

***Improving access to housing for Roma: good local practices, funding and legislation
Prague, 2-4 February 2011***

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Council of Europe standards regarding Roma housing

Ladies and gentlemen,

On behalf of the Secretary General of the Council of Europe and his Special Representative for Roma Issues, Mr Jeroen Schokkenbroek, I would like to introduce some of the standards developed by the Council of Europe in the specific field of housing, following the kind invitation addressed to the CoE by FRA and the Czech Roma Decade presidency. Indeed before discussing more concretely housing policies and measures and possibly assess their impact we should all bear in mind international norms and standards fixed in that area.

Jurisprudence and decisions of the European Social Charter and the European Court of Human Rights

At Council of Europe level the **European Social Charter and Revised Charter (RESC)**, and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) contain directly or indirectly important housing and housing-related rights.

The Charter grants rights to social and medical assistance for those without adequate resources, establishing housing obligations in relation to physically and mentally disabled persons, children and young persons, migrant workers, elderly persons and rights to social, legal and economic protection for families, including a State obligation to provide family housing.

Part V of Article E of the Charter states: *“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”*

Article 30 (RESC) on the right to protection against poverty and social exclusion includes an obligation to promote effective access to a range of services, including housing.

Article 31 establishes a right to housing, with Contracting States undertaking to take measures designed to promote access to housing of an adequate standard, to prevent

and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without adequate resources.

The European Committee on Social Rights (CSR) interpreted Article 31, defining fundamental notions, such as adequate housing, homeless persons, forced eviction and housing affordability. It also established what action States are required to carry out to ensure the effectiveness of the right to housing: These include, among others, the control of adequacy, construction policy, social housing, housing benefits, judicial remedies, and emergency housing for homeless people. The Conclusions of the CSR in monitoring States obligations under Article 31 have demonstrated the application of a new set of benchmarks to national housing law and policy.

This implies that, for the situation to be in conformity with Article 31 of the Charter, States Parties must:

- adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- maintain meaningful statistics on needs, resources and results;
- undertake regular reviews of the impact of the strategies adopted;
- establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

The jurisprudence of the Charter is also being developed through the **Collective Complaints Protocol**. This allows approved NGOs to lodge a complaint to the CSR where there appears to be a violation of any provision of the Social Charter by any State which has accepted it. Several member states have been condemned concerning the inadequate housing of Roma families, lack of legal security of tenure, non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them, or the lack of proper amenities.

Recalling our yesterday's discussion in Roudnice nad labem, I would like to highlight a few aspects of the Charter:

- Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.

Under Article 31§3, States Parties are required, in order to increase the supply of social housing and make it financially accessible, to adopt measures:

- for the provision of housing, in particular social housing;
- to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive.

Under Article 31§3, States Parties are also required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population. Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

The **European Convention on Human Rights (ECHR)** contains many civil and political rights provisions which are being indirectly interpreted in the development of housing rights across Europe, especially within Articles 3, 6, 8, 13 and 14. These can also be applied in national courts since the Convention has been incorporated into national law in all member States. Positive obligations on States are being established in the European Court of Human Rights (ECtHR) especially in relation to vulnerable persons who cannot assert rights themselves.

In *Moldovan and Others v. Romania* (2005), the ECtHR concluded that the applicants' living conditions, and the racially discriminatory manner in which their grievances were handled by the public authorities, constituted an interference with their human dignity, amounting to 'degrading treatment' within the meaning of Article 3. Article 8(1) protects the right of individuals to "respect" for their private life, family life and "home," although this does not amount to a right to housing.

However, the combination of obligations under Articles 3 and 8 can lead to positive obligations in this area. The ECtHR considered in *Marzari v. Italy* that, *"although Article 8 does not guarantee the right to have one's housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual..., this provision does not merely compel the state to abstain from such interference: in addition, to this negative undertaking, there may be positive obligations inherent in effective respect for private life. A State has obligations of this type where there is a direct and immediate link between the measures sought by the applicant and the latter's private life."* Positive obligations on States to protect people's homes have been found under Article 8 in relation to protection from smells and nuisance from a waste treatment plant, toxic emissions emanating from a chemical factory, environmental pollution from a steel plant. Article 8 was also used by French courts to stop evictions of Roma families.

Viewpoints and recommendations of the CoE Commissioner for Human Rights

The CoE Commissioner for Human Rights, Mr Thomas Hammarberg, addressed the problem of housing, in particular the housing of Roma, on several occasions.

On 30 June 2009, his recommendations on the implementation of the right to housing [CommDH(20095)] were published. These recommendations reiterated the major conclusions of his paper *"Housing Rights: the duty to ensure housing for all"*, published on 25 April 2008, recalls the legal protection of housing rights in international law (UN, CoE and EU levels) which I just summarized as concerns CoE standards.

This report also highlights some **interesting national initiatives**.

§ The Homelessness (Scotland) Act 2003 obliges local authorities, by 2012, to secure adequate accommodation for all persons who become homeless, as part of a legally binding obligation to provide housing for all. The questions of

intentional homelessness and local connection which limited eligibility in the past will be removed. This represents a major development in universal and enforceable housing rights for a European country.

§ The recent law on the justiciable right to housing in France aims to give people the right to seek legal redress before an administrative tribunal, where their right to housing has been avoided by public authorities. It can require the State to offer the claimant adequate housing, within certain categories of need.

§ Several Autonomous Regions in Spain are currently discussing ways to enforce housing rights for vulnerable groups. In Andalusia, a new law aims to ensure access to housing for three different priority groups; people with an income that is below the minimum wage, socially disadvantaged people and young people. It will be enshrined in Article 25 of the Regional Constitution of Andalusia (*Estatuto de autonomía*). In Catalonia, the National Pact for Housing aims to ensure that nobody experiences housing exclusion due to economic reasons. The Catalan Government will use elements of the Scottish and the French law in the prevention of homelessness, prevention of eviction and support for tenants.

In that respect, let me refer to one of the decisions of the **Strasbourg Declaration adopted at the High Level Meeting on Roma on 20 October 2001**, i.e. for the Council of Europe to set up an **electronic resource tool (database) on policies/good practices of Roma integration policies**. Positive policies and initiatives in the field of housing would be introduced in this database. Today's meeting will hopefully help us identify criteria to define what sort of Roma housing policy and measure can be regarded as a good practice or on the contrary what sort of measures has led to the failure of some projects.

When working on the future database, the Secretariat will take into consideration the work and information delivered at meetings of the Committee of Experts on Roma and Travellers (**MG-S-ROM**), e.g.

- the legalization of Roma informal settlements and/or the upgrading of Roma settlements/housing (Bulgaria, Croatia and Serbia).;
- the use of structural funds in the context of housing projects for socially disadvantaged people (Slovakia);
- the construction of housing infrastructure and housing loans (Greece);
- the eradication of slums and integrated and co-financed (state/regional/local and EU funding) integrated housing projects (Spain);
- the desegregation housing policy as a criteria to allocate funds (Hungary).

An important aspect for assessing housing policies' impact is whether they respect the standards fixed by two **Recommendations adopted by the Committee of Ministers**, namely Rec(2004)14 on the movement and encampment of Travellers in Europe (addressing housing rights of nomadic or semi-nomadic populations) and Rec(2005)4 on

improving housing conditions of Roma and Travellers in Europe. The latter provides a very concrete list of 52 provisions covering all aspects. It also defines “housing” for the purpose of that recommendation: “*housing includes different modes of accommodation, such as houses, caravans, mobile homes or halting sites*”.

Positive examples of housing projects identified by FRA research studies, EC reports or through the Roma Decade would also be considered when studying best practices. They could be also identified through housing projects supported by loans of the CoE Development Bank (CEB). In this context let me stress that the CEB can be an important source for loans/grants for member States housing projects (as was the case in Bulgaria and Hungary). Other positive practices may be identified through the Dosta! prize awarded by the Congress for Local and Regional Authorities of the CoE to municipalities that engaged in long term integration projects of their Roma or Traveller populations.

I would like to recall here that during an expert meeting on housing conditions of Roma and Travellers organised by FRA on 9 July 2009 to prepare FRA survey on this topic, frequent shortcomings of housing policies and projects were identified such as the fact that housing projects do not necessarily take enough into account **specific cultural needs and traditions**, which usually is a sign of a lack of **proper consultation with the beneficiaries** and communities concerned.

The issue of evictions

Whatever good intentions exist in member states at central level in trying to improve the housing situation of Roma, the overall impact can be limited if at the same time Roma are constantly evicted at the local level. And in that respect the number of eviction procedures of Roma and Travellers in Europe remain particularly alarming. This is why the MG-S-ROM adopted an *Opinion on the housing situation of Roma and Travellers in Europe* in 2009, which had a specific focus on evictions.

The CoE Coordinator for Roma issues, Mr. Scicluna, had indicated in 2006 in one document referring to Roma housing related aspects that evictions had unfortunately gained momentum in recent years.

These persistent evictions has led to a phenomenon of renomadisation or forced nomadism and result in the opposite effect of well-intended integration housing policies.

In order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

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

- a. carried out under conditions which respect the dignity of the persons concerned;
- b. governed by rules of procedure sufficiently protective of the rights of the persons.

When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Finally, 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. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules. Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be obliged to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights.

All proceedings for possession of a home engage Article 8 of the ECHR, but the justification for such lawful interference can be made on the grounds that it is in accordance with the law, necessary in a democratic society and proportionate to the aim sought to be achieved. In *Stanková v. Slovakia* (Application no. 7205/02, Judgment 9 October 2007) the ECtHR found that an eviction by a public authority, which met the above requirements, but without providing any alternative accommodation, produced effects which were incompatible with the right to respect for private and family life and home.

In that context would like to share with Decade member states an interesting national example which is the French legislation of 9 July 1991 on eviction procedures:

- Evictions can only take place after a court judgment;
- The deadline for eviction should take into account the age and health of the occupiers, as well as the general situation of this family;
- Under no circumstances can an eviction take place between 1 November and 15 March of the following year, unless appropriate alternative accommodation has been offered.

As a conclusion let me quote the Spanish Ministry for Housing found in a paper submitted to MG-S-ROM: *"a house is not only a material good. It is also many other things. It is our second skin; it is the space for our memory; it is sometimes the unique stable reference when everything changes around us. And it is of course something necessary for any project of life."*

Thank you for your attention.

Annex

Additional information regarding the right to housing (Article 31 of the Charter):

The implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.

□When the achievement of the right to housing is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. Additionally, States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected.

□The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity.

However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs. The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups.

Under **Article 31§1** of the Charter, States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing. "Adequate housing" means a dwelling which is safe from a sanitary and health point of view, i.e. it must possess all basic amenities, such as water, heating, waste disposal, sanitation facilities and electricity and must also be structurally secure, not overcrowded and with secure tenure supported by the law. Effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial legal and non-legal remedies. Any appeal procedure must be effective. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.

Under **Article 31§2** of the Charter, States Parties must take measures in order to reduce homelessness with a view to eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. There must be enough places and the conditions in the shelters should be such as to enable living in keeping with human dignity. The temporary supply of shelter, however adequate, cannot be considered satisfactory. Individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness. Since in the case of unlawfully present persons no alternative accommodation may be required by States, eviction from shelter should be banned as it would place the persons concerned, particularly children, in a situation of extreme helplessness which is contrary to the respect for their human dignity.

Under **Article 31§3** of the Charter, an adequate supply of affordable housing must be ensured for persons with limited resources. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. Social housing should target, in particular, the most disadvantaged.