

DECISION ON THE MERITS

Adoption: 17 May 2016

Notification: 27 June 2016

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European Roma and Travellers Forum (ERTF) v. the Czech Republic

Complaint No. 104/2014

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 285th session attended by:

Giuseppe PALMISANO President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK, General Rapporteur
Colm O’CINNEIDE
Birgitta NYSTRÖM
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
François VANDAMME

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 16 March and on 17 May 2016,

On the basis of the report presented by Marcin WUJCZYK,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint submitted by the European Roma and Traveller Forum (“ERTF”) was registered on 3 March 2014. It was transmitted to the Government on 4 March 2014.
2. The complainant organisation alleges that the Czech Republic is in violation of Article 16 and Article 11 of the 1961 European Social Charter (“the 1961 Charter”) read alone or in conjunction with the Preamble of the 1961 Charter, on the grounds that the housing and health care rights of Roma are insufficiently protected.
3. In accordance with Rule 29§1 of the Rules, on 26 March 2013, the President of the Committee asked the Government of the Czech Republic (“the Government”) to make, before 15 May 2014, written observations on the admissibility of the complaint.
4. The Government’s observations on the admissibility were registered on 14 May 2014.
5. On 30 June 2014, the Committee declared the complaint admissible. On 8 July 2014 the admissibility decision was communicated to the parties and the Government was simultaneously invited to make written submissions on the merits of the complaint by the time-limit of 30 September 2014.
6. On 8 July 2014, referring to Article 7§1 of the Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the States Parties to the Protocol, and the States having made a declaration under Article D§2 of the Revised Charter, to transmit to it any observations they might wish to make on the merits of the complaint before 30 September 2014.
7. No such observations were received.
8. On 21 August and 31 October 2014 the Government requested an extension of the deadline for its submissions on the merits. The President extended this deadline to 31 October 2014 and then to 14 November 2014.
9. The Government’s submissions were registered on 14 November 2014. The response from the ERTF was registered on 15 January 2015.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

10. The ERTF asks the Committee to find a violation of Article 16 of the 1961 Charter either alone or in conjunction with the Preamble on the grounds that Roma suffer a) from a lack of accessible housing, b) residential segregation, c) inadequate living conditions and d) forced evictions. It also asks the Committee to find a breach of Article 11 of the 1961 Charter either alone or in conjunction with the Preamble of the 1961 Charter on the grounds that Roma face discrimination in access to health care and suffer from poor health status due inter alia to inadequate living conditions.

11. Finally the ERTF asks the Committee to find a breach of Article 11 of the 1961 Charter either alone or in conjunction with the Preamble of the 1961 Charter on the grounds that Romani children are often misdiagnosed with mental or health disabilities and enrolled in special schools.

B – The respondent Government

12. The Government rejects the allegations put forward by ERTF.

RELEVANT DOMESTIC LAW AND PRACTICE

13. In their submissions, the parties make reference to the following domestic legal sources:

- Government Resolution No. 524

- Civil Code No.89/2011, Coll.

14. Resolution No. 2/1993 Coll., of the Presidium of the Czech National Council of 16 December 1992, on the Declaration of the Charter of Fundamental Rights and Freedoms ('CFRF') as a part of the constitutional order of the Czech Republic, as subsequently amended:

Article 24

“A person’s affiliation with any national or ethnic minority group may not be to his/her detriment.”

Article 31

“Everyone has the right to protection of his/her health. Citizens are entitled, on the basis of public insurance, to free medical care and to medical aids under the conditions provided for by law.”

RELEVANT INTERNATIONAL MATERIALS

I. The Council of Europe

15. The European Convention on Human Rights 1950 (“the Convention”) includes the following provisions

Article 2 – Right to life

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”

Article 8 – Right to respect for private and family life

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Relevant judgments

16. *Winterstein and Others v. France*, Application No. 27013/07, judgment of 17 October 2013, the Court stated that:

“159....The Court would emphasise in this context that numerous international instruments, some of which have been adopted within the Council of Europe, emphasise the necessity, in the event of the forced eviction of Roma and travellers, of providing them with alternative housing, except in cases of force majeure: see Recommendation (2005)4 of the Committee of Ministers, Resolution 1740(2010) of the Parliamentary Assembly and the Position Paper of the Commissioner for Human Rights dated 15 September 2010 ... and, in more general terms, General Comment no. 7 of the United Nations Committee on Economic, Social and Cultural Rights ...

160. In addition, it is necessary, as the Government have accepted, to take into account the fact that the applicants belong to a vulnerable minority. The Court would refer to its previous finding that the vulnerable position of Gypsies and travellers as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (see *Connors*, cited above, § 84; *Chapman*, cited above, § 96; and *Stenegry and Adam*, cited above). It has also stated in *Yordanova and Others* (cited above, §§ 129 and 133) that, in cases such as the present one, the applicants’ specificity as an underprivileged social group and their resulting needs must be taken into account in the proportionality assessment that the national authorities are under a duty to undertake, not only when considering approaches to dealing with their unlawful settlement but also, if their removal is necessary, when deciding on its timing and manner and, if possible, arrangements for alternative shelter.”

Other materials

17. The Committee of Ministers of the Council of Europe has adopted the following texts:

- Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe,
- Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe;
- Recommendation (2006)10 of the Committee of Ministers to member states on better access to healthcare for Roma and Travellers in Europe.

II. The United Nations

18. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) includes the following provisions:

“Article 11

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to 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.”

“Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

19. The United Nations Committee on Economic, Social and Cultural Rights has made the following comments as to adequate housing and forced evictions:

General Comment 4

“8. (a) (...) Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties should consequently take immediate measures aimed at

conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups. (...)

“18. (...) instances of forced eviction are prima facie incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” (Doc E/1992/23: “The right to adequate housing”).

General Comment 7

“13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.” (...)

“Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of rights recognized in both International Human Rights Covenants [the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights]. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.” (Doc. E/1998/22: “Forced evictions, and the right to adequate housing”)

20. The United Nations Committee on Economic, Social and Cultural rights has made the following General Comment on the Right to Health:

General Comment 14

“12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) *Availability.* Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party’s developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. 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, without discrimination on any of the prohibited grounds.

Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) *Acceptability*. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) *Quality*. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 16 OF THE 1961 CHARTER

21. Article 16 reads as follows:

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means."

22. The Preamble reads as follows

Preamble (Extract)

"[...]

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;"

A – Arguments of the parties

1. The complainant organisation

23. The ERTF alleges that the situation in the Czech Republic is in violation of Article 16 of the 1961 Charter in light of the Preamble of the 1961 Charter:

a) Lack of accessible housing

24. The ERTF alleges that there is no systematic policy on social housing in the Czech Republic, the previous centralised state housing stock was transferred to the administration of regional and local authorities, who have in turn decided to privatise their housing capacities, which has had an impact on the most socially disadvantaged, in particular Roma. There is, according to the ERTF, a lack of social housing legislation and instruments, and social housing programmes are rare.

25. Further there is inadequate funding for social housing programmes, no funding is received by municipalities from the Government for social housing.

26. Although the Government did adopt in 2011 a Resolution No. 524 on the Concept of Social Housing in the Czech Republic until 2020, which seeks to improve the accessibility of social housing for groups at risk of social exclusion, the ERTF cites a report of the Council of Europe's Human Rights Commissioner which welcomed the concept but noted the concerns of other bodies that the proposals have remained largely on paper and the projects which are being carried out are isolated and depend on the political will of the different municipalities. (Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the Czech Republic, from 12 to 15 November 2012 CommDH(2013)1 / 21 February 2013). It also cites a 2012 report of the Council of Europe's European Commission against Racism and Intolerance (ECRI) (CRI(2012)27) which also found that the proposals remained largely theoretical and dependent on the political will of the municipalities.

27. The ERTF acknowledges that since 2003, the Ministry for Regional Development has been implementing a programme for the “construction of supported flats” designed to offer low cost housing to persons who have difficulties in accessing social housing due to special needs related to their disadvantaged social position. A grant from this programme covers either 80% of the acquisition of a flat by a municipality or the refurbishment of a municipal flat. However, the ERTF alleges that municipalities have been reluctant to have recourse to this programme.

28. According to the ERTF due to the lack of accessible housing and discrimination many Roma are obliged to live in residential hostels.

b) Residential segregation

29. One of the consequences of a lack of proper accessible housing is that many Roma families are forced into residential hostels, which leads to their residential segregation.

30. According to the ERTF there is increasing residential segregation of Roma into marginalised communities. The ERTF states there is no exact recent data on the phenomenon, however data collected in 2005 indicated that 67,500 Roma (approximately one third of the Roma population in the Czech Republic) were living in 330 socially excluded localities in 2005.

31. ERTF cites again ECRI, which noted in 2012 (see above mentioned report) that the number of socially excluded localities is reported to have increased to 400.

32. Some of the locations are whole neighbourhoods or streets, often on the outskirts of the municipality, others are single structures surrounded by other buildings.

33. According to the ERTF there is no coordinated national policy to promote spatial desegregation, the Agency for Social Inclusion has declared access to housing and desegregation an objective, but its possibilities for intervention are very limited.

34. The ERTF maintains that municipalities are often resistant to desegregating, or fail to develop any systematic desegregation policies. Some even pursue active segregation policies.

35. The ERTF provides examples of segregated communities and of municipalities moving Roma to isolated locations, for example in 2010 in the town of *Kladno*, Roma were coercively moved by the municipality to segregated locations at the edge of the town; *Maskombinat* in *Kladno* is inhabited solely by Roma, some forced to live there.

c) Inadequate living conditions

36. ERTF alleges that much of the accommodation inhabited by Roma is in substandard condition. It provides example of flats in *Maskombinat* which are damp, cold, and mouldy with no access to basic services or educational or medical facilities. It cites a Housing Rights Watch report of 2010 in support of its allegations.

37. The ERTF also maintains that due largely to discrimination Roma are unable to access housing on the private rental market and are forced to live in residential hostels. The living conditions in many of these hostels are inadequate, with insufficient sanitary and cooking facilities. It cites research by UNDP which concluded that almost 10% of Roma are forced to use wood for cooking, 30% of Roma households do not have their waste collected regularly and some do not even have sufficient access to drinking water (EC/UNDP/WB2011 regional Roma Housing survey).

d) Forced evictions

38. The ERTF states that in certain circumstances landlords may evict tenants from property without a court order, for example on the grounds of bad behaviour. The new Civil Code authorizes eviction without a court order on the grounds that the landlord needs the property for his/her own use.

39. The Building Act permits the Building Office to order the demolition of a building posing a threat to life or health, or property of others, this according to ERTF may form the basis for an eviction order.

40. The Civil Code permits the termination of a lease agreement without court approval, a notice to quit period can be ignored where the tenant has broken the terms of a lease in a serious manner, i.e. for failure to pay rent. There is no obligation to provide equivalent alternative housing (which existed previously).

41. Examples are provided of large numbers of Roma being evicted with just over 24 hours notice; for example in the case of Roma in *Ostrava*. The eviction was justified on the grounds the buildings were unfit for human habitation. The local authorities and the State had failed to carry out adequate maintenance of the sewerage system. Certain of the families evicted were offered alternative accommodation in residential hostels which was inadequate according to Amnesty International, (Urgent Action - Czech Republic: Roma families at risk of forced eviction 6 August 2012) and the European Roma Rights Center (ERRC) whilst others were offered no alternative accommodation. However, the courts did find that the eviction notice had not been procedurally correct or sufficiently precise.

42. In another case the ERTF alleges that in November 2012 Romani families in the town of *Usti nad Labem* received 2 weeks' notice of eviction from the municipality on the grounds that the building was uninhabitable, it was owned by a private landlord and the Roma were paying high rents. There allegedly, was no adequate prior consultation and little effort to find suitable alternative accommodation for the families and many were forced to live in a residential hostel.

2. The respondent Government

43. The Government firstly contests the Committee's interpretation of the scope of Article 16 of the 1961 Charter. It argues that Article 16 can only in a very narrow way be said to encompass the right to housing. The right to housing is primarily enshrined in Article 31 of the Revised Charter which the Czech Republic has not ratified. Further the Government argues that it is inconsistent with the object and the purpose of the Charter to consider Article 16 equivalent to Article 31, including the notions of adequate housing and protection from forced evictions. It notes that Article 16 was unchanged in the Revised Charter and States therefore obviously did not intend Article 16 to be identical to Article 31 of the Charter as concerns the right to housing.

a) Social housing

44. The Government provides information on legislation and other instruments governing social housing and social exclusion. It states that a Social Housing Policy has been adopted which will be valid until 2020, the basic objectives of which are broadening access to adequate housing and improvement of the quality of housing.

45. Over the last 15 years significant changes have been made in the housing sector, the Government maintains that the deregulation of the sector has led to increased supply of rental properties and a decrease in rental costs. Housing allowance has been available since 1995 and in 2006 a supplementary housing benefit was introduced. Both are means tested. These benefits are available to all those who meet the criteria without discrimination.

46. Further the relevant authorities have a certain discretion when applying the conditions laid down by the law for receipt of housing benefits.

47. Legal norms exist defining the standards which housing must meet in size, sanitary facilities etc., in 2014 new legislation was adopted which provides that housing benefits will only be paid in respect of housing meeting certain standards.

48. However the Government states that housing benefits are limited (with certain exceptions) in time; benefits can only be received for 84 calendar months in a 10 year period.

49. There are several measures in force to encourage and support the creation of social housing in particular for specific groups, elderly persons, persons with disabilities, and other vulnerable groups such as the Roma. Subsidies and advantageous loans are available for any legal entities, including the municipalities in order to provide subsidized flats. Rents in such subsidized flats are capped, by the Ministry of Regional Development (MoRD).

50. The MoRD is also responsible for implementing several measures under the Integrated Operational Program (IOP) aimed at the integration of socially excluded Roma. Support is provided for three activities: revitalization of public spaces, renovation of blocks of flats and pilot projects focused on addressing problem of Roma communities at risk of social exclusion.

51. Regarding residential hostels the Government states that accommodation in such places is intended to be temporary and therefore the law permits a stay to be terminated more easily than that in more permanent accommodation. A deposit equivalent to three months rent is standard and cannot be considered to be discriminatory. New legislation will require residential hostels to meet certain criteria where the rent is to be paid by housing supplement.

b) Forced evictions

52. The Government states that in general forced eviction is only permitted where a person occupies property without any legal basis. In such an event the owner or another person having a legal interest may seek an eviction order from the courts. If the court finds the action well founded it may order the person occupying the property to leave within a reasonable time. If the occupier does not do so the owner may then seek an order to execute the judgment, upon such an order an occupier may be evicted.

53. The Government states that eviction procedures should not be confused with notice periods. Leases (rental agreements) may be terminated with notice for reasons set out in legislation, permitted reasons include where the landlord needs the property for himself or family, or the tenant has grossly violated his obligations under the lease. Should an occupier not comply with a notice to quit, the owner may seek a court order for eviction. If the court issues an eviction order the eviction may not take place – does not come into force until the elapse of a minimum of 15 days. However, an eviction will not be ordered where it is deemed incompatible with “good manners” according to Article 2(3) of the Civil Code.

54. There is no longer any obligation under the Civil Code to provide alternative accommodation.

d) Territorial segregation

55. As regards the allegation that the Roma remain segregated the Government states that one of the primary aims of its spatial planning policy “*while changing or creating of urban environment to prevent spatial social segregation with its negative impact in social cohesion of the population, to analyse the main mechanics of occurrence of segregation and to consider the already existing and possible consequences as well as to propose solutions during the territorial planning which would be suitable to prevent undesirable level of segregation or lower it*”.

56. A map of socially excluded localities is under preparation in order to better target resources and support, including the European Social Fund.

57. As regards the allegations concerning Roma in a residential hostel in *Maskombinat* the Government states that the last tenants moved out in 2010, in 2012 it was condemned for demolition and was uninhabited. In 2014, permission was granted for demolition. Many of the previous inhabitants live in a refurbished apartment block with new amenities in *Kladno*.

58. There are two Government Advisory bodies at national level which deal with the integration of Roma, the Government Council for Roma Minority Affairs and the Government Council for National Minorities.

59. The Government Council for Roma Minority Affairs operates as an interdepartmental body the mission of which is to coordinate integration activities of ministries, state institutions, regions and other public institutions in relation to the Roma. For this purpose, it initiates system changes and removal of barriers that prevent the Roma from living a full and respectable life in Czech society.

60. In 2013, regional coordinators for Roma affairs operated at the level of all 14 regions. The activity of the coordinators, except for the coordinator operating in the capital city of Prague, was supported by the grant programme of the Office of the Government of the Czech Republic “Support to Regional Coordinators for Roma Affairs”.

61. In 2013, conferences and coordination meetings of the coordinators focused on increasing educational chances of Roma children, housing situation of the Roma and the issue of residential hostels, on promoting Roma employment and addressing their indebtedness, combating prejudices and stereotypes and improving the security situation of the Roma. In regions where the Social Inclusion Agency was operating the coordinators also cooperated with its local consultants.

62. The regional coordinators participated in drafting measures for improving the situation of Roma. They laid down their proposals during preparation of mid-term plans of social services development, regional concepts for crime prevention, long-term plans for education and educational system development, local social inclusion strategies or even regional strategies for integrating the Roma minority. They also took part in formulation of strategies of anti-drug policy in the region, or the strategic plan of local partnership in the localities where the Social Inclusion Agency operated.

63. The Social Inclusion Agency promotes the elimination of the occurrence and expansion of socially excluded localities, promotes exchange of experience among regional partners and dissemination of best practice examples. In 2010–2012, the Agency carried out a three-year individual project 'Promotion of Social Inclusion in Selected Roma Localities via the Agency for Social Inclusion in Roma Localities'. In 2013, the Agency operated in 33 towns, villages and micro-regions. In 2013, implementation of the Agency's follow-up project started and the Agency commenced work in additional 17 towns since then.

64. The Government maintains that it has adopted strategies to combat and prevent social exclusion, and improve conditions which may impact on inclusion, it states that such problems are complex and require a holistic approach..

65. The Government disputes some of the material relied upon by the ERTF- such as the survey on housing discrimination.

B – Assessment of the Committee

66. The Government argues that the right to housing provided under Article 16 is considerably more restricted than Article 31 of the Revised Charter (which it has not ratified) in scope and that the “automatic” transfer of the rights contained in Article 31 to Article 16 would deprive the former of any content. To interpret Article 16 as encompassing a general right to housing would be contrary to an correct interpretation of the treaty, and the intention of the drafters.

67. The Committee has already had occasion to state its interpretation of the notion of the right to housing under Article 16. It summarised this interpretation in its decision in *European Roma Rights Center (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24.

68. The Committee considers that, as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31. The fact that the right to housing is stipulated under Article 31 of the Charter, does not

preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection (European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 December 2005, §9).

69. Finally, the Committee affirmed in its General Introduction to Conclusions 2002, “the interpretation given under the European Social Charter of 1961 remains valid for those provisions that were not amended by the Revised Social Charter of 1996. Any changes in case law relating to provisions that have not been amended naturally apply to both treaties”.

70. The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. In order to satisfy Article 16 States must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling, which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore, the obligation to promote and provide housing extends to security from unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24).

71. The Committee recalls that the rights recognised in the Charter must take a concrete and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

72. This means that, for the situation to be compatible with the treaty, States Parties must:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources and results;
- c. undertake regular reviews of the impact of the strategies adopted;
- d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 54).

73. As regards the allegation that there is insufficient social or accessible housing available to Roma families, and Roma often end up in territorially segregated localities, the Committee recalls that the poor housing situation of Roma families in the Czech Republic has been documented in the past.

74. It further recalls its recent conclusion under Article 16 of the 1961 Charter where it found that the situation was not in conformity on the ground that housing conditions of Roma families were not adequate (Conclusions XX-4, 2015).

75. It notes that the Government has provided broad information on measures to increase the availability of housing such as the Social Housing Policy until 2020, subsidies and loans and specific programmes targeted at Roma, however there are few details. The Committee further notes the measures taken by the Government to improve more generally the integration of Roma: Integrated Operational Program (IOP), Roma coordinators and the work of the Social Inclusion Agency. However there is no information on needs in the housing fields, targets or achievements to date (number of beneficiaries of loans subsidies, number of housing units, constructed or renovated), etc. and little concrete evidence has been provided that sufficient actions and measurable progress has been made in the field of housing for Roma.

76. The Committee further notes that there is considerable evidence from other sources: the European Commission against Racism and Intolerance (ECRI) conclusions adopted in 2012 and in 2015 ECRI's report of the Czech Republic (fifth monitoring cycle) adopted June 2015 (CRI (2015) 35), which states that the number of socially excluded localities has increased to 400 and that discrimination in the housing market continues to affect the access of vulnerable groups such as Roma. In the same vein, the Commissioner for Human Rights in his report of 2013 urged the authorities to increase their efforts to counter practices that lead to the territorial segregation of Roma and their discrimination in the allocation of social housing (CommDH(2013)1). It also notes the information on the Progress Report 2014 - Decade of Roma Inclusion 2005-2015.

77. The UN Committee on Economic, Social and Cultural Rights expressed concern that Roma continue to experience widespread discrimination, inter alia in housing matters, and that the state party had not put into place a comprehensive social housing system nor adopted a social housing law (Concluding Observations on the second periodic report of the Czech Republic June 2014 E/C.12/CZE/CO/2).

78. Lastly the Committee considers that there is ample evidence that many Roma families live in very poor living conditions. According to a report commissioned by the European Commission (Roma Health Care report, the Health Status of the Roma population, Data collection in the member states of the EU, August 2014),

15 % of Roma in the Czech Republic live in households without at least one of the basic amenities; indoor kitchen, toilet, shower, bath or electricity. This compares to 3 % of the non-Roma population.

79. The Committee therefore considers that the situation is in violation of Article 16 of the 1961 Charter in light of its Preamble on the grounds that there is a lack of accessible housing, that residential segregation of Roma persists, and that many Roma families live in inadequate conditions.

80. The Committee recalls that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide (*European Roma Rights Center v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51).

81. The Committee recalls its well established case law, most recently set out in *Medecins du Monde-International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012, § 75, where it stated that in order to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in case of illegal evictions.

82. Furthermore, when evictions do take place, they must be:

- carried out under conditions respecting the dignity of the persons concerned;
- governed by rules sufficiently protective of the rights of the persons;
- accompanied by proposals for alternative accommodation

83. The Committee refers in this respect to judgments of the European Court of Human Rights in cases such as *Connors v. the United Kingdom*, judgment of 27 May 2004, where the Court stated “The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8.”

84. The Committee also has regard to General Comment 7 of the UN Committee on Economic, Social and Cultural Rights on the right to adequate housing: forced

evictions (1997) which explicitly mentions that the procedural protections should include an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; information on the proposed evictions, and, especially where groups of people are involved, government officials or their representatives to be present during an eviction.

85. The Committee notes that legislation permits the eviction of individuals and families without requiring the provision of alternative accommodation. Further the Committee is not satisfied that all legislation permitting evictions ensures the necessary safeguards required by Article 16 of the 1961 Charter, such as the prior consultation, of affected parties, or obligation to propose alternative accommodation.

86. Further the Committee notes that there have been examples where local authorities did not proceed in accordance with the law when trying to evict Roma families, for example in *Ostrava, Usti nad Labem*.

87. The Committee therefore considers that the situation is in violation of Article 16 of the 1961 Charter on the grounds that Roma families are often forcibly evicted without the necessary safeguards.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE 1961 CHARTER

88. Article 11 reads as follows:

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

89. The Preamble reads as follows:

Preamble (Extract)

"[...]"

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;"

A – Arguments of the parties

1. The complainant organisation

90. The ERTF alleges that the discrimination in access to housing and poor living conditions affects Roma's access to health care and increases their health risks, further that the Roma suffer discrimination in health care.

91. The ERTF maintains that there is a higher incidence of infectious diseases such as hepatitis and bacillary dysentery, primarily due to poor living conditions. In 2010 poor sanitary conditions were the cause of a high incidence of Hepatitis A in Roma populations in certain areas, an estimated 30% of all cases reported in the country in 2009 involved Roma. In 2012 there was an epidemic of bacillary dysentery in several residential hostels in Ostrava. 17 % of the Roma population suffers from a disability or a chronic disease. A number of surveys have shown that the health of the Roma population is worse than that of the majority population experts state that their life expectancy is 10-15 years shorter than that of the majority population and infant mortality is twice as high as the national average.

92. The ERTF alleges that there is widespread discrimination against Roma in access to health care. Many Roma face difficulties when seeking to register with a doctor.

93. The proportion of Roma who reported that they could not afford to purchase medicines prescribed to them is much higher compared to the non-Roma community.

94. The ERTF maintains that the failure to ensure universal access to health insurance coverage deprives a large number of Roma from access to health care. Health insurance is compulsory in the Czech Republic, and is usually funded through employee and employer contributions. Unemployed persons' contributions will be funded by the state however they must be registered with the Labour Authority. Should an individual not fulfill the obligations of a job applicant they may be excluded from the register of the Labour Authority and lose their entitlement to health insurance and have to fund it themselves. According to the ERTF many Roma are not covered because they are not registered with the Labour Authority or have been excluded and then do not pay for health insurance after being excluded from the Labour Authority.

95. The ERTF also alleges that the practice of placing Roma children in special schools (schools for children with disabilities) even when they have no disability also breaches their right to health. It cites in this respect cites the judgment of the European Court of Human Rights in the case of D.H. and Others v. the Czech Republic, Application No 57325/00, Judgment of 13 November 2007. It maintains that the tests used to diagnose intellectual or mental disabilities are flawed and result in Roma children being placed in special schools at a significantly higher rate than their non-Roma peers.

3. The respondent Government

96. The Government states that access to public health insurance is guaranteed to everyone in the Czech Republic in accordance with Articles 24 and 31 of the Czech Republic Charter of Fundamental Rights and Freedoms. It is not based, under any circumstances, on differentiation by race, nationality or on other discriminatory ground.

97. In the Czech Republic contributions to the health insurance system are paid either by the employer or the self-employed person, by the state and/or by the insured person.

98. The Government emphasises that persons may only be excluded from the job seeker register (and accordingly lose eligibility to have health insurance contributions paid by the state) on grounds provided for by law. Persons are informed of the consequences of being excluded.

99. As regards the ERTF's allegation of discriminatory practices whereby health practitioners fail to register Roma individuals with their practice the Government states that cases or complaints of such practices have never been recorded, no details are given and "access to health care and services is guaranteed without exception".

100. As regards the cost of medicines, the Government states that legislation stipulates that within each group of medical substances there must be one preparation fully covered by health insurance. In addition, persons in receipt of social assistance are exempt from the cost of medicines.

101. Legislation exists regulating the distribution of medical services in order to ensure a fair geographical distribution and effective access, for example a limit of 35 minutes of travel time in order to visit a General Practitioner is set.

102. In response to the allegations that the Roma community suffer a high rate of Hepatitis, dysentery, etc., due to poor sanitary conditions in their housing, the Government points out that Hepatitis C is spread via bodily fluids and caused by behaviour patterns and repeated exposure to risk, further it does not necessarily/inherently affect one ethnic group more than another. The same is true for bacillary dysentery it is primarily caused by bad hygienic habits.

103. The Government is of the opinion that the ERTF data on Hepatitis A in Roma is incorrect, and states that in fact, incidence of Hepatitis A is decreasing amongst people of Roma origin. It further provides data on incidence of Hepatitis C among the population, including among Roma.

104. The report on Public Health of the Czech Republic published by the Ministry of Health did identify a high prevalence of health problems among the Roma community linked to their lower socio economic status. However, the Government argues that

health-related data and knowledge of actual status is limited, a more complete study which needs to acquire representative samples of the Roma population, comparison with the majority of the population, comparison with other minorities living in the Czech Republic is required.

105. The Government further states that a correlation between drug addiction and alleged discrimination of Roma has not been proved.

106. The Government lists a significant number of measures it has taken in order to promote a healthy lifestyle and prevent high risk behavior taken by the National Institute of Public Health and Ministry of Health on topics such as smoking, HIV infection, drug abuse, Hepatitis, some of which is specifically aimed at the Roma community.

107. As regards the allegations concerning the life expectancy and infant mortality of people in the Roma community, the Government argues that ethnic origin is not monitored in official statistics, so the statements made cannot be substantiated. Overall infant mortality in the Czech Republic is low.

108. It also provides data on social services (and their expenditure) provided to ethnic minorities.

109. The Government maintains it is not possible to determine the vaccination rate amongst the Roma population as no separate data is compiled. It recalls that law requires mandatory vaccination against certain diseases.

110. In summary the Government reaffirms that the legislative framework guarantees free medical care and services, provides for health education and endeavours to increase individual responsibility and is fully compliant with Article 11 of the 1961 Charter.

B – Assessment of the Committee

111. The Committee considers that the more relevant provisions for the purposes of this complaint are Article 11, in its entirety (see European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008). One of the main questions which the complaint raises relates to the operation of the health insurance and medical assistance systems and whom the latter benefit, as well as how the Roma community access health care in practice.

112. 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 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 (Article E of the Charter revise and Preamble of the 1961

Charter) in conjunction with the substantive rights of the Charter (Conclusions 2005, Statement of Interpretation on Article 11).

(i) Access to health care (availability of health insurance and medical assistance)

113. The principle of the universal access to health care is embodied in Article 31 of the Czech Charter of Fundamental Rights and Freedoms, which provides for the right of the citizens to health protection. More precise provisions are included in the Act No. 20/1966 Coll. on Care of People's Health which in Article 11 sets the following principle:

“Availability of the health care without direct payments, based upon the public health insurance (within the extent stipulated by a separate Act), or based upon a contractual health insurance.”

114. The General Health Insurance Company as well as other existing health insurance companies (departmental, company-related) conclude agreements on the provision of health care with respective service providers.

115. Insurance contributions are paid by individuals and by employers, or by the state.

116. The Committee observes that exemption from paying health care contributions for unemployed persons registered with the Labour Authority (and others) ensures that some of the most disadvantaged sections of the community have access to health care.

117. The Committee considers that the health care system must be accessible to everyone, especially the health care should be available to all who require it, and free of charge to those without the necessary resources. States Parties must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action. (Conclusions XV-2, (2001) Denmark).

118. However, as regards the situation of persons have not registered with the Labour Authority or who have been excluded from the register of unemployed persons the Committee notes that such persons are left without health coverage (unless they pay the contributions themselves) given that eligibility for “non-contributory” state health coverage is linked to unemployed persons being on the Labour Authority register. The Committee notes in this respect that a job seeker can be excluded from the job seeker register on many grounds, e.g. if a job seeker: works illegally and receives unemployment benefits at the same time; refuses to take up a suitable employment or retraining; obstructs cooperation with the Labour Office; does not present him/herself at the relevant branch of the Labour Office or to the contact point of public administration at the arranged time; or withdraws his/her consent to personal data processing.

119. The issue for the Committee is to examine what medical services are available to persons who have lost their health insurance and require medical care. In this respect the Committee has been provided with no evidence that a person without resources requiring medical services would receive the necessary care. The Committee considers that the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, such as Roma who have lost health insurance, thus amounting to a breach of this provision.

120. The ERTF further maintains that Roma communities are faced with disproportionate health risks, high incidence of certain diseases, and overall poorer health than majority of population and sometimes discrimination when seeking to access services.

121. The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups (Conclusions XVII-2 (2001) – General Introduction).

122. The Committee notes that data on the health status of Roma families is scarce and what is available is limited but nevertheless shows disparities between the health status of the Roma and non-Roma communities.

123. Numerous sources confirm that Roma families face disproportionate health risks and discrimination in accessing health care, for example: Third Opinion on the Czech Republic, Committee on the Framework Convention for the Protection of National Minorities, §§19,50, 1 July 2001, ACF/OP/III/(2011)008; UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of the Czech Republic June 2014 §9; Roma health report, Health Status of the Roma population, data collection in the member States of the European Union, (Executive Summary written by Matrix, for the European Commission).

124. The Committee considers there is sufficient evidence, which shows that Roma communities in many cases do not live in healthy environments. This situation can in part be attributed to the failure of the relevant policies by the State, for instance lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as inadequacy of measures to ensure public health standards in housing in such neighbourhoods.

125. The Committee notes that the Concept for Roma Integration 2010-2013, the Strategy for Combating Social Exclusion 2011-2015 and the updated National Roma Integration Strategy 2014-2020 all address the issue of health care, recognising that Roma face discrimination in health care and disproportionate health risks.

126. Despite the measures taken by the Government the Committee nevertheless considers that there is little evidence of progress. ECRI's report on the Czech Republic (fifth monitoring cycle) adopted June 2015 (CRI (2015)35), noted that the first Concept for Roma Integration was widely regarded as having had little effect and little progress had been made.

127. Therefore the Committee considers that the State has failed to meet its positive obligations to ensure that Roma families enjoy adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.

128. The Committee therefore holds that problems encountered by many Roma families in accessing health care services, as well as the failure of the authorities to take appropriate measures to address the exclusion and marginalisation in the field of health to which Roma communities are exposed, constitute a breach of Article 11§§ 1, 2 and 3 of the 1961 Charter in light of the Preamble.

(ii) Segregation of Roma children

129. As regards the segregation of Roma children in education and in particular their placement in schools for children with disabilities due to discrimination and/ or the use of allegedly unreliable diagnostic tools, the Committee considers that this falls outside the ambit of the right to health as guaranteed by the Charter. It considers that the educational segregation of Roma children would amount to a violation of the right to education of Article 17 of the Revised Charter (see Conclusions 2003 Bulgaria, Conclusions 2005 Slovak Republic). However the Czech Republic has not ratified the Revised Charter.

130. The Committee finds that there has been no violation of the Article 11 of the 1961 Charter on this ground.

CONCLUSION

For these reasons, the Committee concludes:

- Unanimously, that there is a violation of Article 16 of the 1961 Charter on the ground of insufficient access to housing, poor housing conditions and territorial segregation;
- Unanimously, that there is a violation of Article 16 of the 1961 Charter on the ground of forced evictions;
- Unanimously, that there is a violation of Article 11 of the 1961 Charter on the grounds of exclusion in the field of health and inadequate access to health care services;
- Unanimously, that there is no violation of Article 11 of the 1961 Charter on the grounds of segregation of Roma children.



Marcin WUJCZYK
Rapporteur



Giuseppe PALMISANO
President



Régis Brillat
Executive Secretary

In accordance with Rule 35§1 of the Rules a separate opinion of Marcin WUJCZYK is appended to this decision.

SEPARATE OPINION OF MARCIN WUJCZYK

I share the view of the Committee regarding its assessment that the Czech Republic is in violation of Article 16 and 11 of the 1961 Charter.

However, in my opinion the Committee acted incorrectly by not referring to the request for compensation submitted by the complainant organisation, the European Roma and Travellers Forum. In my view when such a claim is made, the Committee should examine it and submit its opinion to the Committee of Ministers, leaving it to the latter to decide how it might invite the Government to meet all or part of their expenses. By not making any comment on the above-mentioned request for compensation, the Committee has not examined all the claims submitted. Such action goes against the principle of charging costs of a litigation based on the outcome, in other words charging the losing party.

Moreover, I think that if a complainant organisation incurs minimal expenses when bringing proceedings, the party should receive compensation. The above results from the principle of procedural law adopted in many legal systems, that a party is entitled to reimbursement of essential expenses. In my view the preparation of a claim must be assumed to result in expenses being incurred by a complainant organisation.

In my opinion the information submitted by the complainant organisation in the case at hand, is sufficient to admit that the organisation incurred expenses for the claim preparation, and thus on this account, the organisation should receive compensation from the Government.