §5, European Committee of Social Rights

such a way as to impede the effective exercise by these groups of the right to protection of health. This interpretation imposes itself because of the non-discrimination requirement (Articles E of the Revised Charter and Preamble of the 1961 Charter) in conjunction with the substantive rights of the Charter.

The Committee therefore assesses the conditions under which the whole population has access to health care, taking into account also the Council of Europe Parliamentary Assembly Recommendation 1626 (2003) on "reform of health care systems in Europe: reconciling equity, quality and efficiency", which invites member states to take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right.⁴⁹

Violations of the right to health of Roma have been found by the European Committee of Social Rights⁵⁰ on the grounds authorities' failures to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to, as well as the problems encountered by many Roma in accessing health care services.

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise.⁵¹ The Committee has emphasised that the rights relating to health embodied in the two treaties are inextricably linked, since "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights – and health care is a prerequisite for the preservation of human dignity."⁵²

c) Discrimination against Roma in the Czech Republic in the field of health

⁴⁹ General Introduction, European Social Charter European Committee of Social Rights Conclusions XVII-2 Volume 1, Council of Europe Publishing, pp. 10-11.

⁵⁰ 46/2007 - European Roma Rights Centre (ERRC) v. Bulgaria

⁵¹ Conclusions 2005, Statement of Interpretation on Article 11 §5

⁵² International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31.

Article 11 of the European Social Charter of 1961 imposes a range of positive obligations to ensure the effective exercise of the right to health, and the European Social Committee assesses compliance with this provision, paying particular attention to the situation of disadvantaged and vulnerable groups.⁵³

According to the data obtained, ERTF contends that the Czech Republic does not meet its obligations under the European Social Charter of 1961 to protect the right to health for the Roma community without discrimination on the basis of ethnicity.

The health status of Roma in the Czech Republic is inferior compared to non-Roma.⁵⁴ Lack of adequate governmental policy has contributed to the progressive social exclusion of Roma and to high levels of poverty among members of this ethnic minority. Discrimination in housing and bad living conditions directly affects Romani patients' access to health care services and increases their health risks. Infectious diseases, in particular hepatitis⁵⁵ and bacillary dysentery, have spread among Romani populations because of bad living conditions. The government also has not undertaken effective measures to combat discriminatory practices against Roma in the health care system, such as the refusal of individual health care practitioners to provide medical services to Roma.

The Committee, in its decision on the merits of the complaint of the European Roma Rights Centre (ERRC) v. Bulgaria, stated that the bad living conditions, the fact that the health status of Roma is worse than that of non-Roma, and the problems encountered by many Roma in accessing health care services constitute a breach of Article 11§§ 1, 2 and 3 of the Revised Charter in conjunction with Article E.⁵⁶

⁵³ Conclusions XVII-2 – General Introduction, European Committee of Social Rights

⁵⁴ See Judith Healy, Martin McKee, "Roma Health. Problems and Perception", in *Accessing Health Care. Responding to Diversity*, Oxford University Press, 2004, <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198516187.001.0001/acprof-9780198516187-chapter-13>

⁵⁵ See Husa P, Ovesná P., "Prevalence and risk factors of hepatitis C in Roma people in Brno"[Article in Czech], *Klinická mikrobiologie a infekční lékařství*, Vol. 17(6), Dec. 2011, pp. 201-207, <http://www.ncbi.nlm.nih.gov/pubmed/22247030>.

⁵⁶ *Decision on the merits of the Complaint No. 46/2007*, European Roma Rights Centre (ERRC) v. Bulgaria: "The Committee therefore holds that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by

The state of health of excluded Roma is affected by a large number of factors which include, for example, the degree of their social exclusion and other characteristics.⁵⁷ A number of surveys have shown that the health of the Roma population in the Czech Republic is worse than that of the majority population⁵⁸.

The Committee considers infant mortality and life expectancy to be good indicators of how well a particular country's overall health system is operating.⁵⁹ These are avoidable risks and every step should be taken, particularly in highly-developed health care systems, to reduce these rates to as close to zero as possible.⁶⁰

Although there is no official research in this area, the educated guesses of experts state that the life expectancy of socially excluded Roma is 10-15 years shorter in comparison to the majority population (73.34 years for men / 79.7 for women) and infant mortality is twice as high as the national average.⁶¹ The low socio-economic status of the Roma is related to their worse health conditions.⁶² The group of socially excluded Roma also shows a higher occurrence of chronic diseases, with 17 % of the Romani population suffering a disability or chronic disease⁶³. The most common disabilities or chronic diseases are:

many Roma in accessing health care services, constitute a breach of Article 11§§ 1, 2 and 3 of the Revised Charter in conjunction with Article E."

⁵⁷See UNDP, *Avoiding the dependency trap. Regional human development report for Roma in central and Eastern Europe*, UNDP 2002, http://hdr.undp.org/sites/default/files/avoiding_the_dependency_trap_en.pdf.

⁵⁸ On the health disadvantage of Roma children compared to non-Roma ones, see Miroslav Dostal, Jan Topinka, Radim J. Sram, "Comparison of the health of Roma and non-Roma children living in the district of Teplice", *International Journal of Public Health*, Vol. 55(5), 2010, pp. 435-441, <http://www.ncbi.nlm.nih.gov/pubmed/20229189>, and Jolana Rambouskova, Pavel Dlouhy, Eva Krizova, Bohumir Prochazka, Dana Hrnčirova, Michal Anđel, "Health Behaviors, Nutritional Status, and Anthropometric Parameters of Roma and Non-Roma Mothers and Their Infants in the Czech Republic", *Journal of Nutrition Education and Behavior*, Vol. 41(1), 2009, pp. 58-64, <http://www.ncbi.nlm.nih.gov/pubmed/19161922>, and Dejmeš J GE, Solanský I, Podrazilová K, Stávková Z, Benes I, Srám RJ., "Vitamin C, E and A levels in maternal and fetal blood for Czech and Gypsy ethnic groups in the Czech Republic", *International Journal for Vitamin and Nutrition Research*, Vol. 72(3), May 2002, pp. 183-190, <http://www.ncbi.nlm.nih.gov/pubmed/12098887>.

⁵⁹ Conclusions 2003, Romania, p. 390

⁶⁰ Conclusions 2003, France, p. 146.

⁶¹ See Ilona Koupilova', Helen Epstein, Jan Holcik, Steve Hajioff, Martin McKee, "Health needs of the Roma population in the Czech and Slovak Republics", *Social Science & Medicine*, Vol. 53, 2001, pp. 1191-1204, <http://www.ncbi.nlm.nih.gov/pubmed/11556609>.

⁶² Decade of Roma inclusion 2005-2015, Progress report 2012 of the Czech Republic, http://www.romadecade.org/cms/upload/file/9276_file5_prog_report_2012-cz.pdf

⁶³ *Health and the Roma Community, Analysis of the situation in Europe Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, Spain*, http://ec.europa.eu/justice/discrimination/files/roma_health_en.pdf

migraines or headaches (21.7 %), high blood pressure (11.3 %), depression (10.7 %), and arthritis (10.6 %).⁶⁴

The lives of socially excluded Roma are also affected by the problem of addictive substance use (such as alcohol, hard or soft drugs, and tobacco) which is widespread in some localities as an adaptive strategy for living in social exclusion. However, the use of addictive substances is a significant barrier which prevents Romani users from leaving their circumstances of social exclusion. Unfortunately, the use of addictive substances is affecting more and more Romani youth.

The health of excluded Romani communities is also affected by a number of associated problems, such as accommodation in dwellings such as residential hostels in poor conditions with a widespread incidence of damp, mould and various pests as disease carriers. Consequently, one major determinant for access to health care and a healthy lifestyle for Roma is their bad housing situation, which has been described above.

The environment of the residential hostels where some Roma communities live does not offer adequate comfort or hygienic conditions. The housing stock there is worn-out, often in a poor technical state, with a widespread incidence of damp, mould and various pests as disease carriers. The transmission of infectious diseases is compounded by families sharing showers and toilets, a lack of private bathrooms, poor access to water, and overcrowding in flats where small spaces are shared by families with several members.

In 2010, poor sanitary conditions were the cause of a high incidence of Type A hepatitis in certain Roma communities in the Czech Republic.⁶⁵ Those most affected were the Romani populations in the Ústí nad Labem district, Hradec Králové, Ostrava, Karvina and Vyškov. A higher incidence of Hepatitis A was also found in Romani populations in Teplice, Děčín, Náchod, Přerov and Prostějov. The situation was so serious that it required the intervention of the Chief Public Health Officer of the Czech Republic in coordination with

⁶⁴ Ibid

⁶⁵ Decade of Roma Inclusion 2005-2015, *Progress Report 2010 on the situation of the Roma minority in the Czech Republic in 2010*, June 2011, http://www.romadecade.org/cms/upload/file/9301_file11_czech-decade-progress-report-2010.final.pdf

the Inter-ministerial Commission for Roma Community Affairs, Regional Roma Affairs Coordinators, and the staff of the Regional Hygiene Stations. In an overall assessment of the incidence of Hepatitis A, an estimated 30 % of all cases reported in the country in 2009 involved Roma; a sharp rise in this disease among the Romani population was recorded in the first half of 2010, with over 50 % of all reported cases of Hepatitis A involving Roma.

In 2012, an epidemic of bacillary dysentery swamped several residential hostels in Ostrava.⁶⁶ Public health officials recorded 31 cases, particularly among Romani children living in such accommodations.

Another problem is the access of Roma to healthcare. Access to healthcare is worse in smaller rural localities, where in comparison with the towns there is a smaller supply of primary health care. Socially marginalised Roma communities face problems registering with doctors, particularly with GPs for adults.⁶⁷ The inhabitants of these localities must therefore travel dozens of kilometres to reach a doctor.

Another barrier to accessing healthcare is the problem of registering with a doctor, whether GPs, paediatricians, specialists or dentists.⁶⁸ One reason Roma are refused registry is not only that doctors have a full patient register, but also that they engage in discriminatory practices. When confronted with this situation by the relevant insurance company, doctors' claims are often found to be untrue, and they must cooperate with the insurance company and find room for Romani patients.

However, insurance companies fail to carry out any other activities to support their obligation to ensure that their clients receive medical care. In situations of discrimination they do not offer to take any effective steps to resolve the issue, even though their clients are guaranteed medical care under the law.

Health assistants could be helpful with "translating" medical jargon into ordinary language for patients from the Romani community who need such assistance. However, the implementation of this plan has not gone beyond pilot schemes of very limited scope. In 2011 a total of nine medical/social assistants were active in the Czech Republic and only in

⁶⁶ "Czech Republic: Dysentery on the rise in Ostrava's residential hotels"

<http://www.romea.cz/en/news/czech/czech-republic-dysentery-on-the-rise-in-ostrava-s-residential-hotels>

⁶⁷ See for example the *Complaint File Ref. N° 67/2012/DIS/JKV* of the Czech Ombudsman on Failure to provide health care due to ethnic origin,

http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Kauzy/zdravotni_pece/E_67-2012-DIS.pdf.

⁶⁸ Decade of Roma Inclusion 2005-2015, *Progress Report 2011 of the Czech Republic*,

http://www.romadecade.org/cms/upload/file/9300_file5_czech-republic_final-report.pdf

four out of the 14 regions in the country, which in view of the need for the programme was not a sufficient number.⁶⁹

In 2012, instead of increasing the number of medical/social assistants, there were only seven in three of the 14 regions of the Czech Republic, which is again an insufficient number regarding the need for this programme.⁷⁰ These workers usually received time-limited contracts; further education and supervision is provided by their employers.

Another issue that constitutes a breach of Article 11 of the European Social Charter of 1961 is the impact of health-related expenditures on family budgets. The proportion of Roma who reported that they could not afford to purchase medicines prescribed to/needed by a member of their household is much higher compared to non-Roma (44 % as opposed to 10 %).⁷¹ Even though recipients of social support for people in material distress are exempted from most payments, this already high number might have increased in recent years as a result of the introduction of fees for medical examinations and prescriptions (in 2008) and the reduction of various forms of social support (in particular for people living with disabilities). While this system ensures that poverty does not prevent access to necessary treatment, non-payment can have dramatic consequences, even in cases where the initial sums are not particularly high. Some hospitals transfer even small debts (such as the fees charged for hospital emergency services, about 90 CZK or 3.60 EUR) to professional collections agents. This results in extremely high additional costs and such a situation can represent a patient's entry into the cycle of indebtedness.

Health insurance is compulsory in the Czech Republic; it is partially covered by employees through wage deductions and partially by employers. Unemployed persons have their health insurance paid by the state. However, it is important that the unemployed be registered at the Labour Authority. If they are excluded from Labour Authority registry due

⁶⁹ *Ibid.*

⁷⁰ Decade of Roma Inclusion 2005-2015, *Progress Report 2012*,

http://www.romadecade.org/cms/upload/file/9276_file5_prog_report_2012-cz.pdf

⁷¹ Survey carried out by the European Union Agency for Fundamental Rights and UNDP (2011), accessible online at <http://www.undp.org/content/rbec/en/home/ourwork/povertyreduction/roma-in-central-and-southeast-europe/roma-data/>

to their failure to fulfil the obligations of a job applicant, then they have to pay their health insurance themselves. Roma often do not pay for health insurance after being excluded from the register and thus accumulate debts. The payment of debts is complicated for households where there is no income from employment.

Another problem is the ill-considered re-registration of Romani insured to insurance companies that do not contract to pay for health care at local healthcare facilities.⁷² These exploitative re-registrations are the result of targeted campaigns on the part of insurance agents, who intentionally approach the inhabitants of excluded localities with offers to change their insurance company. The agents anticipate such people will have lower levels of functional literacy and a lack of ability to think through the consequences of an ill-considered re-registration, consciously manipulating them in order to gain insurance clients for whom it is probable that their claims will be minimal.

Another issue that violates not only the right to health but also the right to education is the illegal procedure by which Romani children are misdiagnosed with mental or health disabilities and recommended for enrolment into “special schools”. The landmark judgment from the European Court of Human Rights, *D.H. and Others v. the Czech Republic*⁷³ challenged the disproportionate placement of Romani children into “special schools” where they, together with children living with disabilities, were segregated from their mainstream peers and taught according to a limited curriculum that failed to equip many with even basic numeracy and literacy skills.

One of the most serious problems has been the fact that up to 25 % of the children in a class designed for children with disabilities (including mental retardation) are permitted by law to be children who have never received a diagnosis of disability, i.e., children who are not mentally or otherwise disabled. This “rule of tolerance” has allowed schools to achieve

⁷² Decade of Roma Inclusion 2005-2015, *Progress Report 2011*,
http://www.romadecade.org/cms/upload/file/9300_file5_czech-republic_final-report.pdf

⁷³ Case of D.H. and others v. the Czech Republic (Application no. 57325/00)
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256>

cohorts of certain sizes without having to obtain a recommendation from the School Counselling Centre for every single child. There were stricter rules for the placement of children living with disabilities into schools for children living with disabilities (the necessary condition being the consent of a child's parents/legal representative and the recommendation of the School Counselling Centre) than there were for the placement of children without any such problems into such schools, which offer a reduced curriculum to their pupils.

According to the Czech Government, expert discussions have revealed "well-founded doubts" as to whether the diagnostic tools used in the Czech Republic—particularly the WISC III test—are "sufficiently reliable in all areas of measuring"⁷⁴.

Meanwhile, the Czech authorities indicate in a 2013 report that they are training psychologists in the testing centres in the administration of the Woodcock Johnson test—a test recognized elsewhere in the profession as flawed. The Czech government indicates that testing is undergoing re-standardisation in a way that "include(s) Roma children".

The Czech authorities are also purporting to distribute two additional tests, the Intelligence and Development Scales (IDS) and the Cattell Culture Fair Intelligence Test (CFT-20R)—by the end of 2013. "The Czech Government fails to report that the original tests (WISC III, WISC IV and Woodcock Johnson), about which "well founded doubts" exist continue to be used in diagnostic centres and continue to be the means by which Romani children are being channelled into substandard education. No safeguards or guidance exist to ensure that these unreliable tests are no longer used"⁷⁵.

⁷⁴ Communication from the Czech Republic Concerning the case of D.H. and others against the Czech Republic (Application No. 57325/00), Doc no. DH-DD(2012)1074, November 20, 2012, p. 6, cited in Submission to the Committee of Ministers, Council of Europe, *D.H. and others v. Czech Republic*, November 2013, p. 5, <http://www.errc.org/cms/upload/file/tenth-communication-to-the-committee-of-ministers-on-judgment-implementation-november-2013.pdf>.

⁷⁵ Submission to the Committee of Ministers, Council of Europe, *D.H. and others v. Czech Republic*, November 2013, p. 5, <http://www.errc.org/cms/upload/file/tenth-communication-to-the-committee-of-ministers-on-judgment-implementation-november-2013.pdf>.

Little about this situation has changed since the D.H. judgment. Romani children are still being funnelled into what are now called “practical primary schools” (which have changed in name only from the “special schools”) at a rate far surpassing their non-Romani peers. The inferior education they receive leaves them without qualifications for any job beyond the most menial and with no hope for the future. For many, this practice traps them and their families in a cycle of poverty and despair⁷⁶.

⁷⁶ For more information refer to: OSCE, *Equal Access to quality education for Roma children*, Field assessment visit to the Czech Republic – May 2012, Warsaw, 26 October 2012, <http://www.osce.org/odihr/96661>.

III. Conclusion

The present complaint, lodged by the European Roma and Travellers Forum, is intended to lead the Committee to find the Czech Republic in Violation of Articles 11 and 16 of the European Social Charter of 1961, alone or in conjunction with the non-discrimination principle stated in the Preamble of the Charter.

The argument of the European Forum of Roma and Travellers is that the corpus of concerns raised above rises to the level of and amounts in practice and effect to a violation of Articles 11 and 16, either read in conjunction with and/or independently of the non-discrimination principle stated in the Preamble of the Charter.

A comprehensive review of the situation of the Romani population in the Czech Republic, the government's social inclusion policies, and the relevant legislation strongly indicates a range of systemic violations of the right to adequate housing and the right to health where Roma are concerned, seriously threatening the existence and wellbeing of Romani families and communities. The existing policies are leading to substandard, deteriorating residential conditions which have led to the evictions of Romani tenants without the provision of alternative housing or remedies for the widespread social exclusion of Roma.

The approach of the Czech Government to the housing and health situation of Roma indicates the existence of official policies that are both directly and indirectly discriminatory and that keep Roma excluded, marginalized and oppressed.

The ERTF respectfully requests that the European Committee of Social Rights reviews the facts presented in this Collective Complaint and finds the Czech Republic in violation of the aforementioned articles of the European Social Charter of 1961, in order to urge the Czech Government to directly apply the European Social Charter of 1961 and to adopt and apply a national long-term strategy, including positive action measures to combat the social exclusion of Roma, through the improvement of their situation in the fields of housing and health.

The ERTF respectfully requests that the European Committee of Social Rights direct the reimbursement of the costs incurred in the preparation of this complaint, to be detailed in due course.

Thank you for your consideration of these matters.

Rudko KAWZCZYNSKI

President

European Forum of Roma and Travellers