

## **Submission by the Council of Europe Commissioner for Human Rights**

under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

in the case of

***Yordanova and Others v. Bulgaria* (application no. 25446/06, judgment of 24 April 2012)**

## Introduction

1. This submission by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers,<sup>1</sup> in the context of the supervision of the execution of the judgment of the European Court of Human Rights (“the Court”) in the case of *Yordanova and Others v. Bulgaria* (application no. 25446/06).
2. According to her mandate, the Commissioner: fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, particularly the European Convention on Human Rights; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.<sup>2</sup>
3. The protection of the human rights of Roma has been a priority issue for the Commissioner, which she has addressed extensively in the course of her country visits and in her thematic work. In both contexts, the Commissioner has found a general shortcoming in the implementation of the human rights of Roma. Throughout Europe, Roma continue to experience widespread discrimination and severe violations of their rights in all areas, including education, health, employment and housing.
4. The present submission aims to assist the Committee of Ministers in its examination of this case and draws in particular on the Commissioner’s report of March 2020 following her visit to Bulgaria in November 2019<sup>3</sup> and her ongoing work to promote respect for the human rights of Roma across the Council of Europe member states.<sup>4</sup> It also builds on the country and thematic work carried out by her predecessors over the years.
5. Section I of this written submission contains the Commissioner’s general observations on forced evictions of Roma in Council of Europe member states. Section II provides a summary of the Commissioner’s findings on forced evictions and the general housing situation of Roma in Bulgaria. In Section III, the Commissioner gives her views on the steps to be taken to prevent forced evictions in the light of the relevant international standards. These sections are followed by the Commissioner’s conclusions.

### I. Observations on the forced evictions of Roma in Council of Europe member states

6. Forced evictions, which are defined by the United Nations Committee on Economic, Social and Cultural Rights as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”,<sup>5</sup> are among the most severe human rights violations faced by many Roma in Europe. The Commissioner and her predecessors have devoted considerable attention to this problem in several countries, including Albania, Belgium, Bulgaria, the Czech Republic, France, Hungary, Italy, Romania, the Russian Federation, Slovakia, Serbia, Sweden, “the former Yugoslav Republic of Macedonia”,<sup>6</sup> and Turkey.

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<sup>1</sup> [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and [amended on 18 January 2017](#)).

<sup>2</sup> [Resolution](#) (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

<sup>3</sup> [Report](#) by Dunja Mijatović, Council of Europe Commissioner for Human Rights, following her visit to Bulgaria from 25 to 19 November 2019, CommDH(2020)8, 31 March 2020.

<sup>4</sup> Information on the Commissioner’s work in this area is available on her webpage on [Human Rights of Roma and Travellers](#).

<sup>5</sup> General Comment no. 7 (1997) on the right to adequate housing: forced evictions.

<sup>6</sup> As of 12 February 2019, the official name of the country changed to North Macedonia.

7. The report on "[Human Rights of Travellers and Roma in Europe](#)"<sup>7</sup> published by the Commissioner's Office in 2012 outlines the most common patterns of violations occurring in the context of the forced evictions of Roma. These include evictions carried out without prior consultation with the individuals, families or communities concerned, without notice or at very short notice; the failure to provide adequate alternative housing solutions to those evicted, leading to their homelessness; the forced separation of children from their families; and the failure to provide effective remedies and legal aid for those affected to seek redress before the courts.
8. Among the risk factors for eviction, the Commissioner wishes to highlight the problem of insecurity of tenure, which makes it very difficult to protect people from forced eviction. Especially in member states in central and eastern Europe and south-eastern Europe, Roma settlements often lack legal recognition and individuals lack title to dwellings. Moreover, as illustrated in Section II below on forced evictions in Bulgaria, the opportunities available to Roma in these countries to legalise their dwellings are limited and hard to access in practice. In western European countries, lack of legal recognition is particularly prevalent among the more recently established settlements of migrant Roma communities (although it does affect others). Roma and Travellers living in caravans are also frequent targets of forced evictions without adequate housing alternatives.<sup>8</sup>
9. However, the Commissioner wishes to stress that legal recognition of housing alone is not enough to protect people from forced evictions. The work carried out by the Commissioner and her predecessors, along with studies and reports by other international bodies<sup>9</sup> and NGOs, show that while security of tenure is partly a legal issue, it is also highly dependent on the general political, economic and social environment. Land speculation, lack of transparency and accountability regarding the planning and execution of housing and other developments, poverty, inter-ethnic tensions and systemic discrimination are among the prime drivers of insecurity of tenure.
10. Regarding Roma, it is the Commissioner's view that the lack of security of tenure affecting Roma is symptomatic of the structural and institutional anti-Gypsyism which pervades European societies. Across Europe, Roma continue to suffer from housing segregation, poverty and an overall lack of access to adequate housing. Informal settlements afford poor living conditions and often lack essential infrastructure such as access to safe drinking water and sanitation.
11. In several countries, Roma are evicted repeatedly and systematically. The authorities often argue that evictions take place in the interest of Roma living in unhealthy conditions, even in cases when the persons concerned have sometimes been living in the same place and in the same substandard housing for decades. However, once evicted, they are often not offered adequate alternative housing solutions, meaning that the initial problem of their unhealthy living conditions is not resolved. The Commissioner notes in this respect that evictions are an ineffective means of combating social exclusion and substandard housing conditions if they are not coupled with adequate socio-economic protection measures.
12. Moreover, the Commissioner observes that forced evictions are often carried out using violence. In several places, authorities have carried out raid-like controls in Roma settlements and have continued to threaten the inhabitants with evictions, alleging that they are involved in illegal activities. Large-scale evictions of Roma, often with heavy police involvement and disproportionate use of force, have also taken place against the backdrop of inter-ethnic

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<sup>7</sup> Council of Europe Commissioner for Human Rights, Thomas Hammarberg, [Human Rights of Travellers and Roma in Europe](#), Council of Europe, February 2012.

<sup>8</sup> See European Court of Human Rights, *Winterstein and Others v. France*, application no. 27013/07, [judgment](#) of 14 October 2013; European Committee of Social Rights, *European Roma Rights Centre (ERRC) v. Belgium*, collective complaint no. 185/2019, [decision](#) on admissibility and on immediate measures, 14 May 2020 and *European Roma Rights Centre (ERRC) v. Ireland*, collective complaint no. 100/2013, [decision](#) on the merits, 1 December 2015; Council of Europe Commissioner for Human Rights, Nils Muižnieks, Human Rights Comment: [Travellers – Time to counter deep-rooted hostility](#), 4 February 2016.

<sup>9</sup> Human Rights Council, Report of the Special rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, A/HRC/22/46, 24 December 2012.

tensions involving Roma and non-Roma and have sometimes been accompanied by hate speech campaigns against Roma by politicians and in the media.<sup>10</sup> The Commissioner notes in particular that in certain cases forced evictions take place in the context of election campaigns as some politicians tend to instrumentalise and scapegoat Roma as part of their political communication. The Commissioner's predecessor raised these issues in a series of [letters](#) addressed to the authorities of several member states in 2016.

13. Forced evictions have dire consequences for those concerned. They can be highly disruptive to family life and can mean that entire communities are uprooted from places where they have lived sometimes for decades. They also deprive children of sustained access to education, health care and social services and have a devastating impact on their physical and mental health. Those evicted face the risk of even greater social exclusion, as landlords are unwilling to lease property to them or will only do so at above-market rates. In some cases, the authorities have relocated entire communities to hazardous locations such as disused factory sites or areas near landfills.<sup>11</sup> Evicted people often end up in other informal settlements in other municipalities, where they face problems registering as residents and hence in finding employment, enrolling in education or accessing social services. Those living in caravans face similar problems, which are compounded by the lack of available halting sites.
14. Lastly, the Commissioner has observed that national authorities often tolerate local policies which discriminate against Roma in housing matters. In many member states, housing policies fall within the remit of local and regional authorities. National authorities often invoke the functional and financial autonomy of the local or regional authorities to justify their lack of involvement in protecting Roma housing rights or to deflect their responsibility for violations of these rights, including in the context of forced evictions.

## **II. Forced evictions and the general housing situation of Roma in Bulgaria**

15. The situation of Roma in Bulgaria as regards forced evictions and the implementation of their housing rights reflects many of the concerns described in the first section of this submission.<sup>12</sup> Roma homes appear to be the most vulnerable to demolition. According to NGO reports, around 97% of the orders for the demolition of dwellings issued in 2010-2012 by the Directorate for National Construction Control and 89% of the demolition orders issued by local authorities in 2012-2016 in a sample of 61% of municipalities related to Roma dwellings.
16. NGOs also estimate that at least half of the Roma in Bulgaria live in illegally built housing and nearly 30% reside in segregated neighbourhoods. The housing conditions of Roma are worse than those of the majority population, as demonstrated in particular by the limited access of Roma to tap water and sanitation in their dwellings. According to the information available to the Commissioner, in 2017-18 there was a clear deterioration in the implementation of housing policies under the National Roma Integration Strategy (2012-2020).
17. Government attempts to legalise houses in informal settlements have generally been unsuccessful, although legalisation has been achieved through some pilot projects. The Commissioner was informed that current legislation only allows legalisation of houses built before 31 March 2001, whereas other houses can be demolished at any time. Moreover, for dwellings to be legally recognised, applicants are required to be the owners of the land or to have a legal right to build on the land. Strict building and planning requirements and the complexity and high costs of procedures have also contributed to the poor outcome of legalisation efforts.

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<sup>10</sup> See the Commissioner's Human Rights Comment: [European states must demonstrate resolve for lasting and concrete change for Roma people](#), 4 April 2019, and her [statement](#) of 25 June 2018.

<sup>11</sup> [Statement](#) by Nils Muižnieks, Council of Europe Commissioner for Human Rights, 7 June 2012.

<sup>12</sup> See the Commissioner's report following her visit to Bulgaria from 25 to 19 November 2019 (fn. 3 above), Section 1.2., Societal hostility and institutional discrimination against Roma, with a focus on the right to housing, pp. 8-10, and the sources quoted therein.

18. The European Committee on Social Rights found in 2006 that legislation limiting the possibility of legalising dwellings disproportionately affected Roma and that evictions did not satisfy the requirements of the Revised European Social Charter, particularly as they made the persons who had been evicted homeless.<sup>13</sup> The Commissioner was informed that in most cases, those evicted are not provided with adequate alternative housing, although temporary solutions have been found in some localities, such as Peshtera, where the municipality paid the evicted persons' rent for one year.
19. The Commissioner learned during her visit to Bulgaria that many municipalities do not have social housing available and that they are not under a legal obligation to set aside funds for this purpose. At the time of her visit, only a few municipalities were in the process of building new social housing, financed using European Union funds. Moreover, while local authorities are responsible for initiating social housing projects, many are reported to lack the technical capacity to carry them out. The new National Housing Strategy devised in 2018 has not yet been adopted.
20. While the scarcity of social housing is a problem which affects Bulgarian society at large, there are strong indications that Roma face distinct problems in accessing such housing. Municipalities are free to establish the eligibility criteria for social housing, which often stipulate that applicants should not have previously lived in an "illegal" building or should have a formal address. Another obstacle to Roma's access to social housing is public opposition at local level, which has prompted some municipalities to cancel construction projects.
21. The Commissioner notes that eviction and demolition orders affecting Roma and their homes have often been issued in the context of manifestations of hostility against Roma. She wishes to reiterate her concern that the authorities' persistence in demolishing Roma dwellings may be influenced by considerations other than the illegality or unsafe nature of the buildings which are given as the reasons for such measures. Several officials with whom she spoke during her visit referred in this connection to the "different lifestyle" of Roma and to "Roma criminality".
22. The Commissioner recalls the conflict which broke out in the village of Voyvodinovo in January 2019, following a dispute involving two young Roma men and an ethnic Bulgarian army officer. On the same day, local residents, members of extremist groups and army personnel organised an anti-Roma protest during which they demanded the demolition of all Roma houses in the village and threatened Roma people. The local authorities immediately demolished some houses and issued orders for the demolition of others on the grounds that they were illegally built or unsafe. Some 200 Roma people left the village in fear, virtually overnight.
23. Many of those who fled Voyvodinovo went on to live in Plovdiv and in several remote villages, in extremely precarious conditions. The Commissioner witnessed this during her visit to the Stolipinovo neighbourhood in Plovdiv, where she met one of the Roma families concerned. She was dismayed by the degradation, insalubrity and the lack of basic services in Stolipinovo. The family had abandoned their plans to return to Voyvodinovo, where they were no longer welcome and in danger of losing their home. They had declined the alternative housing proposed by the authorities, as it would have meant separating the children from their father and it was available for only six months.
24. The Commissioner also met the local authorities, who appeared to be indifferent to the situation of the people concerned. They explained that the offer to accommodate members of some families separately was a result of the shortage of social housing and of the fact that unmarried couples could not legally be considered a family.

### **III. Measures to prevent forced evictions in the light of the relevant international standards**

25. The sections above have addressed the phenomenon of forced evictions of Roma, looked at mainly from the viewpoint of their housing rights. Resolution 1993/77 of the United Nations

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<sup>13</sup> See *European Roma Rights Centre (ERRC) v. Bulgaria*, collective complaint no. 31/2005, [decision](#) on the merits, 18 October 2006, and [second assessment of follow-up](#), 6 December 2018.

Commission on Human Rights states that the "practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing".<sup>14</sup> However, the Commissioner also shares the view of the Committee on Economic, Social and Cultural Rights that the right to housing "should not be interpreted in a narrow or restrictive sense" but should be seen more broadly "as the right to live somewhere in security, peace and dignity."<sup>15</sup>

26. As illustrated in Sections I and II of this submission, forced evictions may in fact lead to violations of a wide spectrum of human rights, including the right to life, the right to be free from cruel, inhuman or degrading treatment, the right to an adequate standard of living, the right to health, the right to an effective remedy, the right to protection of one's family life and the right to enjoy one's property. Consequently, the international standards regarding the prevention of forced evictions provide for a broad range of safeguards intended to ensure effective protection against such violations. The Commissioner wishes to highlight below some standards which in her view are particularly relevant in the context of the supervision by the Committee of Ministers of the execution of the general measures indicated by the Court in this case.
27. Preventing evictions is essential. This can be done, *inter alia*, by facilitating the legalisation of existing housing and by improving access for all to adequate and affordable housing, including social housing.<sup>16</sup> In line with the principles set out in Recommendation [Rec\(2005\)4](#) of the Committee of Ministers on improving the housing conditions of Roma and Travellers,<sup>17</sup> member states should devise integrated housing policies, implemented in a non-discriminatory way and including measures to prevent and combat the spatial segregation of Roma. It is also crucial that Roma communities and organisations participate in the process of conceiving, designing, implementing and monitoring policies and programmes aimed at improving their housing situation. Moreover, politicians should refrain from anti-Roma rhetoric, which fuels tensions at local level and often leads to forced evictions.
28. As highlighted by UN Habitat and the Office of the High Commissioner for Human Rights (UN fact sheet on forced evictions),<sup>18</sup> *evictions may be permissible only in exceptional circumstances and require full justification, and all alternatives to eviction have to be considered first. If unavoidable, evictions should not make the persons affected more vulnerable to other human rights violations. In particular, evictions should not result in homelessness.* The Court has found in several judgments that the suitability of the alternatives provided should be evaluated, among others, in the light of the particular needs of the person concerned.<sup>19</sup>
29. *States must set up procedures to limit the risks of human rights violations related to evictions.* The European Committee of Social Rights (ECSR) has held that "*the criteria of illegal occupation must not be unduly wide*"<sup>20</sup> and that unlawful occupation of land or buildings by persons who cannot effectively benefit from rights enshrined in national legislation, such as the right to housing, cannot be held to continue depriving them of benefitting from their rights.<sup>21</sup>

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<sup>14</sup> UN Commission on Human Rights, Resolution 1993/77: forced evictions.

<sup>15</sup> UN Committee on Economic Cultural and Social Rights, General Comment No. 4: Right to adequate housing (Art. 11 (1) of the Covenant), 13 December 1991. See also UN Habitat, UN Office of the High Commissioner for Human Rights, [Fact sheet no. 21/Rev.1](#) on "The right to adequate housing".

<sup>16</sup> See the Commissioner's Human Rights Comment: [The right to affordable housing: Europe's neglected duty](#), 23 January 2020; Guidelines for the Implementation of the Right to Adequate Housing, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, A/HRC/43/43, 26 December 2019.

<sup>17</sup> Council of Europe, Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 25 February 2005.

<sup>18</sup> UN Habitat, UN Office of the High Commissioner for Human Rights, Fact sheet no. 25/Rev.1 on "Forced evictions".

<sup>19</sup> See, for example, the Court's judgment in *Winterstein and Others v. France* (fn. 8 above), §148.

<sup>20</sup> *European Roma Rights Centre (ERRC) v. Greece*, collective complaint no. 15/2003, [decision](#) on the merits, 8 December 2004, §51.

<sup>21</sup> *International Federation of Human Rights (FIDH) v. Belgium*, collective complaint no. 62/2010, [decision](#) on the merits, 21 March 2012, §161; see also the decision on the merits in *European Roma Rights Centre (ERRC) v. Bulgaria* (fn. 13 above), §53.



Furthermore, in several decisions the ECSR has identified the safeguards that must apply when evictions do take place: genuine consultation with the affected parties in order to find alternative solutions to eviction, which must be appropriate and sufficiently long-term in nature; adequate and reasonable notice before eviction; a prohibition on carrying out evictions at night or during winter; access to legal remedies and legal aid; and adequate compensation.<sup>22</sup> According to the above-mentioned UN fact sheet on forced evictions, *due process also requires that*: there should be no violence during evictions; government officials should be present if groups of people are being evicted; all persons carrying out the eviction should be properly identified; all necessary measures should be taken to minimise the impact of evictions; and compensation for losses suffered should be provided in advance.

30. The Court has reiterated in this case that *in assessing the proportionality of an eviction, the affected persons' vulnerability as a group must be considered, together with the length of their residence and the links developed by a community with a given location*. Furthermore, *the principle of non-discrimination* must be respected at all stages of the eviction process.

## Conclusions

31. The Commissioner considers that the problem of evictions of Roma in Bulgaria can only be effectively addressed in the context of a broader effort to tackle the widespread prejudice and institutional racism against Roma, and through structural changes in the area of housing rights.
32. The Commissioner wishes to emphasise that irrespective of the lack of legal recognition of Roma people's dwellings, the retaliatory demolition of their homes, with no assessment of proportionality and no provision for adequate alternative solutions where needed, is not only unlawful, but contributes to the further stigmatisation and marginalisation of Roma. Moreover, such practices run counter to the efforts made at national level to improve Roma's access to adequate housing and more generally, to improve their living conditions.
33. For the vicious circle of evictions to be stopped, the authorities have to move away from punitive approaches and start addressing the housing situation of Roma on the basis of the relevant international human rights standards. In the Commissioner's view, it is essential that all relevant authorities, at all levels, comply with Bulgaria's international obligations with regard to the housing rights of Roma.
34. The Commissioner is of the opinion that the Bulgarian authorities should:
- act swiftly to improve the legal safeguards covering evictions; in particular, they should promptly finalise the legislative amendments providing for the application of the principle of proportionality in the context of evictions, in line with the Court's specific findings in this case and taking into consideration the applicable international standards;
  - ensure that courts and other authorities consistently apply proportionality criteria when assessing cases of (potential) evictions;
  - ensure that evictions, when carried out, respect the dignity of the persons concerned even when they are illegal occupants, and that alternative accommodation or other compensatory measures are available; alternatives provided must fully respect the rights of children and of vulnerable persons;

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<sup>22</sup> See *International Federation of Human Rights (FIDH) v. Belgium*, *ibid.*, §163, and [Digest of the case law of the European Committee of Social Rights](#) (in particular Article 16 - The right of the family to social, legal and economic protection and Article 31 – The right to housing), December 2018.

- take measures to avoid future forced evictions and identify sustainable housing solutions for people who lack security of tenure; take determined measures to legalise informal settlements, based on existing good practices; in all cases, ensure that everyone enjoys at least a minimum level of security of tenure and protection against forced evictions;
- take decisive measures to improve the housing conditions of Roma, in line with the principles set out in Recommendation Rec (2005) 4 of the Council of Europe Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe; such measures should be part of comprehensive strategies to tackle the socio-economic exclusion affecting many Roma; the authorities should allocate adequate resources for the implementation of such policies, which should be regularly monitored and evaluated;
- improve the access of Roma to social housing; for this purpose, adopt, as promptly as possible, a binding and ambitious action plan to expand the availability of social housing; review the eligibility criteria for access to municipal housing with a view to rescinding or relaxing rules which currently make it impossible in practice for Roma to apply for such housing; adopt legislative measures to establish an appropriate framework for housing measures taken by local authorities;
- ensure that the Roma communities concerned are fully involved in any legal or practical action to improve their housing conditions.