

**Forced Evictions: A Failure of Protection of the Right to Housing for the  
Roma. Approaches of the European Court of Human Rights, European  
Committee on Social Rights, and United Nations Human Rights Protection  
Systems (CERD and CCPR) with regards to Ukraine**

by

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## ABSTRACT

*The right to adequate housing is now addressed in various international human rights instruments. Under different jurisdictions, this social, economic and cultural right protects the most pivotal right to housing, which indirectly corresponds to other human rights. However, when it comes to the fulfillment of the right to adequate housing for vulnerable groups, this right despite it being the positive obligation of the State, is simply ignored in many instances. In this thesis, the main target group of analysis in the area of the right to housing is the Roma. This group was chosen for this thesis because of the specificity of the violation of their housing rights, which leads to the total exclusion of this community in social life. Moreover, the brutal violation of the right to housing for Roma not only by the State but also by right-wing organizations, results in forced evictions.*

*A comparative analysis for three jurisdictions was conducted for the purposes of identifying a better application of international legal instruments in this field. The international authority of the European Court of Human Rights, the European Committee of Social Rights, the Human Rights Committee and the Committee on Elimination of Racial Discrimination, all contribute to discussion about the issue of recent forced evictions of Roma in Ukraine. Thus, this thesis questions how the failure of protection of the right to adequate housing for Roma brought about the forced eviction as part of racial state practice across Europe. In answering the thesis question, in the light of three domains, a violation of the right to housing for Roma was analyzed through its theoretical foundations and case law. This approach gives a full analysis of the constitutional legal provisions that interpret the concept of "home" and brings the relevant case law for Ukrainian experience in the forced eviction of Roma.*

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## **LIST OF ABBREVIATIONS**

CEDAW-Committee on the Elimination of Discrimination against Women

CERD- Committee on Elimination of Racial Discrimination

CRC- Convention on the Rights of the Child

ECHR- European Convention on Human Rights

ECtHR- European Court of Human Rights

ERRC- European Roma Rights Center

(R)ESC- (Revised) European Social Charter

ECSR- European Committee of Social Rights

HRC-Human Rights Committee

ICCPR-International Covenant on Civil and Political Rights

ICERD-International Convention on Elimination of Racial Discrimination

ICESCR-International Covenant on Social and Economic Rights

INTERIGHTS-International Center for the Legal Protection of Human Rights

UN- United Nations

## INTRODUCTION

International human rights instruments have created all the necessary measures that acknowledge the right to adequate housing and shelter. This economic, social and cultural right is recognized in the Universal Declaration of Human Rights<sup>1</sup> and International Covenant on Economic, Social and Cultural Rights<sup>2</sup>. Despite this, billions of people are not adequately housed and live in slums, informal settlements or in health and life threatening conditions. Moreover, millions face forced evictions that make their lives susceptible to risks. These kinds of situations shows that there seems to be a breach of the right to housing; especially because the right to adequate housing should be protected in all States, due to the ratification of at least one of the international treaties that protect this right.

For some unprotected vulnerable groups of individuals, such as ethnic and national minorities, women, children, migrants and disabled people, special mechanisms for protection at the domestic level were created. As stated by the European Roma Rights Centre<sup>3</sup>, in 2016, a total of 10,119 Roma people had been forcibly evicted in France alone. For this reason, this thesis examines the situation of Roma across Europe as one of the stigmatized groups that face forced evictions because of the lack of protection of the right to adequate housing.

In my opinion, it is very important to state the main roots of lack of protection of the right to adequate housing for Roma. Often treated as second-class citizens, the Roma started to isolate themselves from non-Roma population and develop their own communities with a specific internal life. The desire to be excluded, or to be separated, arises not from the specific lifestyle of that community, as some people wrongly assume. Social exclusion evolved step by step in close connection to economic, social and political changes in countries. Considering this fact, my

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<sup>1</sup> “ Universal Declaration of Human Rights. New-York: United Nations,1948. Accessed on February 7, 2018. Available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>2</sup> “ International Covenant on Economic, Social and Cultural Rights”. New-York: United Nations, 1966. Accessed on December 1, 2017. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>3</sup> “Census of forced evictions in living areas occupied by Roma (or persons labeled as such) in France” (European Roma Rights Center). Accessed on December 1, 2017. Available at: <http://www.errc.org/cms/upload/file/roma-eviction-census-france-2016.pdf>.

research is related to three jurisdictions where some of the violations of the law were present the communism regime. I argue that the main roots of human rights violation of the Roma is prevalent in the area of housing. The beginning of the struggle for the right to adequate housing for the Roma is very often associated with the collapse of communist regime. It is very important to state, that under the communist ideology, the right to adequate housing was seen as a part of social protection and was provided by the State. On the one hand, it was seen as a very progressive idea; but on the other hand, it brought out a totally opposite outcome. Very often, the Roma families were settled in derelict old buildings or residential houses, which were built in the interwar period. Moreover, in some situations, the Roma families had a chance to become residents of new homes, but due to the wrongful stereotypes, States soon stopped this practice. The main stereotype that follows the Roma in the area of housing is connected to the non-adaptation of the new living conditions. In other words, the Roma were perceived as uneducated people, who did not know how to use modern housing facilities. Therefore, the new stigma has become a norm, and local authorities did not have any intention to provide flats to the Roma, that, in their opinion, would be easily damaged because of inappropriate use.

The second reason that forced the Roma community to live in slums is linked to the fall of the communist regime. The Roma were among the first ones who lost their jobs, because they generally worked in lowly occupations due to their general lack of education. Economic changes made it impossible for Roma to come into the transitional period with new opportunities; and at the same time, discrimination started to develop in newly created States. Unforeseen for Roma, the right to housing lost its status as responsibility of States, once individuals could become property owners. Some State-owned premises were transferred to municipalities and simply privatized, but some tenants were given the right to buy their dwellings at a low price, provided by the State. However, in the case of the Roma, very often they did not have money to redeem the price of the house. In addition, a lot of Roma were living in the historical parts of the towns and the cost of property there was relatively low for the people who had possibility to privatize

it. For this reason, in order to take possession of very attractive buildings, those who could afford to forcibly evicted the Roma.

Another pivotal issue that I stress upon is the main debates among scholars about the main sources of forced evictions and common gaps in legislation in different countries. As stressed by Ivana Krstić<sup>4</sup>, the local authorities should measure all relevant circumstances prior to forced evictions or just evictions. Moreover, the local authorities should examine situations on the basis of proportionality and legality of the future interventions of the life of community. Thus, the main consultations for victimized communities have to be provided, in order to identify relevant remedies, which can be in the form of the compensation of demolished houses, providing alternative accommodation and recovery for psychological trauma.

In contrast to that idea, Nolan Aoife<sup>5</sup>, in the context of Italy, highlights the deficiency of the legal protection from forced evictions. Moreover, even when protection from forced evictions exists in domestic legislation, other issues arise, such as the absence of documents for registration of illegal settlements that totally exclude the right to property for individuals. For example, in Ukraine, protection from forced evictions is included in the Constitution, but it does not necessarily mean that forced evictions do not take place in this country. In 2016, the unexpected forced eviction of the Roma community took place in Loshinivka<sup>6</sup> (Odessa region) and local Roma communities were not protected, either by legislation, or by the National Police of Ukraine. That means, that even when the right to adequate housing is protected by not only international standards, national local authorities find excuses for non-compliance with their obligations. This negligence leads to the fact, that forced eviction of the Roma became a usual practice. Moreover, sometimes even the members of community do not know, that their housing

<sup>4</sup>Krstić, Ivana. "Forced eviction-universal international standards". (English)." *Analiz Pravnog Fakulteta u Beogradu* 61, no. 2 (September 2013): 92.

<sup>5</sup> Nolan, Aoife "'Aggravated Violations', Roma Housing Rights, and Forced Expulsions in Italy: Recent Developments under the European Social Charter Collective Complaints System," 2011.

<sup>6</sup> "Убийство В Лощиновке: Все Подробности Трагедии." (РБК Украина). Accessed on December 5, 2017. Available at: <https://daily.rbc.ua/rus/show/ubiystvo-loshchinovke-podrobnosti-tragedii-1472460981.html>. [Murder in Loshinivka. All details of the tragedy]



is the subject of protection. It should be noted, that the housing conditions of Roma very often are not on satisfactory standards. In many situations, representatives of the Roma ethnic minority are in need of at least one basic home utility. According to studies conducted by the European Union Agency for Fundamental Rights, European Commission and by United Nations Development Program<sup>7</sup>, 45% of respondents of Roma origin reported the lack of basic utilities, such as electricity, indoor shower, indoor toilet or kitchen. This kind of information shows proof of inadequate conditions for living that can be found in most Roma settlements. From the difficult living conditions, more complex issues arise. These issues include, access to education for children that live in the Roma settlements; in other words, the right to education is also restricted. According to the UNICEF<sup>8</sup>, in Eastern Europe, only 20% of Romani children were involved in school. For example, in Slovakia, extreme poverty made it impossible for Romani children to go to school, because mainly in winter, children did not have enough warm clothes to go to school. Only with the help of the grants from the Decade of Roma Inclusion, some children managed to finish their schooling and continued with their studies.

Another difficult problem about living in slums is the poor and failing health of its Roma inhabitants. Moreover, areas with the Roma settlements are usually located in abandoned, excluded, and very poor territories that sometimes are associated even with the local city dumps. It is understandable, that living in such hazardous conditions can affect health and can lead to the very low life expectancy. Thus, the violation of the right to health also comes into the picture when there is no adequate housing. Another issue that is also relevant to the living in Roma settlements is connected to women's rights. Frequently, because of the lack of basic utilities, a lot of women have to stay at home and spend their time only by trying to fulfill home tasks. This kind of forced lifestyle totally rejects women from civil society, and makes them victims of

<sup>7</sup> Coman C., and Rezeanu C.-I. "The 'Free' Movement of Roma in the EU: From the Presumption of the Fundamental Right to Housing to Forced Evictions and Expulsion." *Bulletin of the Transilvania University of Braşov: Series VII: Social Sciences, Law, Vol 9(58), Iss 2, Pp 81-90 (2016)*, no. 2 (2016): 81.

<sup>8</sup> "The right of Roma children to Education". (UNICEF). Accessed on December 5, 2017. Available at: [https://www.unicef.org/eca/ru/Roma\\_Position\\_Paper\\_-\\_June12.pdf](https://www.unicef.org/eca/ru/Roma_Position_Paper_-_June12.pdf).

domestic violence in some extreme cases. Moreover, the lack of basic utilities makes women face difficulties during their pregnancy; this not only impacts their health, but also the health of the unborn child. High levels of illiteracy and school abandonment make women disconnected from the employment sector. Therefore, the connection to different groups of human rights are also relevant when we speak about the right to housing.

### *Structure of the Thesis*

This thesis comprises three main chapters with sub-chapters. Based on this, the first chapter of the thesis is titled *Who are the Roma?*, the second chapter focuses more on case law of forced evictions and the right to adequate housing, and is titled *Forced evictions and the right to housing under the ECHR, the (R)ESC, and the UN HR protection systems*; and the last part of thesis is titled *Recent forced evictions of Roma in Ukraine*.

The first chapter, *Who are the Roma?* is connected to the theoretical information about the focus group selected as a basis for my thesis, namely the Roma. In the beginning of the chapter, I discuss the Roma in European society, the kind of heritage they have, and the reasons why I choose that particular group, also referring to Ian Hancock<sup>9</sup>. This part also discusses the overall situation of the human rights of the Roma people in Europe and finds an explanation for historical discrimination, stigmatization and sometimes, total exclusion from civil society. It is important to state that the discriminatory character of access to social, economic, civil and political rights is also going to be assessed. The final sub-chapter of this section of my thesis provides the characteristics for the right to housing for the Roma, as an aspect of the battle for social recognition through specific agendas, human rights instruments, and forced evictions which are mirrored in the Decade of Roma Inclusion<sup>10</sup>.

<sup>9</sup> Hancock, Ian. "The Struggle for the Control of Identity". Accessed on December 1, 2017. Available at : <http://www.oocities.org/~patrin/identity.htm>.

<sup>10</sup> "Decade of Roma Inclusion 2005-2015" (WORDBANK). Accessed on December 1, 2017. Available at: <http://siteresources.worldbank.org/INTROMA/Resources/Moreabouttheromadecade.pdf>.

The second chapter of the thesis gives an explanation for selected jurisdictions by analysis based on comparative methods. This chapter also describes the access to adequate housing under the European Convention on Human Rights, European Social Charter, International Covenant on Civil and Political Rights and International Covenant on Elimination of All Forms of Racial Discrimination. It also provides an answer for the question regarding the failure to provide social housing for Roma, forced evictions and discriminatory State policies. In addition, it examines the relevant and the most recent case law about Roma forced evictions from the European Court on Human Rights, European Committee of Social Rights and the United Nations protection systems.

Finally, the third chapter is connected to the recent eviction of Roma in Ukraine. The national legislation of Ukraine and the participation of non-State actors in forced evictions of Roma is analyzed. Thus, from the explanation of differences among three different jurisdictions, a comparative analysis from the third chapter is used to identify and create recommendations for better access to the right to housing and prevention of forced evictions for the Roma in Ukraine.

### *Choice of jurisdictions*

This thesis is built on a comparative analysis of the State strategies and domestic legislation on the protection and integration of the Roma in the area of housing. Three jurisdictions are examined in comparative perspective: the jurisprudence of the European Court of Human Rights, European Committee on Social Rights and relevant bodies under the United Nations human rights protection systems.

The system of the European Court of Human Rights is examined first. According to the European Convention on Human Rights<sup>11</sup>, the right to adequate housing is interpreted from Article 8 and Additional Protocol No.1<sup>12</sup> of the European Convention on Human Rights. From

<sup>11</sup> "The European Convention on Human Rights." Strasbourg: Council of Europe, Human Rights Information Centre, 1993.

<sup>12</sup> "Protocol No. 1 to the Convention on Human Rights." Strasbourg: Council of Europe. Accessed on September 14, 2018. Available at: <https://www.coe.int/en/web/echr-toolkit/protocole-1>.

the case law established by the European Court of Human Rights, the concept of “home” arises, and in context of the Roma rights, it has a very important meaning. In other words, from cases examined by the Court, the right to housing for Roma is seen in light of protection from forced evictions, the provision of alternative housing and taking into consideration cultural features. Even though the case of *Wintenrstein and others v. France*<sup>13</sup> corresponds more closely to the right of Travelers, this case can be analyzed in the context of Roma rights because it contains the basic characteristics of forced evictions. In addition, other cases illustrated in the domain of the European Court of Human Rights also provide a very successful measure for the aggrieved parties.

The second jurisdiction that explains the main problems in access to adequate housing for the Roma is the European Committee on Social Rights. Altogether 15 countries in Europe have ratified the Additional Protocol to the European Social Charter<sup>14</sup> establishing the collective complaints mechanism. Notably, one of the largest portion of collective complaints submitted to the ECSR were about the violation of the provisions on the right to housing. I illustrate the main role and main cases of the European Roma Rights Centre<sup>15</sup> in the collective complaints mechanism in the third chapter of my thesis. In addition, before turning to the European Committee on Social Rights, non-governmental organizations have also conducted a very detailed research that prove a limited access to the specific right. Therefore, in the third chapter I illustrate the collective complains from Italy, Portugal and Greece in respect of situation of housing rights of Roma in Ukraine.

The last jurisdiction, which is examined, is connected to the United Nations human rights protection mechanisms. The Committee on Elimination of Racial Discrimination and Human Rights Committee are the most important treaty-based bodies that examine the right to adequate

<sup>13</sup> *Wintenrstein and others v. France*, Application no. 27013/07, Decided on 17 October 2013.

<sup>14</sup> “Revised European Social Charter”. Starsbourg: Council of Europe, 1996. Accessed on September 14, 2018. Available at: <https://rm.coe.int/168007cf93>.

<sup>15</sup> “European Roma Rights Centre”. Accessed on December 3, 2017. Available at: <http://www.errc.org/>.

housing for Roma in the context of racial discrimination. It should be noted that the right to housing under this jurisdiction occurs under the International Covenant on Economic, Social and Cultural Rights. More specifically, Article 11<sup>16</sup> underlines the scope of the right to adequate housing and sets about the adequate standard of living conditions. In addition, in the third chapter, I also provide more information about the right to adequate housing under the United Nations and its intersection with other corresponding rights.

### *Objective, Aim, and Methodology*

This thesis highlights the current status of Roma in the area of adequate access to housing. A comparative analysis of the legal framework of three jurisdictions is conducted for analyzing the development of the right to housing for the Roma and for identifying possible reasons for non-compliance with national and international legislation. The aim of this research is to consider the main positive examples of court decisions and legislation in the area of protection against forced evictions and legal protection of tenure. The legal research of this thesis incorporates case law, literature review, interviews and reports from non-governmental organizations. Moreover, secondary sources are also used, such as books, articles from journals and newspapers. A comparative analysis will help to identify the main reasons for the non-fulfillment of the State's positive obligation to the right to housing for a particular vulnerable group such as the Roma. Referring to the current position of law and policies related to the right to housing in a comparative manner, this thesis addresses the problem of the right to adequate housing and protection from forced evictions, not only on the national level, but also from the international perspective. In addition, I attempt to evaluate a better application of the right to housing for the Roma in Ukraine and analyze possible influential factors that I include in the recommendations. Additionally, Chapters 2 and 3 describe statistical data as a visual

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<sup>16</sup> "International Covenant on Economic, Social and Cultural Rights". New-York: United Nations, 1976. Accessed on September 7, 2018. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

demonstration of mass forced evictions, the number of the poorest Romani communities, and other data that is used for understanding the right to housing for Roma in general.

### *Relevance of the thesis*

This thesis is about the violation of the right to adequate housing for the Roma , which I argue leads to the forced evictions, failure of protection of tenure, discrimination and infringement of related rights, such as the right to health, civil rights and right of women. The Roma live in extremely poor and underdeveloped conditions that excludes them from entire societies and forces them to accept their current situation. This eventually creates the need to develop national and international measures that should be respected. The unique nature of this thesis is based on the identification of the main roots of problems for the lack of protection of the Roma community in the area of housing, and highlighting the main reasons for living in slums. The most important feature of this thesis is in bringing together the most important cases from the European Court of Human Rights, the European Committee on Social Rights and United Nations treaty-based bodies about right to housing for Roma and building parallels with domestic forced eviction of Roma in Ukraine. In addition, a comparative analysis will give a general overview about the impact of international human rights instruments and bodies to the national systems of protection against forced evictions. Detailed analysis of the domestic cases that are relevant to the right to housing for the Roma communities, brings discussions about the strategic litigation related to the right to housing in Ukraine. Moreover, some significant cases from the European Court of Human Rights and jurisdictions are going to be examined in order to illustrate positive experiences at the national level, such as policies, strategies and other relevant provisions.

## CHAPTER 1: Who are the Roma?

This chapter aims to give an overall description of the Roma as vulnerable group, who suffer discrimination in different areas. From the very beginning I provide the main controversial facts, terms and features related to Roma, found throughout and across the history of Roma, anti-Roma state policies, segregation, discrimination and access to justice.

In the first sub-chapter, I explain the usage of the concept “Roma”, and compare this term to other discriminative and offensive notions. By referring to the history of Roma, I attempt to explain the main reason for poor living conditions, segregation in housing, and limited access to dignified living conditions. In addition, the information about the stereotypes and identity of Roma also contributes to the discussion.

In the second sub-chapter I highlight the connection between the right to housing and discrimination in this area, comparing it with segregation in education, employment, health institutions. Anti-gypsyism and negative stereotypes, that are prejudicial in nature, are also stated as roots for ignorance by the State actors. Furthermore, the inaccurate romantic representation of Roma as travellers, and segregation in the main social spheres, have made Roma quiet , unspoken victims of human rights violations.

Finally, I conclude this chapter with the concept of the right to housing as the main issue of Romani movement. I briefly highlight the main legal instrument that was used by the Roma activist and state actors to improve living conditions for Roma. The main reasons for poor, segregated housing are stated by the reference to migration and the lack of implementation of relevant state policies.

### ***1.1.Roma as a Vulnerable Group***

For centuries, the Roma have been treated very suspiciously by a majority of the population in many countries. This has led to the development of stereotypes, mysteries, prejudice and other forms of unknown information that surround the Roma. For this reason, the

Roma created various images in society that show them as a community, that cannot be treated as regular citizens, and these dynamics in society brought the idea of the Roma's total ignorance of civil, political and social rights. Being a community, that produced exotic stereotypes and a closed nature not surprisingly developed the erroneous understanding of statistical data and history of the ethnic minority and identity.

Historical discrimination, stigmatization, and other forms of persecution made the Roma community difficult to study, even for researchers. The Roma were simply accepted as a *gadje* and as people who would never reveal themselves or any truthful information— and this fact additionally consolidates the negative image of the Roma in contemporary society. It is also well known, that the Roma were victims of the Holocaust during the Second World War and in many cases, historical memories of their dark past also left its imprint in communities. Therefore, any studies related to the Roma communities are assumed very carefully by the representatives of the Roma community.

Mistrustful relations between the Roma and non-Roma community led to the fact that a lot of historical events are misused and transformed, mostly not in favor of the Roma minority. The interactions between minority and majority became the main challenge for various scholars, NGOs, and public authorities, and unconsciously designed an incomprehensible picture about the Roma community all over the world. According to information provided by the European Roma Rights Centre<sup>17</sup>, it is estimated that there is about 6 to 8,5 million of the Roma living in the Middle East, the Americas and in the rest of the world. These are, however, only estimations: I will further present more concrete data analysis and statistics. Another ambiguous issue related to the Roma community is its history and the usage of the term “Roma”. Identity also forms one of the most important inquiries that I illustrate in the last paragraph of this subchapter.

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<sup>17</sup> Petrova, Dimitrina. “The Roma: Between a Myth and the Future”. Accessed on January 23, 2018. Available at: <http://www.errc.org/cikk.php?cikk=1844>.



The first issue, related to the ambiguous examination of the Roma community is related to the problems of using statistics in the investigation of the Romani community. As pointed out by James A. Goldston<sup>18</sup> in his article “Race and Ethnic Data: A Missing Resource in the Fight against Discrimination”, the journey to obtain statistics related to the racial minorities leads to the fact that maintaining and gathering information can provoke fear among the Roma and cause a misuse of information and support of negative stereotypes. In contrast, James A Goldston argues that it may be of benefit to the State not to conduct detailed and proper statistical analysis— because such data can prevent the uncovering of the human rights violations towards national minorities. These ideas completely mirror the current situation of the Roma community, when the discontinuity between official and unofficial data about the Roma population has a disparate gap and is simply accepted as nonexistent.

The lack of information about the official number of the Roma depends on two factors. Firstly, the Roma community itself does not want to be a part of population census and secondly, the State also does not have the desire to collect such data. The Roma have no trust for those outside their community who will collect data about them, because of their apprehension that such data will be subject to misuse, and as support material for hate speech, persecution and the production of negative stereotypes by the media. At the same time, statistical data has broader issues that relate not only to the protection of community itself and the State interest, but also to the protection of the personal data, cultural autonomy, anti-discrimination agendas and the constitutional rights to choose freely, as identified by Ivan Szekely.<sup>19</sup>

The second vague argument that exists around the Roma community is related to the use of the term “*Roma*”. Dimitrina Petrova<sup>20</sup> gives an explanation to the term of “Roma” as one that occurred in the early 1990s and has politically-correct interpretations among Europeans (the non-

<sup>18</sup> Krizsán, Andrea. 2018. " Ethnic Monitoring and Data Protection : The European Context". CPS Books. Budapest : INDOK, c2001.

<sup>19</sup> Ibid.

<sup>20</sup> Petrova, Dimitrina. “The Roma: Between a Myth and the Future”. Available at: <http://www.errc.org/cikk.php?cikk=1844>.

Roma) who used the reference to “Gypsies”. Thus, she emphasizes on the usage of the definitions of “Gypsies” and “Tsigane” as non-preferable, because they have huge historical and anthropological background related to negative prejudices. Simultaneously, some communities can identify themselves as a “Gypsies”, but not necessarily as “Roma”, such as the Ashkelia, Egyptians, Trevelers, Rudary, Beash and Sinti. What is very interesting is that some groups are accepting of the definition of “Gypsies”, such as the Roma community of Russian Roma and other ethnic groups that existed in the Russian Empire, stated by Nadezsha Demeter.<sup>21</sup> As it is seen from the variety of forms and identities of the Romani community, it is understandable that the Roma community is very diverse and do not form only one homogenous society. Accepting the changing of the attitude to the Roma community by the States, forming the policy of different NGOs and new challenges and development of the community itself, one common term arose from the political and national contexts, when “Roma” started to be used as a unified definition. In addition, international and national organizations started to use “Roma” as an umbrella term for all ethnic groups that belong to the Roma community and address issues of designed agendas.

Finally, when it comes to Romani language, the word “Roma” is translated as people, who belong to the Roma national minority and for those, who stay apart from Romani world, the world “*gadje*” is associated with non-Roma habitats. Therefore, the term “Roma” is the definition, that has a variety of association, but the pivotal issue addressed by that description is the prevention of negative stereotypes and usage of the world that comes from the Romani language.

In addition to all stated above, there is a blurred perception about the Roma — so much so that it is important to the history and heritage of that ethnic minority. In his book “The Pariah

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<sup>21</sup> Деметер, Надежда. “Цыгане на постсоветском пространстве и в Европе: исторические, социальные и культурные перспективы,” *Этнографическое Обозрение*, no. 3 (2011): 120–30.[ Demeter, Nadezhda, Nikolaj Bessonov, and Vladimir Kutenkov. *Istoriya tsygan: Novyj vzgljad* (History of the Gypsies: A New View). Voronezh: IPF "Voronezh," 2000. ]

Syndrome”, Ian Hancock<sup>22</sup> states that the Romani people are of northern Indian origin. He also supports his idea with the chronological illustration of the way how the Roma arrived in Europe. He also claims that the Roma moved out from India between AD 800 and AD 950 and made the long journey, that brought them to Europe approximately only in AD 1100. He refers to the three different populations of the Roma, namely the Eastern Gypsy (Domari), Central Gypsy (Lomavren), Western Gypsy (Romani) and he assumes, that all of them did not leave India at totally the same time. Moreover, he suggests that the reason for the migration was based on the fact that Roma were mostly prisoners of war or entertainers.

I argue that there are several instances, unfortunately without real evidence about the Roma move from Iran into Armenia, and the status of the Roma people ancestors in the Byzantine Empire. But it is possible that due to this, therefore, the reception in Europe for the Roma people was suspicious, leading to slavery, recognition of the low cast citizenship and stigmatization. In my opinion, that historical background is the milestone for the creation of the stereotypes and evictions, that the Roma started to face in subsequent years. Hancock tells us that after the period of slavery some Roma people escaped to the nearest foreign border to Ukraine, Russia, Serbia and Hungary because they feared the reenactment of slavery.

Therefore, most of this information is based merely on supportive documents that somehow mentioned the Roma casually. It paints an incomprehensible impression about the history of the Romani people. In addition, the strong evidence of persecution and mass killings of the Roma is connected to the pivotal stage in the history of the Roma, namely the Holocaust during the Second World War. What is disappointing is that for some reason, the genocide of Roma people did not find recognition for decades, and was broadly viewed as a forgotten holocaust because of the lack of knowledge from the Roma and non-Roma community.

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<sup>22</sup> Hancock, Ian. “The Pariah Syndrome : An Account of Gypsy Slavery and Persecution”. Ann Arbor : Karoma Publishers, 1988, c1987.

Finally, the last matter that supports unclear portrait about the Roma is the issue identity. The important argument about collective identity and classification is given by Richard Jenkins<sup>23</sup>, who refers to social identification, self-identification and group classification. He emphasizes tremendously on the topic of social identification, when each individual knows about the belonging to some community and can point out, without mistake, the real criteria that proves that particular belonging. However, he describes the outside world, that is accepted by an individual as unfamiliar and cannot provide comfortable interaction. He also points out on the very easy, and yet, at the same time, difficult approach for evoking similarity and difference that prove a relationship between “classifiers themselves” and “others”. Very often, that generates the creation of two groups, namely “us” and “them”. This ideology comes close to the connection of the Roma national minority, that embodies this mentality. They therefore, builds relations with the social world using categorization and the mention of belonging to a group of people. that have common features and cannot be united with the mainstream community.

In contrast to this sociological approach, Ian Hancock<sup>24</sup> argues that the Roma identity was produced by non-Roma, and that unfortunately resulted in the creation of new prejudices. He underlines the main tendency on Western Europe, when Roma identity became an inseparable part of European heritage. Even through decades, some people who never saw the Roma in their life, can without any additional uncertainty describe who the Roma are and what it is to be the Roma. Therefore, the Romani identity entrenched in society as both romantic and negative phenomena is very difficult to eradicate. Moreover, the Roma identity started to be classified by “others” as a lifestyle, or in some situations, as a social behavior that was supported by cultural and language differences— but sadly does not address the issue of distinctive ethnic or national belonging.

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<sup>23</sup> Jenkins, Richard. “Categorization: Identity, Social Process and Epistemology.” *Current Sociology* 48, no. 3 (July 2000): 7.

<sup>24</sup> Hancock, Ian. “The Struggle for the Control of Identity”.

Lastly, these kinds of social changes and constant images about the Roma in society became a form of reasonable evidence about the role of the Roma, transforming them as “other” to the non-Roma community across the world. From that explanation, it is visible that the shifting and heterogeneity of the concept of “us” and “them” has become a purpose of undermining the role of the Roma community in its relations with the non-Roma community.

Consequently, the Roma people are one of the most enigmatic communities in modern European society; and unclear representation of facts about the history, statistics, definitions and identity makes the image of the community untrue and negligible. Therefore, the Roma community holds a lot of mysteries, stereotypes and other issues that lead to non-understanding, hate, stigmatization and discrimination. These problems paint the image of the Roma as non-serious, and therefore, such problems do not find support for progressive actions from political powers to address the issues of the Roma, to understand their needs in the various spheres of social life (such as housing, education, health, and political presentation) and to fight for not only their socio-economic rights, but also for their political rights.

### ***1.2 Vulnerability Dimensions of the Roma***

It is well known, that the Roma are victims of systematic discrimination and other forms of oppression. According to Budapest Beacon<sup>25</sup>, the study conducted by the European Council on the protection of minorities in Hungary highlighted the problem of discrimination of the Roma in all spheres of public life, including employment, education, healthcare and housing. Exclusion from the main aspects of the life make the Roma community invisible and leads to the non-recognition and their image as second-class citizens. The common aspects of the radical ignorance from the States and the non-Roma community itself, followed by anti-Roma policies, causes the Roma to live below the poverty line. For this reason, I argue, through the support of numerous scholars, about the struggles, victimization and survival intentions of the Roma

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<sup>25</sup> “Roma Are the Victims of Systematic Discrimination in Hungary according to EC Report,” (The Budapest Beacon (blog)). Accessed on September 19, 2017. Available at: <https://budapestbeacon.com/roma-are-the-victims-of-systematic-discrimination-in-hungary-according-to-ec-report/>.

community. Moreover, the main principles that I distinguish among the various clichés that form exceptional attitudes to the Roma are anti-gypsyism, segregation, discrimination and policies against the Roma. All these aspects have historical background, and other features which form a stable position and image for the Roma community not only in Europe, but also in the global context, is very important.

Accordingly, my first argumentation is based on the ways of development of anti-gypsyism and references to history, media, non-religious singularity, and oppressive nations, amongst others. This argument is followed by the development of segregation and discrimination of the Roma community in the modern context.

According to a report prepared by the Commissioner for Human Rights<sup>26</sup>, anti-gypsyism is a phenomenon that forms the image and attitudes of the Roma in the light of prejudice, biases and stereotypes. It is accepted by the international community that anti-gypsyism has unclear and vague definitions — but the main issue addressed by this term is connected to the specific form of racism connected with the Roma. Moreover, the main origins for the creation of anti-gypsyism is challenged by numerous scholars, but I primarily rely on the ideas of Ian Hancock.

As stated by Ian Hancock<sup>27</sup>, it is not only the Roma arrival in Europe that is a crucial fact of their exclusion and oppression, but there are also some additional factors which demonstrates the full picture of historical pressure for the community. When the Roma arrived in Europe, they were seen as an Islamic threat because the color of their skin and their different daily practices were distinctive to Medieval Europeans. That first reception consolidated a negative image of the Roma and created an illogical mysterious fear of Gypsy magic that possess supernatural powers. In addition to the non-European habits, the Roma brought the concepts of pollution and cleanliness, which are borrowed from Indian culture. In the mentality of the Roma, non-Roma did not practise the same attitudes in the preparation of food, personal hygiene and relationships

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<sup>26</sup> “Human Rights of Roma and Travellers in Europe.” (Council of Europe). Accessed on January 29, 2018. Available at: <https://rm.coe.int/the-human-rights-of-roma-and-travellers-in-europe/168079b434>.

<sup>27</sup> Hancock, Ian. “The Pariah Syndrome : An Account of Gypsy Slavery and Persecution”.

between men and women, therefore the Roma automatically excluded the non-Roma from their social circles.

In addition, the romantic representation of the Roma comes from novelists, who portrayed the Roma as a mixture of different ethnic-groups of the Roma, taking advantage of the most exotic details. One more interesting issue connected to the negative attitude towards the Roma is the idea of counterculture, the idea that gives an explanation for the Roma as a group of people who work against the values of the majority— in other words, the majority being non-Roma. Finally, the media has played its role, when the popular press and journals, for decades, have used hate speech and associated the Roma as criminals without fact-checking and without any consultations with the Roma. Thus, the development of anti-gypsyism has stagnated the evolution of Roma culture and is one of the factors that prevents the integration and inclusion of the Roma in contemporary societies.

The second problem that arises very often as part of Roma issues is segregation. This problem occurs in all spheres of life of the Roma, such as health, housing, education and other spheres, where they are seen as a second-class citizens and common goods (that would ordinarily be available to citizens) are not allocated for them. It should be noted, that segregation of the Roma has very long history. Iulius Rostas<sup>28</sup> stresses that the beginning of segregation started from the collapse of the communist system, when further steps for improving the situation of the Roma were tolerated by the newly established independent States. Moreover, the issue of segregation has its roots from the non-logical designing of advocacy that was prepared by Roma activists, non-Roma agents and other participants. The Roma were among the first who lost their jobs in factories and started to thrive in the new political system without incurrence, guaranteed salaries and the possibility to obtain housing.

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<sup>28</sup> Rostas, Iulius, and Kostka, Joanna. 2014. "Structural Dimensions of Roma School Desegregation Policies in Central and Eastern Europe." *European Educational Research Journal* 13 (3): 2.

The most common area in which the Roma are segregated is connected to education, where physical separation is performed in order to divide the Roma students from non-Roma students. This action by authorities is sometimes justified as necessary measures, needed to preserve the Romani identity and culture of students, to combat the opposition from the non-Roma parents for their children to study together with the Roma, or presented as special policies designed for the illusory improvement of education for the Roma children and those from poor backgrounds. Other more absurd reasons for the separation of the Roma children are very common in Hungary and Czech Republic, where the authorities create special tests for the measurement of intellectual skills of Roma children. These kinds of tests had the effect of placing most Roma children or those with mental disabilities, in segregated schools and classes. Therefore, segregation in schools is one of the most important issues that have to be addressed in order to provide a reasonably successful future for the new generation of children.

The second area of social life where segregation plays a role is in housing. In many countries across Europe, there are many specific areas where Roma settlements occur, separate from the mainstream communities. For instance, Dena Ringold and Michel Aleksandr<sup>29</sup> provide an explanation for the occurrence of the separated Roma settlements as a practice that originated from the Medieval times. In southeastern Europe, under the rule of the Ottoman Empire, many Roma settlements were organized according to the religious belonging of the Roma. Different approaches for the settlements were used during Communism, where intensive integration for national minorities was used and housing was provided with employment. Therefore, the Roma very often settled near the enterprises, but after the fall of the socialist political system, the Roma did not have finances to pay the rent, and as a result, these areas were left abandoned and they were evicted. In addition to the problem of segregated settlements, in Czech Republic, Romania

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<sup>29</sup> Ringold, Dena, Mitchell Alexander Orenstein, and Erika Wilkens, "Roma in an Expanding Europe: Breaking the Poverty Cycle". Accessed on January 25, 2018. Available at: [http://siteresources.worldbank.org/EXTROMA/Resources/roma\\_in\\_expanding\\_europe.pdf](http://siteresources.worldbank.org/EXTROMA/Resources/roma_in_expanding_europe.pdf)



and Slovakia, Roma walls were introduced by the local authorities in order to segregate the Roma from the rest of society.

The next area of segregation towards the Roma is connected to healthcare. It is evidenced by many European states, where the Roma face low-quality health facilities and segregation policies of hospitals. Very often, the main victims of this exclusionary attitude are the Roma women, who are captured in so-called “Gypsy rooms”. The problem of separating pregnant Roma women, from other women, is highly debated in Bulgaria, where segregation and discriminatory treatment developed through the healthcare system, and in many circumstances, Roma women had to suffer unsanitary conditions and lesser quality and standard of care by healthcare staff<sup>30</sup>. The situation of separated rooms for the Roma in maternity wards is tragically mirrored in Hungary, where healthcare staff regularly do not want even to touch patients of Roma origin. This leads to misdiagnosis and non-relevant medical treatment.<sup>31</sup> In many cases, the exclusion in healthcare systems leads to the unreasonable justification of hygiene norms built on the basis of ignorance and acceptance of the Roma community as representatives of a group that breeds many illnesses. Moreover, health systems in many European States have been transformed against an ignorance of the needs of the Roma, and used various stereotypes to further the separation of the Roma from the majority.

Thus, this exclusion from the three main branches of State operations and using negative stereotypes towards the Roma, makes the Roma population face stigmatization and serves nothing to improve their position as a vulnerable group. For this reason, States are not the only ones who need to take steps for Roma inclusion and integration, but the Roma community also must fight for their own rights. Unfortunately, the idea of segregation became more relevant in the period of transformation and developing the ideology of homogenous society, that is very

<sup>30</sup> “ECRI REPORT ON BULGARIA”.(Council of Europe). Accessed on January 31, 2018. Available at: <https://rm.coe.int/fifth-report-on-bulgaria/16808b55d8>

<sup>31</sup> “ECRI REPORT ON HUNGARY”(Council of Europe). Accessed on January 31, 2018. Available at: <https://rm.coe.int/fifth-report-on-hungary/16808b57e8>

often used in many European States. New challenges of the twenty-first century make the Roma struggle for their rights and in some cases, survive in very unpleasant conditions. This shifts the image of the Roma as passive, vulnerable, victimized people without any hope for better future. Thus, systematic social practices have to be condemned in contemporary societies as a harsh violation of fundamental human rights—in cases of segregation in education, as a strict violation of the right to education; of the undignified living conditions that contravenes the right to housing; and situations of limited access to the healthcare systems violates the right to health.

Hence, the most important issue that follows the Roma community in all areas of life is discrimination. Discrimination based on race is the one constant and systematic practice imposed by States in all social areas, which the Roma have faced for decades. Recent news about the situation of the Roma community merely supports the information that nothing has significantly changed. Under-representation in political areas and other fields make the Roma invisible citizens, followed by negative stereotypes and being seen as victims of discrimination. In contrast to segregation and anti-gypsyism, discrimination is the area that can be directly controlled by legislation. In case of segregation and anti-gypsyism, not only should the State laws be directed towards protection, but also the social problems that occur in different structural levels should be solved. Legislation is a very powerful tool to combat discrimination against the Roma, but at the same time, anti-discrimination laws cannot solve the historical discrimination of the Roma in one attempt. Police brutality, arbitral detention, and over-represented criminal justice, should prompt the investigation of cases where justice for the Roma minority is shunned.

However, international human rights instruments create specific measures for preventing possible racial discrimination in the fields of access to justice and anti-discrimination. For example, the European Convention on Human Rights contains a provision that prohibits discrimination (Article 14<sup>32</sup>) and highlights the necessity for a fair trial (Article 6,7<sup>33</sup>) and the

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<sup>32</sup> “European Convention on Human Rights.”

<sup>33</sup> “International Covenant on Civil and Political Rights.”

right to effective remedy (Article 13<sup>34</sup>) in the International Covenant on Civil and Political rights. When it comes to the International Convention on the Elimination of All Forms of Racial Discrimination, relevant provisions are set for the prohibition of discrimination in the area of justice in Article 5<sup>35</sup> and Article 6<sup>36</sup>. In addition, General Recommendation XXXI<sup>37</sup> on the prevention of racial discrimination in the administration and functioning of the criminal justice system was adopted by the Committee of Elimination of the Racial Discrimination (CERD). CERD stresses that the Member States should impose the right to the presumption of innocence, where “this right implies that the police authorities, the judicial authorities and other public authorities must be forbidden to express their opinions publicly concerning the guilt of the accused before the court reaches a decision, much less to cast suspicion in advance on the members of a specific racial or ethnic group.”<sup>38</sup> Unfortunately, all these measures are not adequately carried out by the State parties, and the shortcomings in imposing proper anti-discrimination legislation still keep the Roma community in the vacuum of injustice and irresponsibility of the State parties.

Another sphere of life where the Roma face discrimination is in the area of employment. According to the research conducted by the ERRC, Ann Hyde<sup>39</sup> states that the Roma are systematic victims of the exclusion from the labor market. Many Roma of working age do not have regular jobs, and in some extreme cases with the young Roma, they have never had jobs. There are many reasons for unemployment. The first reason is connected to the lack of professional skills, due to the absence of the relevant education and the non-integration dimensions during the post-communism period. However, the main reason for the non-

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<sup>34</sup> Ibid.

<sup>35</sup> “International Convention on the Elimination of All Forms of Racial Discrimination,” New-York: United Nations.1965. Accessed on February 1, 2018. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

<sup>36</sup> Ibid.

<sup>37</sup> “General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System,” CERD. Accessed on February 1, 2018. Available at: <http://www.refworld.org/docid/48abd56dd.html>.

<sup>38</sup> Ibid.

<sup>39</sup> Hyde, Ann. "Systemic Exclusion of Roma from Employment". Accessed on February 4, 2018. Available at: <http://www.errc.org/article/systemic-exclusion-of-roma-from-employment/2535>.

acceptance of Roma in different job positions is discrimination that has been supported by stereotypes—these stereotypes create the image of the lazy, irresponsible Roma, who does not want to work. In addition, even if the Roma finds a work opportunity, most of them are low qualified jobs with very low payment because of their the lack of education. In addition, some companies have strong anti-Roma policies, where workers of Roma origin can be excluded from the beginning, in the application and interviews. Some Roma face discrimination in the working process and very often are victims of low payments, even in cases where they work same positions and the same amount of working hours as other non-Roma persons. The Roma of higher education similarly face problems in their career advancement—for instance in Slovakia, many highly educated Roma complained about the “glass ceiling” that follows them in the different areas of the labor market. The most distressful and sad fact is that different kinds of anti-discrimination laws (on the basis of ethnicity) in the area of employment actually do exist . For whatever reasons, this legislation is not properly applied and enforced in favour of the Roma, and this is not only by national employers, but also by international companies with strong reputation.

To sum it up, the Roma community is one of the most vulnerable ethnic minorities, that need protection and positive obligation of the States in the area of housing, education, employment health and access to justice. It is worth noting that the Roma are victims of structural and complex issues on many cases, produced by the non-action of States, and in some situations, because of the lack of political presentation of the Roma. In addition to the contemporary situation of the Roma, a huge impact on their non-integration is played by the media. The media spreads anti-Roma information, historical rejection and persecution of the Roma and other forms of anti-gypsyism. Segregation is also pivotal in the area of racial difference and application of different kinds of measures for the separation of the Roma community from the non-Roma community. This pulls back the Roma community from fully evolving and fully participating in education, housing and health areas. Moreover, discrimination

is the biggest problem of the Roma community that excludes the Roma from different aspects of public life, and creates and fosters strong negative stereotypes even in employment and access to justice.

### ***1.3 Protection Mechanisms of the Right to Housing for Roma***

As stated in the previous parts of this chapter, the Roma faced numerous difficulties in exercising their civil and socio-economic rights. I believe that the issues of housing, health, education and employment are inter-related and it is very difficult sometimes to find the roots of vulnerability and unprotected status of the Roma. In my view, housing is the main problem for segregating the Roma communities, and policies to solve this issue have to be incorporated by the local authorities through State intervention. In framing the discourse of this human right, it is necessary to provide explanations for the main reasons and historical background of the problem why it is problematic for the Roma to exercise the right to housing— and discuss and underline the main aspects of the right to housing as a human right.

It should be noted, that the right to housing is a human right that is specifically mentioned in many human rights instruments. For instance, in the Universal Declaration on Human Rights, the provision about the right to housing exists in Article 25<sup>40</sup>. In addition, International Covenant on Civil and Political Rights<sup>41</sup> emphasizes on the right to housing, as a positive right, where State Parties have to take all necessary steps to ensure the realization of the right to adequate housing. The prohibition of racial discrimination is strictly referred to in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention relating to the Status of Refugees<sup>42</sup> and in the Convention on the Rights of the Child (CRC)<sup>43</sup>. The more practiced analysis of the right to housing was conducted by the UN Committee on Economic and Cultural Rights, where the main features were established for determination of the right to

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<sup>40</sup> “Universal Declaration of Human Rights.”

<sup>41</sup> “International Covenant on Civil and Political Rights.”

<sup>42</sup> “General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System.”

<sup>43</sup> “Convention on the Rights of the Child.” New-York: United Nations.1990. Accessed on February 7, 2018. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

adequate housing. The main rules were addressed in the General Comment No 4 on the right to adequate housing<sup>44</sup>. It was addressed in the Committee, that adequate housing “should be seen as the right to live somewhere in security, peace and dignity”.

In addition to non-discriminative nature of that right, the issue of providing housing for people without dependence on their income also was included. For this reason, the main elements of the right to housing is defined as affordability, habitability, accessibility, legal secure of tenure, availability of services, infrastructure and materials, cultural adequacy and location, that can provide access to the work place, employment, health, education, and other facilities. From that long list of features, it is understandable that to achieve all these changes is very difficult for the States because it is financially high. Therefore, the Committee compromised by shifting onto States how they would deal with the problem of the lack of the resources, and to make statemenets about the progressive realization of the right to housing and how it would shift to the full realization of the right. That means that the States are obliged to design policies, social projects, administrative, legislative financial and educational measures in order to achieve the realization of the right to housing. Therefore, even countries with very low standard of living should provide low-cost programs for their citizens.

An important related outcome to the right to housing is the protection from forced evictions, which is of current interest to the Romani community. Tenants, and slums inhabited by the Roma, are very often demolished by the local authorities. An example of this is the eviction of more than 10,000 Roma in France that was reported by the ERRC<sup>45</sup> in 2016. Thus, the

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<sup>44</sup> “General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)”, (UN Committee on Economic, Social and Cultural Rights), 13 December 1991, E/1992/23, Accessed on February 7, 2018. Available at: <https://www.refworld.org/docid/47a7079a1.html>.

<sup>45</sup> “Thousands of Roma Forced onto Streets of France in 2016 ”, (ERRC). Accessed on February 7, 2018. Available at: <http://www.errc.org/press-releases/thousands-of-roma-forced-onto-streets-of-france-in-2016> .

challenge of the forced evictions was addressed by the UN Special Reported on Housing and was pointed out in the General Comment No 7<sup>46</sup>.

The right to adequate housing is the right that has a place as part of socio-economic human rights. It is, however, one of the most debatable human rights that has to balance between the positive and negative State obligations. It is well known fact that the Roma in some segregated areas live in the extremely poor conditions and without adequate access to basic utilities. In some cases, they even do not have access to basic utilities, making their life extremely difficult and depriving them from a dignified way of living. This is clearly a violation of their various human rights.

It is also important to state that the places of accommodation have different forms, and depends on surrounding society, the economic activity of the Roma, and distinguishing from sedentary or nomadic way of life. For instance, Jean-Pierre Liegeois<sup>47</sup> explains different types of accommodation of the Roma referring to three historical ways of possible settlements. Families, who arrive in the first wave spread without distinguishing on nomadic or settled ways of living. They spread through capitals and big cities, or sometimes, in isolated neighborhoods near big cities. The second wave has features of continuing travelling near the urban areas, but in some cases, there are formed communities that stay for some time without moving. Finally, the third wave of the Roma is connected to the conflict in Yugoslavia and admitted by the settling at the periphery of urban cities. Moreover, those families, who arrived after the different upheavals in Europe in 1990s, face different kinds of living conditions. Most of the time, they were connected to the policies of the host States. Therefore, from the waves of arrival, it is possible to make logical links and understand why some of the Roma managed to establish stationary houses, while others live in the buildings awaiting destroying or in radical situations forced evictions,

<sup>46</sup> “General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions”. UN Committee on Economic, Social and Cultural Rights (CESCR), 20 May 1997, E/1998/22. Accessed on February 7, 2018. Available at: <https://www.refworld.org/docid/47a70799d.html>.

<sup>47</sup> Liégeois, Jean-Pierre, and Jean-Pierre Liégeois. "Roma in Europe". Strasbourg : Council of Europe Pub., 2007.

and in the most extreme cases, some the Roma communities still live in stationary caravans outside the cities.

Going beyond history, it can be seen that the migration of the Roma is a rational explanation of the poor living conditions for the Roma. However, the extreme policies under different historical periods also made an impact on Roma migration. Policies towards the nomads were frequently popular in the discourse of non-settling them, and pointed towards moving and persecution. Exceptional policies were performed in Spain, Romania during the period of slavery, and in Austria, where some steps for the settlement were conducted, but these actions were rejected by the local population, who did not want to see the Roma near them.

Another period of encouraging settlement is connected to the communism era in Central and Eastern Europe, where the positive intention from the States by forced settlement led to slums, isolated regions, and accommodations with lack of basic utilities. After the collapse of communism regime, many local authorities tried to solve the problem of housing for the Roma. In many cases, it was organized by giving flats in apartment blocks, where the Roma had to live with people who had other problems, such as alcoholism, drug abuse, and crimes. Therefore, the integration into society did not happen, because being placed in life-threatening conditions such as this were not tolerated and were rejected by general society. In addition, ill-minded neighbors, who suffered from stereotypical impressions of Roma, created unsuitable conditions for the Roma, making them subject to living in unsafe spaces. The Roma even faced restrictions during the search for apartments, because many non-Roma neighbors did not want to live with Roma on their apartment floor or even in buildings. Therefore, the racism, discrimination, security of tenure and reluctance of the local authorities are key elements in the failure of the right to housing for the Roma.

Finally, the right to housing is a right that is addressed under different human right instruments and should be respected by the States. In reality, this right has been violated by the



State and non-State actors for decades, towards the Roma community. Local authorities are still very reluctant to provide positive and substantial measures for their improvement. Therefore, the Roma still suffer from discrimination and racism in the area of housing, and have to live below the poverty line especially after forced evictions. The main problem of the right to housing for the Roma is connected to the nature of this right itself. Very often, the States simply hide behind the excuse that there is not enough financial support for implementation of the State's policies towards the right to housing. Therefore, not only the Roma, but also different representatives of society, still lack the fulfillment of the minimum standard of the right to housing.

## CHAPTER 2: Forced Evictions and the Right to Housing under ECHR, RESC, and the UN HR Protection Systems

In this chapter, the overview of the right to housing for Roma is examined under the protection system of the European Human Right Convention (ECHR), the (Revised) European Social Charter<sup>48</sup> and the relevant international treaties under the United Nations (hereafter UN) human rights protection system. The protection provided by these instruments will be analysed in the light of the case law of the European Court of Human Rights (hereafter “ECtHR”), European Committee of Social Rights (hereafter “ECSR”) and United Nations (hereafter “UN”) human rights protection systems. By giving the description of the interpretation of the right to housing, the concept of “home” and other related issues of the right to adequate housing as the main factors of this right is illustrated. In addition, the connection of the right to housing for Roma in some jurisdictions is presented in close connection with other fundamental human rights.

The first jurisdiction analyzed in this chapter is the ECtHR. At the beginning of this chapter, I provide the main competences of the ECtHR and provide the corresponding meaning of the right to housing. Furthermore, the relevant case law will describe the main additional issues of the right to housing for Roma. The next jurisdiction that is discussed in this chapter is the ECSR. This domain will be analyzed in the context of the right to housing through the European Social Charter (hereafter ESC) as the main legal instrument. Finally, the UN treaty-based bodies will also be highlighted to provide information about the cases of forced evictions of Roma as a result of the failure of protection of the right to housing.

As a result, after each jurisdiction, I point out the main advantages and disadvantages for bringing complaints in the respective domains. However, the fullest analysis for the stated above jurisdictions will be contained in the final chapter of the thesis, when the relevant cases

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<sup>48</sup> The thesis will include the decisions of the ECSR both in respect of the European Social Charter adopted in 1961 and the Revised European Social Charter, adopted in 1996 having different provisions on the right to housing. The abbreviation – (R)ESC – refers to both.

of forced evictions of Roma in Ukraine will be examined. The cases from Ukraine would be compared with the cases from the international case law, with recommendations for the most appropriate and best approaches taken in the jurisdictions.

### ***2.1. Right to Housing under the European Court of Human Rights***

The European Convention on Human Rights and Fundamental Freedoms<sup>49</sup> (hereafter “ECHR”) was adopted in 1950 to secure fundamental civil and political rights within in the domain of the Council of Europe. It is one of the most effective instruments on human rights protection due to the mechanism of the ECtHR. What is most important is that decisions of ECtHR are binding for Members States, and they oblige States to make modifications in national laws and in administrative practices in accordance with the ECtHR judgments.

The main legal standard used by the ECtHR in the area of protection of fundamental human rights is the ECHR<sup>50</sup>. However, when it comes to the protection of social and economic rights, and to the right to housing specifically, an additional standard should be applied. This is done through another important legal instrument in the protection of the right to housing, that is, the First Additional Protocol<sup>51</sup> of the ECHR (hereafter “Protocol No.1 to the ECHR”). This Protocol interprets the main source of the right to housing. Therefore, in this sub-chapter, I illustrate numerous legal norms that related to forced evictions of Roma and provide an explanation of an autonomous concept of the “home”.

It is important to state that the right to housing is mentioned under several articles in the main text of the ECHR. It is possible to distinguish that there is no specific provision of the ECHR that directly states about the right to housing. Nevertheless, the right to housing is mentioned as a peripheral right in Articles 3, 6, 8, 14 of the ECHR. In Article 8<sup>52</sup> of ECHR is written, that “*Everyone has the right to respect for his private and family life, **his home**, and his correspondence*”. This can be interpreted to mean that Article 8 imposes a positive obligation of

<sup>49</sup> “European Convention on Human Rights”.

<sup>50</sup> Ibid.

<sup>51</sup> “Protocol No. 1 to the European Convention on Human Rights”.

<sup>52</sup> “European Convention on Human Rights”

the State to respect the home of each member of society. The broad interpretation of this clause does not give a concrete answer about the scope of this right. Through the case law established by the ECtHR, it is understandable that the Court respects the sovereignty of Member States, but do not give an explanation about the meaning of the right to respect everyone's home. Taking into account the specific situation of the Roma in the Council of Europe, ECHR developed the importance of positive obligations of the Member States to facilitate the "gypsy" way of life. This means that states should encourage traveling around and settling in different places of Roma due to their difficult vulnerable positions, as in the case of *Buckley v. The United Kingdom*<sup>53</sup>.

In Article 8, the autonomous concept of "home" takes place by interpretation. Only by using different cases delivered by the ECtHR is it possible to find the main features of the definition of "home". According to the Guide on Article 8 of the ECHR,<sup>54</sup> the notion of "home" is an autonomous concept that goes beyond the classification of domestic law. The landmark case that addressed the concept of "home" is *Gillow v. The United Kingdom*<sup>55</sup>, where the test for "sufficient continuing links"<sup>56</sup> was established. That test gave the possibility to the Court to analyze the connection between the claimants' right to respect in their home and presumed home. In his article Antoine Buyse<sup>57</sup> states that sufficiency of this link can be treated in two ways, as the "establishment of another home", length of absence or as "periods of ownership and habitation", and the "intention to take up permanent residence". However, the continuity of the link can be broken only in case of involvement of the state. The ECtHR also developed the

<sup>53</sup> *Buckley v. United Kingdom*, Application no. 20348/92, Decided 29 September 1996.

<sup>54</sup> "Guide on Article 8 of the European Convention on Human Rights"(ECHR). Accessed on August 12, 2018. Available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf).

<sup>55</sup> *Gillow v. United Kingdom*, Application no. 9063/80, Decided 14 September 1987.

<sup>56</sup> *Ibid.*, para. 46; *Prokopovich v. Russia*, No. 58255/00, para. 36, ECHR 2004-XI (extracts);

<sup>57</sup> Buyse, Antoine. "Strings Attached: the Concept of "Home" in the Case Law of the European Court of Human Rights", *European Human Rights Law Review* No. 3 (2006), p. 298.

notion of “home” in the light of privacy. Thus, in the case of *Gomez v. Spain*<sup>58</sup>, “home is the place, the physically defined area, where private and family life develops”.

The most interesting thing is faced when the legality of tenure is questioned. According to the case law of ECtHR, an “illegally occupied a place of residence also qualifies as a “home””. Despite that, the illegality of particular dwelling should be caused by the State itself; for this reason, the concrete individual circumstances are more important than illegality. The right to housing in the light of Article 3<sup>59</sup> of the ECHR, which deals with prohibition of torture, seems to be irrelevant and very far from the housing right. However, the right to housing can be sensitized by this provision. The level of gravity that may be reached when the State does not comply with its obligation to prevent torture or degrading treatment, is a horizontal obligation. The main contradiction in the interpretation of this clause is related to the difficulty in bringing the main evidence in the failure of protection of housing rights by the State, which then leads to degrading treatment when such protection is not available. As a result, it is possible to state that Article 3 of the ECHR does not constitute the main article for guaranteeing adequate housing. Nevertheless, Article 3 can be used very successfully in combination with Article 8 to develop positive obligations on the part of the State. The case law of the ECtHR so far experienced this conjunction only in cases of protection from noise from bars and night-clubs<sup>60</sup>, environmental pollutions<sup>61</sup> and other pollutions of the environment.

In contrast to the stated above articles, Article 13<sup>62</sup> and Article 14<sup>63</sup> are common in the bringing of complaints when housing rights of Roma are violated. Article 13 of ECHR is invoked in many cases that deal with violation of housing rights of Roma, and it emphasizes the right to an effective remedy, that is not available in many countries of the Council of Europe.

<sup>58</sup> *Gomez v. Spain*, Application no. 4143/02, Decided 16 February 2005.

<sup>59</sup> “European Convention on Human Rights.”

<sup>60</sup> *Moreno Gómez v. Spain*, Application no. 4143/02, Decided 16 November 2004.

<sup>61</sup> *Fadeyeva v. Russia*, No. 5723/00, Decided 30 November 2005.

<sup>62</sup> “European Convention on Human Rights.”

<sup>63</sup> *Ibid.*

Forced evictions of Roma in Romania, Italy, Ukraine, and other countries are characterized by a lack of protection of an effective remedy before a national authority. Article 14 of ECHR in many cases comes together with the right to an effective remedy, and highlights the importance of racial discrimination in cases of forced evictions. Thus, these clauses are more effective in the protection of housing rights of Roma and more effective in bringing complaints on behalf of an aggrieved party that has been subject to anti-Roma programs.

The next legal norm that mentions the right to housing in the domain of the Council of Europe is Article 1<sup>64</sup> of Protocol 1 of the ECHR. In this clause, the protection of property is stated with two other specific rules. The general rule of Article 1 claims, that "every natural or legal person is entitled to the peaceful enjoyment of his possessions". It means that everyone's property should be protected. What is also important, is that "possessions" includes patents, shares, licenses, leases and welfare benefits. "Peaceful enjoyment" means the right of access to the property. In cases, when interference to property rights does not address these two specific rules, the Court can apply a "fair balance test" to find the solution between the individual and general interest. This test is more accurate than the test of "necessary in a democratic society" and requires the State party to show a fair balance between the person's right and the public interest. In a nutshell, the protection of property under Article 1 of Protocol No. 1 of ECHR is limited to the protection of property and this drafting does not require the concrete right to housing. It imposes an obligation of the State to protect everyone's property but does not give rise to the obligation to provide accommodation.

Consequently, in the domain of the European Court of Human Rights, there is no concrete clause where the right to housing is drafted. Only a few articles from the ECHR could be interpreted by the Court in the light of protection of the right to housing. However, the right to housing can be analyzed from Article 1 of Protocol 1 of ECHR as part of the protection of everyone's property. On the one hand, that provision has the main disadvantage when the

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<sup>64</sup> "Protocol No. 1 to the European Convention on Human Rights."

positive obligation of the State to provide with accommodation is simply absent. On the other hand, this clause is an important component in the area of forced evictions of Roma. Coming back to the ECHR, it is important to mention that the ECHR has been interpreted by the Court as providing protection from forced evictions or illegally occupied the land, as well as from expulsion from a member state. This protection under the ECHR is available under the ECtHR if eviction or expulsion would run contrary to the right to family, right to life or the prohibition of tortures. Therefore, the ambiguity of the right to housing and notion of "home" is now part of the jurisprudence of the ECHR, which should be interpreted in the light of present-day conditions.

### Case Law

In the jurisdiction of the European Court of Human Rights, there are different mechanisms, that can be used for protection of the main human rights stated in the ECHR or in Additional Protocols if they have been ratified by the State party. It is possible to lodge an individual complaint with the ECHR through the criteria defined in the ECHR. Articles 34<sup>65</sup> and 35<sup>66</sup> provide explanations to individual applications and mention the main criteria for the admissibility of applications. In the human rights context, the broad possibility of lodging complaints by individual, group of individuals or from non-governmental organizations increases the higher possibility for investigation into human rights violation.

In the area of violation of housing rights, the ECtHR has many legal cases. In this chapter, I provide a description and a short analysis of the main recent legal cases that protect the right to housing for Roma and Travelers. For example, in case of *Wintenstein and others v. France*,<sup>67</sup> I emphasize the issue of gendered legal occupations, that according to the local authorities was impossible to obtain. In addition, in the case of *Yordanova and others v. Bulgaria*,<sup>68</sup> I highlight the protection from evictions, established by the Court, in respect of

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<sup>65</sup> "European Convention on Human Rights."

<sup>66</sup> Ibid.

<sup>67</sup> *Wintenstein and others v. France*, Application no. 27013/07, Decided 17 October 2013.

<sup>68</sup> *Yordanova and others v. Bulgaria*, Application no. 25446/06, Decided 24 September 2012.

Roma communities that had occupied some land for decades before changes in property structure in a State party. The most extreme case that involved the issue of mob violence resulting in the demolition of Roma housing is presented in the case of *Moldovan and others v. Romania*. These are only a few cases, and other cases that addressed forced eviction of Roma and other associated rights in the jurisdiction of the ECHR will also be highlighted.

The case of *Winterstein and others v. France* was decided by the ECtHR in 2013. The application was brought by 25 citizens of France. They had been living in a mobile home for decades. The authorities decided to relocate several families because of the natural area, that they inhabited. After that action, most of the applicants ignored the act of the authority and continued to live at the same conditions, however some families received a social housing or moved to other cities. By non-urgent action the order was delivered for defendants to leave the land within three months. The Court of Appeal upheld this judgment, but applicants were denied legal aid and could not proceed with an appeal.

The International Movement ATD Fourth World and the 25 applicants complained to the ECtHR, claiming that Article 8 was violated, in conjunction with Article 14. Namely, the right to respect for private and family life was violated in conjunction with the prohibition of discrimination. As a result, the ECtHR held unanimously that forced evictions of Travelers amounted to a violation of their right to private and family lives. The important component to the case was prepared by the third-party intervener, the ERRC. The ERRC stated advanced three key issues of the case. The first issue underlined by the ERRC is connected to the interpretation of the concept of “home”. It stated, that "sheds/caravans" should be qualified as "homes" or "possessions" under the Article 8 and Article 1 of Protocol 1 of the ECHR. Secondly, the ERRS claimed that demolishing of the housing of Roma/Travelers should only take place under the same conditions of "ordinary" houses. In addition, the ERRC argued regarding the effective remedies for those who were evicted.



The importance of the case lies in the recognition of the concept of "home" by the ECtHR. The ECtHR noted, that

In the present case it is not in dispute that, at the material time, the applicants had been residing for many years (between five and thirty years) at the locality of Bois du Trou-Poulet in Herblay. The Court thus takes the view that the applicants had sufficiently close and continuous links with the caravans, cabins, and bungalows on the land occupied by them for this to be considered their "home", regardless of the question of the lawfulness of the occupation under domestic law.<sup>69</sup>

This means that the ECtHR recognized the status of applicants' sheds/ caravans, as "homes" under the scope of Article 8. Moreover, the Court underlined that the right to respect for one's home the right to respect for private and family life, extended to the identity of Travelers.

In this case, the partly dissenting opinion of judge Power-Forde<sup>70</sup> is also very substantial. For example, he mentions the obligation upon Contract Parties in Article 14, to investigate *ex officio*, racist motives in violation of another article of the ECHR. In other words, he stated that a separate issue could be analyzed by the Court if it is connected to the clause. He thinks that taking into account Travellers as a vulnerable minority, their complaint could be examined under Article 14 in conjunction with Article 8 of the ECHR. Thus, he highlights the issue of direct or indirect discrimination that could play any part in the issue.

The second case considered that is by the ECtHR is *Yordanova and others v. Bulgaria*<sup>71</sup>. In this case, the applicants are Roma and have lived for decades in an area owned by the State. The applicants occupied the land in Batalova Vodenitsa illegally and never thought to regularize their buildings. In 2005, the municipal authorities decided to transfer the land to a private investor. For this reason, a district mayor ordered the removal of the Roma residents and the Court upheld this decision. However, the Roma residents were not evicted, pursuant to Rule 39<sup>72</sup>

<sup>69</sup> Wintenstein and others v. France, Application no. 27013/07, Decided 17 October 2013, para 141.

<sup>70</sup> Ibid. Partly dissenting opinion of judge Power-Forde, p.34.

<sup>71</sup> Yordanova and others v. Bulgaria, Application no. 25446/06, Decided 24 September 2012.

<sup>72</sup> Under Rule 39 of its Rules of Court the European Court on Human Rights, indicate interim measures to any State party to the European Convention on Human Rights. In *Yordanova and others v. Bulgaria* the applicants under this rule were protected from eviction under Interim measures imposed by the ECHR.

by the ECtHR and under the pressure of the European Parliament. It is important to state that the ECtHR decided to analyze the possibility of violations of Article 8 and 14 of the ECHR.

The main issues arise from this case are connected to the applicants' rights under Articles 8 and 14 of the ECHR. When it comes to Article 8 of the ECHR, the enforcement of the removal order was analyzed in the light of interference with the rights protected by this clause. Taking into consideration the fact that applicants have lived for many years in the extemporaneous buildings, did not support the contention of the government that the Roma registered there recently only to obtain municipal flats. Thus, the Court explains that under Article 8, the applicants' houses in Batalova Vodenitsa should be interpreted as "homes"<sup>73</sup>. Without controversy, enforcement of the 2005 removal order would lead to them losing their homes, and their rights under the scope of Article 8 would be violated. In addition, the Court further argued that the expulsion would cause the applicants to not only lose their homes— but also their social and family ties. This would therefore amount to an interference of their "private and family life".

Another very important part in the Court's reasoning is the proportionality analysis. The Court gives a very clear argument, that under the removal order, the proportionality analysis was completely missed. The authorities did not give any concrete reasons for the order because of the specificity of Bulgarian law that does not require any examination for proportionality. Therefore, the removal order was issued only because of the illegal occupation of the land by the applicants. As a reaction from the Court to this claim by the Government, the Court decided to analyze this case under two main claims, "pressing social need" and "proportionality under legitimate aim pursued"<sup>74</sup>.

The Court built its arguments based on the idea of "recognition of community life in Batalova Vodenitsa" and based on the recognition of the Roma as "socially disadvantaged group". The Court emphasized very strongly about the different treatment of the cases, where

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<sup>73</sup> Ibid, para 103.

<sup>74</sup> Ibid, para 123.

community establishes very strong social links. It also recognized the long history of the establishment of a community in Batalova Vodenitsa.

In contrast, it is very clear that the Government did not take into consideration these specific circumstances. The Court also acknowledged the lifestyle and living environment of the Roma that was developed in the settlement, which could be destroyed if the Roma were seeking social housing. What is also very crucial is that the Court mentioned the positive duty of the authorities under Article 8. The Court underlines that the State does not have the duty to provide housing, and it does not have this obligation under the ECHR. However, under the specific conditions, the social status of the applicant could be taken into account and “underprivileged status of the applicants” group should be an important issue in cases of illegal settlements<sup>75</sup>.

The final case I will mention in this branch of human rights is the case of *Moldovan and Others v. Romania*<sup>76</sup>. In this case, the conflict arose between a Roma and non-Roma villager. An altercation happened, which led to the death of the latter's son. That evening, the non-Roma villagers and some representatives of police gathered in front of the house, where Roma men were hiding. The house was set on fire. Two men escaped from the house but were beaten to death by the angry mob. A third man was prevented from leaving the house and he died in the fire. Later that evening, a crowd of villagers completely destroyed thirteen Roma houses and some property. For this reason, the applicants were needed to flee from the village and find alternative housing with friends or family members. The Court found a violation of several Articles, such as Articles 3, 6 (Section 1), 8 and 14. In the context of Article 3, the Court found a violation that was caused by the forced eviction. Namely, it concluded that after the eviction, the applicants were forced to live in uncomfortable conditions, affecting their health and well-being. When it comes to the right to housing, specifically Article 8, the Court also found a

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<sup>75</sup> Ibid, para 133.

<sup>76</sup> *Moldovan and others v. Romania*, Applications no. 41138/98 and 64320/01, Decided 30 November 2005.

violation and stated several reasons that caused a deprivation of their right to respect for private, family life and homes.

The Court noted that Romanian authorities imposed insecurity on the applicants' life, because the compensation that was awarded for destroyed houses was only given after ten years. In addition, in the criminal proceedings against the accused villagers, discriminatory comments and remarks were made about the ethnic origin of Roma<sup>77</sup>. The involvement of national police in burning applicants' houses was tolerated by the Public Prosecutors' Office. The Court also found a violation of Article 14 in conjunction with Articles 6 and 8. The Court argued, that "the attacks were directed against the applicant because of their Roma origin"<sup>78</sup> and pointed out that the Government did not have any concrete justification for the difference in treatment.

### Reflections

The right to housing for Roma in the context of the right to housing is examined very precisely by the ECtHR. The Court managed to develop the right to housing from Article 8 and Protocol 1 Article 1. It also gave special attention to forced evictions. From the stated above information, it is important to conclude that the ECHR has developed an effective mechanism for protecting the right to housing for Roma. As mentioned before, a separate and specific clause on the protection and ensuring the right to housing is absent from the ECHR. However, the pivotal concept comes from the notion of "home" as highlighted by the ECtHR. Under the specific interpretation of "home" by the ECtHR, the right to housing arises. Furthermore, Protocol 1 Article 1 is also instrumental in the protection of the right to housing, although it is more in connection with property.

Taking into consideration a specificity of the application of the right to housing for Roma, the right to housing is analyzed by the Court, including any racist motives as well. In order to give the fullest picture of the right to housing for Roma under the jurisdiction of the

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<sup>77</sup> Ibid, para 107.

<sup>78</sup> Ibid, para 139.

ECtHR, I relied on the case of *Winterstein and others v. France* where the notion of "home" is stated very clearly. Despite the relevance of this case for Travelers, that case can be used for Roma as well because of the issue of forced evictions and unlawful occupation of territory. Moreover, the racist motives of the State amounted to a direct or indirect discrimination. In the case of *Yordanova and others v. Bulgaria*, the issue of social links and special treatment for underprivileged status of the applicants comes into the situation of possible removal. However, the ECtHR brought to the picture, a proportionality analysis that made the examination of the right to housing effective and lawful. In addition, "recognition of community life" in this case underlined that the ECtHR paid attention to the cultural way of settlements for Roma. In the case of *Moldovan and Others v. Romania*, forced evictions which took place, and the subsequent violation of the right to housing, was decided in conjunction with the violation of Article 14. The ECtHR stressed the lynching by the angry mob that resulted in demolishing of homes for several Roma families. Furthermore, it criticized the ineffectiveness of the Romanian state, which only provided compensation to the injured parties after ten years.

Consequently, in the case law on ECtHR, the right to housing is stated under Article 8. However, from the stated above cases it is important to mention that the Court examines the right to housing for Roma more in the light of property and possession, and refers to discriminatory treatment in Article 14 as well.

## ***2.2 Right to Housing under the European Committee of Social Rights***

The European Committee of Social Rights is the body responsible for monitoring compliance of the State party with the European Social Charter. The ESC complements civil and political rights drafted in the ECHR with social and economic human rights<sup>79</sup>. The ECS was adopted in 1961 and a revised (amended and significantly broadened) version, the RESC was adopted in 1996. Dependent on their decision, states can be a Party to either the 1961 or the 1996

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<sup>79</sup> "The European Social Charter." (Council of Europe). Accessed on August 24, 2018. Available at: <https://www.coe.int/en/web/turin-european-social-charter/about-the-charter>

version<sup>80</sup>. The Charter it guarantees a broad range of human rights related to employment, healthy and fair working conditions, housing, health, and social protection, laying down detailed provisions on the undertakings of the State Parties to promote the effective exercise of the guaranteed rights<sup>81</sup>. In addition, the Charter refers very strongly to the protection of social and economic rights extended to vulnerable persons, who should enjoy these rights without discrimination.

The Committee uses two separate procedures to supervise compliance with the undertakings. The primary one today is the Collective Complaints procedure, adopted in 1995, whereby complaints can be lodged by non-governmental organizations and social partners.<sup>82</sup> The main reason for the introduction of the Collective Complaint procedure was to ensure a higher observation of the rights guaranteed by the Charter, and approximate it to the mechanisms of other international human rights treaties by authorizing the ECSR to adjudicate complaints. The other, original procedure is the reporting system, which obliges State Parties to submit regularly a report on the implementation of the Charter in their respective national law and practice. For this reason, the Committee has established a clear operation of two different mechanisms, which aim to protect and fulfill social rights.

In the Charter, the right to housing is implied in Article 16 in both the “old” and the “new” Charter, guaranteeing the right of the family to social, economic and legal protection and is explicitly guaranteed by Article 31 of the Revised, 1996 Charter<sup>80</sup> providing for that,

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<sup>80</sup> The 1961 version guarantees 19 rights, the Revised, 1996 version guarantees 31 rights.

<sup>81</sup> The so called selective system of the Charter permits State Parties not to ratify the whole document, instead, to choose – within certain limits – the obligations they undertake.

<sup>82</sup> 15 countries have ratified the Protocol so far out of the 43 States Parties.

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1) to promote access to housing of an adequate standard; 2) to prevent and reduce homelessness with a view to its gradual elimination; 3) to make the price of housing accessible to those without adequate resources.

Therefore, the main elements of the right to housing under the Charter are “accessibility”, “adequacy” and “prevention and reduction of homelessness”. However, the fullest interpretation of the scope of the right to housing may also be observed in the case law established by the ECSR. In 1995, a Collective Complaints Mechanism was established that gave the possibility for accredited NGOs to lodge complaints against State Parties. Furthermore, the ECSR itself plays the role as a supervisory mechanism, that aims to guarantee housing-related rights by the State Parties.

The interpretation of the right to housing from the Charter was created through case law of the European Committee of Social Rights. The Committee gives a full explanation of the right to housing in the light of a State's obligation, referring to the national reports from States and decisions on Collective Complaints<sup>83</sup>. Article 31 of the European Social Charter cannot be interpreted as a right that should promote an obligation of "results". But despite this, it also does not mean that the State Parties do not have an obligation to provide housing. Rather, it obliges States to show that they have taken practical steps and made provisions for effective protection of this right. The State should show a continuous progress towards achieving the goals of ESC. The progress of achieving the goals can be demonstrated by providing the necessary statistical analysis of the progress, undertaking regular views of the impact of the strategies adopted, establishing a timetable for the objectives and paying attention to the adaptation of special policies for vulnerable persons<sup>84</sup>. Therefore, the right to housing under the ESC cannot be accepted as only a theoretical notion, it should be practical and effective as well. The Committee notes that effective enjoyment of the right to housing should be followed by a positive

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<sup>83</sup> Ibid.

<sup>84</sup> "Digest of the Case Law of the European Committee of Social Rights". (European Committee of Social Rights) Accessed on 16 August 2018. Available at: <https://www.refworld.org/docid/4a3f52482.html> .

intervention by the State. In other words, the State must take the legal and practical measures which are pivotal for achieving the goal of protection of the stated above right<sup>85</sup>.

Article 31 of the ESC does, however, overlap with other articles, for example, with Articles 16<sup>86</sup> and 30<sup>87</sup>. Before coming to the explanation of the reasons for overlapping, it is important to state that the general right to housing was included only to the Revised Charter. Some countries did not accept the provisions under Article 31. For this reason, Article 16 can be found in both Charters, and partially overlaps with several aspects of the right to housing. In cases of forced evictions, the notion of the right to housing is the same under Articles 16 and 31<sup>88</sup>. In addition, the Committee mentions that under Article 16, the right to housing should be interpreted as “the right of families to adequate supply of housing”. This means that a family’s needs should be taken into consideration, and housing policies should be developed to ensure an adequate standard of living and essential services<sup>89</sup>. Therefore, the ESC contains special provisions for protecting the housing rights of marginalized or vulnerable groups, such as physically and mentally disabled persons<sup>90</sup>, children and young persons<sup>91</sup>, migrant workers<sup>92</sup> and elderly persons<sup>93</sup>. The special rights, designed to protect against poverty and social exclusion are drafted in Article 30 and, *inter alia*, they oblige States to provide effective access to housing. Moreover, Article 30 is a critical component in battling against social exclusion—for example, in the case of Roma, it requires State Parties to ensure that this community is able to access housing, which also influences their health, education and employment<sup>94</sup>.

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<sup>85</sup> European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, para. 35.

<sup>86</sup> “The European Social Charter.”

<sup>87</sup> *Ibid.*

<sup>88</sup> European Roma Rights Centre v. Bulgaria, para. 17.

<sup>89</sup> European Roma Rights Center v. Bulgaria, para. 9.

<sup>90</sup> “The European Social Charter.” *Article 15*.

<sup>91</sup> *Ibid: Article 17*.

<sup>92</sup> *Ibid: Article 19*.

<sup>93</sup> *Ibid: Article 23*.

<sup>94</sup> European Roma Rights Centre v. Portugal, Complaint No. 61/2010, Decision on the merits of 30 June 2011, para. 65.



The Committee also acknowledges the importance of other human rights standards. The right to housing of the Charter must be considered in the light of other human rights instruments. For example, it corresponds to relevant rights in the ECHR, namely Article 8. In many cases connected to housing rights, the jurisprudence of the ECtHR plays the role in inspiring the Committee. Furthermore, the Committee notes that interpretation of the right to housing is completely in the same manner as the European Court of Human Rights<sup>95</sup>. However, the different nature of the rights in the ESC and the ECHR should be reflected upon, and taken into account, such as protection of property for instance. The Committee states that ownership of the piece of property does not come into the scope of the right to housing, but under the Protocol 1 Article 1 the ECHR requires a “State to provide full and complete restitution for the unjustified deprivation of property rights”<sup>96</sup>. Despite this, the Committee recognizes the importance of materials gathered by other international human rights bodies and uses that information in delivering judgments.

In its case law, the Committee designed the notion of "adequate living conditions" and obliges the State Parties to include this concept in national legislation. Thus, the Committee defines the right to adequate housing to mean “dwellings which is safe from sanitary and health point of view, i.e. possesses all basic amenities, such a water, heating, waste disposal, sanitation facilities; electricity etc; and if specific dangers such as, for example, the presence of lead or asbestos materials are under control<sup>97</sup>”.

It also outlines other criteria for adequate housing, such as providing a dwelling which is not over-crowded and where the security of tenure is guaranteed. In the case of the *Roma Rights Center v. Portugal*<sup>98</sup>, the Committee clearly states that the physical safety of occupants should be ensured, and a dwelling must provide inhabitants with adequate space, and possibly protect from

<sup>95</sup> International Movement ATD Fourth World v. France, paras. 68–69.

<sup>96</sup> Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, Decision on the merits of 22 June 2010, para. 60.

<sup>97</sup> Grover, Sonja C. “Children Defending their Human Rights Under the CRC Communications Procedure.” Berlin, Heidelberg : Springer Berlin Heidelberg : Imprint: Springer, 2015.

<sup>98</sup> European Roma Rights Centre v. Portugal, para. 37.

harsh weather conditions. In addition, adequate housing should be located with access to health-care institutions, public services, schools, and employment. Segregation of socially disadvantaged communities should be abolished, especially in cases of immigrants and ethnic minorities, otherwise, it will lead to restricted access to medical institutions, unemployment, and poor health<sup>99</sup>. Under the right to adequate housing, the Committee also pays attention to forced evictions. The Committee underlines “forced evictions as the deprivation of housing which a person occupied, on account of insolvency or wrongful occupation.”<sup>100</sup> The Committee emphasizes the restriction and limitation of cases of forced evictions, and allow eviction only under special circumstances. It states that evictions must be “carried out under conditions which respect the dignity of the persons concerned; governed by rules of procedure sufficiently protected under the rights of the persons; accompanied by proposals for alternative accommodation”<sup>101</sup>. In the case of illegally occupied territories, the Committee sets the criteria, where illegal occupation should be not big territory and the eviction should take place in accordance with a procedure that would sufficiently protect the right of persons concerned<sup>102</sup>. Moreover, the demolition of housing or forced eviction violates the right to housing in general, and States must provide effective measures and remedies to the victims<sup>103</sup>.

To sum it up, under the domain of the European Committee of Social Rights the right to housing is developed into a separate provision. This means that the scope and content of this right are stated clearly, and does not need to be interpreted only through case law. The right to housing under this jurisdiction is evolved into separate, and at the same time, complementary issues, such as the right to adequate living conditions, protection from forced evictions and accessibility to health institution, education, employment, and other related rights. Furthermore,

<sup>99</sup> European Roma Rights Centre v. Portugal, paras. 49–50.

<sup>100</sup> “GOVERNMENTAL COMMITTEE OF THE EUROPEAN SOCIAL CHARTER” (Council of Europe). Accessed on September 12, 2018. Available at: <https://rm.coe.int/168070cacc>.

<sup>101</sup> European Roma Rights Centre (ERRC) v. Italy, para. 41; Conclusions 2011, Turkey, Article 31§2.

<sup>102</sup> European Roma Rights Centre v. Bulgaria, para. 51.

<sup>103</sup> Gailiūtė, Dovilė “Right to Housing in the Jurisprudence of the European Committee of Social Right.” Accessed on September 12, 2018. Available at: [https://www.mruni.eu/upload/iblock/912/022\\_gailiute.pdf](https://www.mruni.eu/upload/iblock/912/022_gailiute.pdf).

the right to housing is seen in the intersection with the right to education, health rights and other rights that can cause social segregation of communities. The most important fact for protecting the rights guaranteed in the Charter is connected to anti-discrimination, giving vulnerable groups equal protection and enjoyment of the rights.

### Case Law

Due to the extensive and well-established case law of the European Committee of Social Rights in this chapter, I analyze several cases connected to the right to adequate housing for Roma. According to the database of the European Committee on Social Rights<sup>104</sup>, the Committee has analyzed 46 cases with regards to the right to housing. As mentioned in the previous chapter, only approved non-governmental organizations can submit collective complaints. Thus, the right to housing for Roma was a key component in cases lodged by the European Roma Rights Center (hereafter “ERRC”), European Roma, and Travelers Forum, INTERIGHTS and Centre on Housing Rights and Evictions.

In order to give an essence of examination of the right to housing by the European Committee on Social Rights, this section presents an analysis of cases prepared by the ERRC. One example is the case of the *European Roma Rights Center v. Italy*<sup>105</sup>, where the right to housing for Roma is connected to other rights, such as rights to education, employment and health. Moreover, I will also analyze the case of *European Roma Rights Center v. Portugal*<sup>106</sup>, where the obligations of the State Parties was interpreted to extend to the provision of social housing. In addition, the case of the *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*<sup>107</sup> will be presented by referring to a positive intervention by the State.

<sup>104</sup> “HUDOC-ESC.” Data base of the European Social Charter. Accessed August 25, 2018. Available at: <https://hudoc.esc.coe.int/eng#%20>.

<sup>105</sup> Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Publicity: 21 October 2010.

<sup>106</sup> European Roma Rights Center v. Portugal, Complaint No. 61/2010, Publicity: 2 November 2011.

<sup>107</sup> International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Collective Complaint No.49/2008, Publicity 23 September 2008.

The first case that I put forward is based on a violation of housing rights of Roma, decided by the European Committee of Social Rights in 2004. In the case of the *European Roma Rights Center v. Italy*, the ERRC claimed that the housing facilities of Roma in Italy should be considered a violation of Article 31 of the Revised European Social Charter. In its collective complaint<sup>108</sup>, the ERRC stated that Roma was denied their right to housing, because they were living in inadequate living conditions, subject to forced evictions, and had limited access to alternative accommodation. Moreover, the ERRC claimed that racial discrimination was intent in the policies designed for the segregation of the Roma community. Thus, the ERRC brought a claim under Article 31 in conjunction with Article E of the Charter. As for the alleged insufficiency and inadequacy of camping sites, the Committee in its decision on the merits of the case<sup>109</sup> decided that “the temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.”<sup>110</sup>

The Committee also expanded on Article E, which enshrines the prohibition of discrimination and establishes an obligation that any group, in this case, Roma, specifically benefits in practice from the rights in the Charter<sup>111</sup>. Thus, the Committee unanimously held that there were several violations by Italy. It mentioned the violation of Article E in conjunction with Article 31. In other words, the Committee found the discrimination of Roma in Italy, in conjunction with its failure to promote housing to an adequate standard. It also found a violation of Article 16 (the right of the family to social, legal and economic protection) and Article 30 (the right to protection against poverty and social exclusion).

Another case which highlights violations in housing rights is the case of the *European Roma Rights Center v. Portugal*. In this case, the ERRC asked the Committee to hold Portugal

<sup>108</sup> “Collective Complaint by the European Roma Rights Center against Italy.”(ERRC).Accessed on August 26, 2018. Available at: [http://www.errc.org/uploads/upload\\_en/file/03/CB/m000003CB.pdf](http://www.errc.org/uploads/upload_en/file/03/CB/m000003CB.pdf).

<sup>109</sup> European Roma Rights Centre (ERRC) v. Italy, Collective Complaint No. 27/2004, Decision on merits 07 December 2005.

<sup>110</sup> Ibid, para. 35.

<sup>111</sup> Ibid, para. 36

accountable for its failure to ensure access to social housing, and in providing only sub-standard quality of housing which resulted in residential segregation of Roma communities. In its decision on the merits<sup>112</sup>, the Committee pointed out Article 30, which requires State Parties “to adopt positive measures for groups generally recognized as excluded or disadvantaged, such as Roma to ensure that they are able to access rights such as housing, which in turn will have an impact on access to other rights such as education, employment, and health<sup>113</sup>”. It means that the right to adequate housing was linked with other rights protected in the Charter, and the Committee expressly pointed this out. Finally, the Committee unanimously held, that there was a violation of Article E, in conjunction with Article 31 as well as a violation of Articles 16 and 30. In addition, the Committee of Ministers made a recommendation that Portugal pay the ERRC a sum of 2,000 euros.

The final case examined here under the jurisdiction of the ECSR is *INTERIGHTS v. Greece*. A collective complaint was brought by the INTERIGHTS to the Committee, alleging that Greece violated the right to housing of the Roma in Greece as protected under Article 16 of the Charter. It also stated a violation of this article in conjunction with the Preamble of the Charter, which protects equal access to social rights and prevents social exclusion. While delivering a decision, the ECSR found that Greece did not provide adequate housing for Roma despite the previous decision of the Committee in case of *ERRC v. Greece*<sup>114</sup>.

The Committee recognized that Greece failed to provide the Roma with access to adequate housing, impose legal safeguards and standards during forced evictions, and provide access to remedies. The Committee also found substantial confirmation that the Roma were forced to live in dwellings without minimum standards of habitability, without running water and electricity. Moreover, the Committee noted the lack of justification for the eviction of Roma who

<sup>112</sup> European Roma Rights Centre (ERRC) v. Portugal, Collective Complaint No. 61/2010, Decision on merits 30 June 2011.

<sup>113</sup> Ibid, para 65.

<sup>114</sup> European Roma Rights Center (ERRC) v. Greece, Collective Complaint No. 15/2003. Decision on merits 8 December 2004.

lived in unlawfully occupied territories. Following these issues, the Committee emphasized that the State Party failed to ensure equal access to adequate housing for Roma, despite the adaptation of safeguards against discrimination. As a result, in 2010, Teodora Tzarki<sup>115</sup>, Deputy Minister of Interior of Greece made a statement that the Roma would be treated properly on the basis of human rights. However, no concrete remedial actions were taken by Greece. As a result, a Committee of Ministers passed a resolution<sup>116</sup> upholding the strong condemnation against Greece, by the Committee.

### Reflections

Under the jurisdiction of the European Committee of Social Rights, the right to housing for Roma was examined in several cases. The case law under this jurisdiction aims to establish the States' obligation for the protection of the right to housing for Roma. Therefore, the cases that I have highlighted not only show the violation of the right to adequate housing for Roma, but also that it corresponds to other issues faced by the Roma community.

The right to housing in the domain of the European Committee of Social Rights is developed in specific articles. Namely, Article 31 is the main provision that expresses the right to housing as the right to adequate living condition, protection from forced evictions and access to education, employment, and social institution. In other words, the right to housing for Roma is evolved with additional aspects and features of Roma community. Non-adequate living conditions without access to basic utilities, location in segregated areas, forced evictions and reluctance of the state are the main indicators of the context of the right to housing for Roma. The ECSR also states in its case law, that related rights for Roma include the right to protection against poverty and social exclusion, the right of the family to social, legal and economic protection. In addition, the principle of non-discrimination is also stated by the Committee, when the right to housing of Roma was violated.

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<sup>115</sup> International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece Complaint No. 49/2008.

<sup>116</sup> Ibid. Resolution CM/ResChS(2011)8.

Due to the collective complaints mechanism, several non-governmental organizations have advanced their application for rulings on possible non-implementation by States, of the Charter. As mentioned in the previous chapter, the right to housing was examined by the Committee and these complaints were mostly brought by the ERRC or INTERIGHTS. The cases that were lodged by the ERRC have similar approaches, issues and reasoning as the Committee. The importance of protecting Roma from forced eviction, preventing their social exclusion, and prohibiting discrimination against them, was stressed upon. The case of *INTERIGHTS v. Greece* was likely the most challenging one because it was brought to the Committee for a second time and was based on the previous case. The Committee having to deliver judgment on the same issues demonstrates how weak the application of merits was by the State. That issue highlights the weakness of the power of the ECSR as a monitoring body, because it has no means to overcome the reluctance of national authorities that do not adopt measures for meaningful changes in the Roma community.

Consequently, the right to an adequate standard of living is drafted very meaningfully in the Charter. It has special protections for vulnerable groups, implies the principle of non-discrimination and has a separate provision on protection from forced evictions. Theoretically, all these formulations are very effective for the protection of Roma rights, but some countries simply ignore the decisions of the ECSR and continue to treat Roma as second-class citizens.

### ***2.3 Right to Housing under the United Nations Human Rights Protection System***

In the United Nations human rights system, the Office of High Commissioner for Human Rights<sup>117</sup> is designed to offer the best support and expertise to the different human rights monitoring mechanisms. It consists of UN Charter-based bodies, including the Human Rights Council and other bodies created under the international human rights treaties. The stated before institutions are composed of independent experts responsible for monitoring of a State's parties

<sup>117</sup> "OHCHR | Human Rights Bodies," (United Nations). Accessed on September 6, 2018. Available at: <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>.

compliance with a treaty obligation. Based on this, in this chapter, I illustrate two treaty-based bodies, which examined the right to housing for Roma.

The Committee on the Elimination of Racial Discrimination<sup>118</sup> (hereafter “CERD”) is the body of independent experts that monitor the implementation of the International Convention of Elimination of All Forms of Racial Discrimination<sup>119</sup> (hereafter “ICERD”). Every two years the State parties should submit regular reports to the CERD to enable the latter to monitor compliance with the ICERD. According to its main functions the CERD should examine reports and notify each State party in forms of "concluding observations". This reporting procedure is not only one mechanism which the CERD establishes. It also uses the early-warning procedure, inter-state complaints, and individual complaints. In addition, the CERD also gives interpretation of the content of human rights provisions, namely through general recommendations, and also organizes public meetings.

The next treaty-based body, which analyzes the issue of housing and forced evictions of Roma is the Human Rights Committee (hereafter “HRC”). All-State parties are obliged to submit their regular reports to the HRC, where the HRC examines each report and addresses its concerns in the form of “concluding observations”. In addition, Article 41 of the International Covenant on Civil and Political Rights<sup>120</sup> (hereafter “ICCPR”) provides for the HRC to examine inter-state complaints. Moreover, the Protocol No.1<sup>121</sup> to the ICCPR gives the HRC authority to consider individual complaints with regards to alleged violations of the ICCPR by the State parties to the Protocol No.1 to the ICCPR.

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<sup>118</sup> “Committee on Elimination of Racial Discrimination.”

<sup>119</sup> “International Convention on the Elimination of All Forms of Racial Discrimination.”

<sup>120</sup> “International Covenant on Civil and Political Rights.”

<sup>121</sup> “Optional Protocol to the International Covenant on Civil and Political Rights.”



When it comes to the right to housing under the UN human rights system, this right is present in the International Covenant on Economic, Social and Cultural Rights<sup>122</sup>(hereafter “ICESR”). Article 11<sup>123</sup> states that:

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.

However, the ICESR emphasizes the interpretation of the right to adequate housing in a narrow manner. It should be understood as the right to live somewhere in dignity, security, and peace.

There are two Committee’s General comments that clarify the right to housing— namely the Committee General Comments No. 4 (1991) on the right to adequate housing<sup>124</sup> and No.7 on forced evictions<sup>125</sup>. In its interpretation, the right to adequate housing cannot be interpreted only as one separate or independent right. It rather contains several freedoms, such as protection against forced evictions and arbitrary destruction, the right to be free from arbitrary interference that leads to the right to privacy and family. In addition, the right to adequate housing also contains additional elements, and the most important entitlement is connected to the equal and non-discriminatory access to adequate housing that followed by participation in housing-related decision making at different levels; security of tenure; housing, land and property restitution;. Adequate housing should provide not only four walls and a roof, but also it has to meet several criteria. It should take into consideration location, security of tenure, accessibility, cultural adequacy, habitability, affordability and availability of services, materials, facilities, and infrastructure. In case of forced evictions, that phenomena could be considered as a serious violation of human rights because it is a key element of the right to housing.

<sup>122</sup> “International Covenant on Economic, Social and Cultural Rights.”

<sup>123</sup> Ibid.

<sup>124</sup> “CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant).”

<sup>125</sup> “General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions”, UN Committee on Economic, Social and Cultural Rights 20 May 1997, E/1998/22. Accessed on September 1 2018. Available at: <https://www.refworld.org/docid/47a70799d.html>.

The right to housing also has its place in the ICCPR, and it states that "*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, **home** or correspondence, nor to unlawful attacks on his honor and reputation.*"<sup>126</sup> Moreover, in the case law established by the HRC, the right to housing is also connected to other rights, such as the right to effective remedy<sup>127</sup> provided by the State Party. It also refers to Article 26<sup>128</sup> which claims equal protection before the law without discrimination. In some specific legal cases, like cases regarding Roma, issues of protection of minorities (Article 27<sup>129</sup>) and the prohibition of cruel, inhuman and degrading treatment (Article 7<sup>130</sup>) occur.

Under the CERD, the cases of State failure of providing of adequate housing for Roma is examined under the ICERD<sup>131</sup>. Obviously, a specific and separate article on the right to adequate housing under this Convention does not exist. However, the most relevant article in this respect is Article 5<sup>132</sup> paragraph (e) subparagraph (iii), which protects the right to housing in compliance with obligations guaranteed in Article 2 of the ICERD. Another important article is Article 6<sup>133</sup>, which imposes on State parties to safeguard to everyone within their jurisdiction that they have that they have effective protection mechanisms and remedies through national legislation and courts and other State actors.

### Case Law

In its sessions, the HRC adopted several views where the Roma rights are concerned. Treaty-based bodies under the provisions of the ICCPR and the ICERD have analyzed complaints related to the rights to housing for Roma. To give a broader description of the operation of the UN human rights protection systems, I refer to three cases, where the rights of Roma were violated. The first case, represented by the ERRC and the League of Human Rights

<sup>126</sup> "International Covenant on Civil and Political Rights."

<sup>127</sup> Ibid:Article 2.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> "International Convention on the Elimination of All Forms of Racial Discrimination."

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

Advocates is the case of *L.R. et al. v. Slovakia*<sup>134</sup>; the second case mentions the concept of “home” in *Assenova Naidenova et al. v. Bulgaria*<sup>135</sup>; and finally, the case of *Antonios Georgopolous, Chrysafo Georgopolous and their seven children v. Greece*<sup>136</sup> is illustrated in the light of forced evictions. In the case of *L.R. et al. v. Slovakia*, the councilors in Slovakia introduced a plan to construct social housing for citizens of Roma origin in Dobsina. In this town, nearly 1,800 Roma live below the poverty line. At the same time, several non-Roma of Dobsina established a “petition committee” in cooperation with Real Slovak National Party. The committee submitted a petition that stated:

I do not agree with the building of low cost houses for people of Gypsy origin on the territory of Dobsina, as it was lead to an influx of inadaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions<sup>137</sup>.

Moreover, the petition was signed by other inhabitants of the town. The municipal council considered the petition and voted to cancel the earlier resolution. Thus, the applicants of the case claimed to be victims of a violation by the Slovak Republic, pursuant to Article 2, paragraph 1, subparagraphs (a),(c) and (d); Article 4 paragraph (a), Article 5 paragraph (e), subparagraph(iii) and Article 6 of the ICERD.

The complaint was based on the several issues raised by the applicants. Firstly, the applicants claimed that the decision of the council to support the petition of the committee and Real Slovak National Party amounted to the racial discrimination of Roma inhabitants that resulted in canceling its resolution to build low-cost housing for Roma<sup>138</sup>. The petitioners also argued regarding the wording of the petition, which could be interpreted as "incitement of racial discrimination". In addition, the petitioners referred to Article 5, paragraph (e), subparagraph (iii) about the State’s failure to safeguard the right to housing, on the basis of a discriminatory request

<sup>134</sup> *L.R. et al. v. Slovakia*, Communication No. 31/2003, Decided 7 March 2005.

<sup>135</sup> *Assenova Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, Decided 25 June 2012.

<sup>136</sup> *Georgopolous, Chrysafo Georgopolou and their seven children v. Greece*, Communication No. 1799/2008, Decided 5 February 2008.

<sup>137</sup> *L.R. et al. v. Slovakia*, Communication No. 31/2003, Decided 7 March 2005, para 2.2.

<sup>138</sup> *Ibid*, para 3.1.

of the non-Roma community. Finally, the petitioners alleged that the State party did not impose any remedies to protect the Roma from racial discrimination, that resulted into declining of the council's resolution not to provide adequate housing for Roma.

The CERD recognized the admissibility of this complaint and considered the merits accordingly. The CERD considered that the petitioners had established a distinction or restriction based on ethnicity. Thus, the CERD found out the presence of non-equal treatment in the area of housing rights for Roma. Therefore, the failure of the State party's courts was recognized, by not providing an effective remedy; which discloses a consequential violation of Article 6 of the ICERD<sup>139</sup>. Furthermore, in accordance with Article 6 of the ICERD, the State party is under an obligation to provide the petitioners with an effective remedy. As a result, the CERD intended to receive, within ninety days, information from the Government of the Slovak Republic about the effective remedies taken to solve discriminatory treatment of local Roma community and give effect to the Committee's Opinion<sup>140</sup>.

The next case, *Assenova Naidenova et al. v. Bulgaria*, was decided by the HRC. In this case, the applicants are from the Dobri Jeliaskov community, where impoverished Roma lived for more than 17 years. The housing of the community was *de facto* recognized by local authorities, through providing electricity and mail service to the community. In 2016, the community was notified to leave the houses constructed on the municipal land based on own free will. The inhabitants did not agree to leave this territory voluntarily and the metropolitan municipality made a decision to evict the Roma community. As a result, the community found itself in the situation of threat of forced eviction. In addition, alternative housing was not provided to the inhabitants even under the imminence of demolition of their homes.

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<sup>139</sup> Ibid, para 10.10.

<sup>140</sup> Ibid, para 13.

The applicants, in their complaint, emphasized the violation of housing rights based on racial discrimination against Roma<sup>141</sup>. They stated that the Roma in Dobri Jeliaskov suffered from discrimination in education and employment. This made it impossible for them to afford to buy houses at market rates. Moreover, the applicants also mentioned that the State failed to provide the minimum “degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats<sup>142</sup>” required by its domestic and international human rights obligations. The most important point here is that the applicants claimed forced evictions could result, *inter alia*, in a violation of their right to adequate housing, as well as the prohibition against forced evictions<sup>143</sup>. Thus, it is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR) and informed by the General Comments No. 4 (1991) and 7 (1997) on the right on adequate housing. Therefore, forced evictions are contrary to the ICESCR because they amount to unlawful interference with the home and are in violation of article 17 of the ICCPR<sup>144</sup>. The evictions may also be interpreted as having unlawful discriminatory intent and unlawful discriminatory effect because of racially discriminatory manner. Finally, the applicants claimed that the State party should protect, respect and fulfill the right to adequate housing without discrimination; in accordance with Article 11 of the ICESCR read in conjunction with article 2<sup>145</sup>. The issue of prohibition of discrimination based on Roma ethnic origin was also stated in the light of Article 26 of the ICCPR.

In consideration of the merits, the HRC recalled the term of “home” as it used in Article 17 of the ICCPR, and issued that it should “be understood to indicate the place where a person resides or carries out his usual occupation”<sup>146</sup>. Due to the facts stated by the applicants, the HRC decided that the houses of the Roma community in Dobri Jeliaskov are their “homes” within the

<sup>141</sup> Assenova Naidenova et al. v. Bulgaria, Communication No. 2073/2011, para 3.1.

<sup>142</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/23), annex III, para. 8 (a).

<sup>143</sup> Official Records of the Economic and Social Council, 1998, Supplement No. 2 (E/1998/23), annex IV.

<sup>144</sup> L.R. et al. v. Slovakia, Communication No. 31/2003, 7 March 2005 para 3.4

<sup>145</sup> Ibid para 3.8.

<sup>146</sup> Ibid para 14.2.

meaning of Article 17 of the ICCPR. Therefore, the HRC determined that the applicants' evictions and demolishing of houses would result in a violation of Article 17. Thus, the HRC decided that the State party is under the obligation to provide the applicants with an effective remedy, including protection from forced eviction as long as alternative housing is not immediately available for them<sup>147</sup>. Consequently, the HRC wished to receive within 180 days information from the State Party about the measures taken to give effect to the Committee's Views<sup>148</sup>.

The last case examined under the jurisdiction of the UN treaty body is the case of *Georgopolous, Chrysafo Georgopolou and their seven children v. Greece*<sup>149</sup>. In this case, the applicants were born and lived in the Roma settlement of Riganokampos in Patras. They did not have access to electricity and only were supplied with two taps of water<sup>150</sup>. In summer of 2006, the applicants and their children left the settlement for seasonal employment. After some days, a crew of the municipality destroyed the Roma settlement of Riganokampos and demolished all the sheds, including the applicants'. The State Party argued that there was a demolishment because these actions were termed as "cleaning operations". Upon their return, the applicants visited the Welfare Department of the municipality of Partas to make a complaint. They were, however, told to look for another apartment and were given a sum of approximately 200 euros as a compensation for the destruction of their shed and some personal belongings.

The applicants claimed the absence of a rent subsidy scheme. In addition, the applicants also claimed that demolishing their shed had not been authorized under judicial decision, and it was unfair that it cannot be the subject of judicial review<sup>151</sup>. The issue of cruel, inhuman and

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<sup>147</sup> Ibid para 16.

<sup>148</sup> Ibid para 17.

<sup>149</sup> *Georgopolous, Chrysafo Georgopolou and their seven children v. Greece*, Communication No. 1799/2008, Decided 5 February 2008.

<sup>150</sup> Ibid para 2.1.

<sup>151</sup> The authors refer to court proceedings in 2005 when the municipality tried to evict them based on a protocol of administrative eviction, which was quashed by the Patras Magistrate Court. The Court held that eviction without

degrading treatment amounted to several forced evictions and non-eviction relocation. In addition, the applicants recalled the jurisprudence by the European Committee on Social Rights and submitted that the State party failed to provide them with a temporary housing, and had allegedly forcefully evicted them, resulting in inhumane living conditions. These actions constituted a violation of Article 23 of the ICCPR<sup>152</sup> and forced families to live in inhumane conditions. The applicants also referred to the Committee's concluding observations on the initial report of the State party (CCPR/CO/83/GRC) and claimed discrimination pursuant to Article 26 and 27 of the ICCPR, because of their Roma origin.

In the consideration of the merits, the HRC observed that the State Party violated the right to housing of the applicants' allegations based on two police reports, but had not adduced any evidence of the planned "cleaning operations" by the crew of municipality of Patras. The HRC found a violation by the State party of Articles 17, 23 and 27 in conjunction with Article 2, paragraph 3 of the ICCPR. Therefore, the HRC wished to receive within 180 days information about the effective remedies taken by the State party to give effect to the Committee's views and recommendations.

### Reflections

Under the domain of the UN, the right to adequate housing for Roma was examined in several cases. Thus, the right to adequate housing was developed in a specific article of the ICESCR. In the case of the ICCPR, the rights to housing are derived from Article 17, and also it is closely related to Articles 7,2,3,26,27. The CERD operates with Article 5, paragraph (e), subparagraph (iii) where racial discrimination in the enjoyment of the right to housing is prohibited.

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relocation assistance of the authorities is abusive and therefore illegal. 3 The authors claim that their situation is different from Committee against Torture communication No. 161/2000, *Dzemajl et al v. Serbia and Montenegro*, Views adopted on 21 November 2002, in which the issue of exhaustion of domestic remedies was pertinent, as the complainants owned the properties that were destroyed.

<sup>152</sup> See European Committee of Social Rights jurisprudence, the decision of 8 December 2004 in relation to the Collective Complaint No. 15/2003 *European Roma Rights Centre v. Greece*.

It is important to mention that treaty-based bodies of the UN have investigated several human rights violations in individual complaints. For example, the HRC in the case of *L.R. et al. v. Slovakia* held that the right to housing for Roma was seen as racial discrimination, and the State Party failed to provide social housing for Roma. It also mentioned a petition, prepared by the non-Roma inhabitants of the city, that had a very open discriminatory intent. In the case of *Assenova Naidenova et al. v. Bulgaria*, the HRC analyzed the impending eviction and demolition of the long-standing Roma community. Moreover, in this case the eviction was done by the State on municipal land, where the housing of Roma was *de facto* recognized. This case also mentioned the concept of “home”, that is represented as a place where a person resides. In the reasoning, the HRC also mentions the issue of racial discrimination that became a basis for lack of education and unemployment, making Roma suffer from inadequate housing. In the case of *Georgopolous, Chrysafo Georgopolou and their seven children v. Greece* the HRC analyzed forced evictions of Roma and reacted to the denying of forced evictions of Roma as being framed under “cleaning operations” by the State Party.

Consequently, the right to housing for Roma under the UN treaty-bodies is presented more in the light of racial discrimination. Racial discrimination is issued as the main reason for violation of the right to housing for Roma, which is expected from these treaty-based bodies. In the above cases, the relevant Committees decided on merits establishes by the Committee's views. As a result, the Committee requested detailed information from the State about the measures taken in order to remedy the violations connected to the right to housing for Roma.



## CHAPTER 3: Forced Evictions of Roma in Ukraine

In this chapter of the thesis, I put forward recent forced evictions of Roma that took place in Ukraine. Forced evictions of Roma in Ukraine started at the beginning of the 2000s and unfortunately continued in recent years. The reluctance of the National Police, ignorance of hate speech by the State authorities, and evolving of radical right-wing paramilitary unions, caused the Roma to suffer from discrimination, and even persecution. Therefore, in this chapter of the thesis I demonstrate the connection between the right to housing for Roma, forced evictions and mob laws, which have the unfortunate result in a violation of the right to education, employment, and even homelessness, or inhuman and degrading treatment.

At the beginning of this chapter, I provide a full presentation of the legal instruments that could be used as authority, for protection of the right to housing for Roma in Ukraine. I point out the right to housing guaranteed in the Constitution of Ukraine<sup>153</sup> and Housing Code of Ukraine<sup>154</sup>. Furthermore, I state the main issues of the concept of adequate housing in the “Strategy for Protection and Integration of Roma National Minority into the Ukrainian society by 2020”<sup>155</sup> and in the Law On National Minorities in Ukraine<sup>156</sup>.

In the next sub-chapter of this thesis, I illustrate cases of forced evictions of Roma in Ukraine. Starting with *Burlya v. Ukraine*<sup>157</sup> and followed with *Pastrama v. Ukraine*,<sup>158</sup> I mention the first cases where the right to housing was considered in the context of forced evictions of Roma in Ukraine. Moreover, after the statement of the main issue of these cases, I provide a description of the anti-Roma programs that took place at the beginning of 2017—more

<sup>153</sup> “Constitution of Ukraine.” Accessed on September 20, 2018. Available at: <https://rm.coe.int/constitution-of-ukraine/168071f58b>.

<sup>154</sup> “Housing Code of Ukraine.” Accessed on September 20, 2018. Available at: <http://zakon.rada.gov.ua/go/5464-10>.

<sup>155</sup> “Roma Strategy.” Accessed on September 20, 2018. Available at: <http://zakon.rada.gov.ua/go/201/2013>.

<sup>156</sup> “Про національні меншини в Україні,” Законодавство України. Accessed on October 3, 2018. Available at: <http://zakon.rada.gov.ua/go/2494-12>. [The Law On National Minorities in Ukraine]

<sup>157</sup> *Burlya v. Ukraine*, Application no. 3289/10, Lodged on 11 January 2010.

<sup>158</sup> *Pastrama v. Ukraine*, Application no. 54476/14, Lodged on 24 July 2014.

specifically, anti-Roma program in Odesa region, namely Loshinivka, is illustrated in the reference to the anti-Roma program in Lviv and Kiev.

After providing a description for these recent anti-Roma programs, I highlight the clear involvement of right-wing organization "C14" that has very obvious racist motives. In addition, information about the radical right-wing organization is also connected to the reluctance of the national police and gaps in the Ukrainian legislation. Finally, the recent cases of forced eviction of Roma in Ukraine is analyzed in light of the possible three jurisdictions stated in the previous chapter.

### ***3.1 Right to Housing for Roma under Ukrainian legislation***

In Ukraine, the right to housing and access to adequate living conditions for Roma is limited. According to Tatiana Martsenyuk<sup>159</sup>, Roma in Ukraine can live in segregated locations or integrated communities where Roma are among other national minorities or nations. However, there are cases when Roma settlements became an isolated infrastructure, and these underdeveloped areas lacked access to running water, electricity, heating, sewage, education, employment and medical institutions<sup>160</sup>. According to information provided in the Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis<sup>161</sup>, there are two main regions in Ukraine, where Roma families live in crowded poor conditions, namely Transcarpathia and Odesa territories. The right to housing in Ukraine is regulated mainly by the Constitution of Ukraine and Housing Code of Ukraine. However, when it comes to the right to housing for Roma, this social and economic right is regulated by the Roma Strategy and by the Law of Ukraine on National Minorities. Therefore, in the following paragraphs, I describe the main legal instruments developed in Ukraine for the protection of the right to housing for Roma.

<sup>159</sup> Martsenyuk, Tatiana "Roma Issues in Ukraine, Gender Aspect", Ukrainian sociological journal, 2013. Available at: <https://periodicals.karazin.ua/usocjour/article/view/4420/3991>

<sup>160</sup> "Situation Assessment Report on Roma in Ukraine and the impact of the current crisis." (ODIHR). Accessed on September 21, 2018. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Situation%20Assessment%20Report%20on%20Roma%20in%20Ukraine.pdf>.

<sup>161</sup> ERRC submission to UN CESCR 2014, op. cit., note 39, p. 7.

The Constitution of Ukraine is the fundamental law of the nation and it operates from 1996. The Constitution of Ukraine is divided into fifteen chapters, and in the chapter of Human and Citizens Rights, Freedoms and Duties, the right to housing has its place. More specifically, the right to housing is drafted in Article 47. This article contains the main information of the right to housing and protects from forced evictions. As it is stated in this article:

Everyone shall have the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing. Citizens in need of social protection shall be provided with housing by the bodies of State power and local self-government, free of charge or at a price affordable for them in accordance with law. No one shall be arbitrarily deprived of housing other than on the basis of the law pursuant to a court decision.<sup>162</sup>

From these provisions, the right to housing in Ukraine is designed as the positive obligation of the State to provide housing for vulnerable members of society, even for free or at an affordable price. In addition, a very progressive remark is made under the forced evictions, when the right to housing could be restricted only through the decision of the court.

The Constitution of Ukraine also has another clause that addresses the rights to housing; even more precisely, it mentions the right to an adequate standard of living. Article 48<sup>163</sup> underlines that “Everyone shall have the right to a standard of living sufficient for themselves and his or her families including adequate nutrition, clothing, and *housing*.” Moreover, this provision is in close connection to Chapter 3 of the Housing Code of Ukraine, where the right to housing and the main conditions of realization of this right is stated. Moreover, in Chapter 1 of the Housing Code of Ukraine, the right to housing is developed more specifically by the proclamation of the age of the individual and circumstances under which the person could be treated as socially vulnerable.

The Housing Code of Ukraine contains a pivotal Article 31<sup>164</sup>, where it states that citizens who are in need of improved living conditions have the right to receive living premises according to the law of Ukraine. Mainly, this kind of living conditions is provided in the form of

<sup>162</sup> “Constitution of Ukraine.” *Article 47*.

<sup>163</sup> *Ibid: Article 48*.

<sup>164</sup> “Housing Code of Ukraine.” *Article 31*.

a separate flat for the family. Additionally, according to Article 32<sup>165</sup> the age of the person, who can obtain the social housing is eighteen. However, in exceptional cases, the age can be decreased. In Article 34<sup>166</sup>, there are six categories of citizens that can obtain social housing, and amongst them are those who live in inadequate living conditions without substantial access to sanitation. Finally, a citizen who would like to improve their housing conditions should be registered for obtaining housing in the State or public housing stock. As a result, the housing could be provided according to the general turn, out of turn or with the first priority queue.

When it comes to the Law On National Minorities in Ukraine<sup>167</sup>, Article 3 states that national minorities in Ukraine are defined as those who are not ethnic Ukrainians, but who share a sense of national self-identification and unity among themselves. However, the right to housing in this legal standard is not mentioned. However, Article 10<sup>168</sup> states that the State of Ukraine ensures the right for national minorities to preserve their living conditions in places of historical and contemporary resettlement.

Finally, in the Decree of the President of Ukraine On the “Strategy for Protection and Integration of Roma National Minority into the Ukrainian Society by 2020”, the right to housing is also addressed. There are three main priorities for the improvement of housing conditions for Roma, and according to the direction of housing of Roma, the State of Ukraine should take measures in:

the implementation of measures to improve the infrastructure in Roma settlements; the promotion to Roma access to state housing fund and programs of preferential lending of purchasing and constructing of dwelling; the adjustment of the cooperation of local executive authorities, government agencies and institutions with Roma public associations for the solution of residential and household problems of Roma.

These ambitious aims are developed for the protection of equal rights for Roma, to enable participation of this national minority in social and cultural aspects of life, and for cooperation

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<sup>165</sup> “Housing Code of Ukraine.” *Article 32.*

<sup>166</sup> “Housing Code of Ukraine.” *Article 34.*

<sup>167</sup> “The Law On National Minorities in Ukraine.” *Article 3.*

<sup>168</sup> “The Law On National Minorities in Ukraine.” *Article 10.*

with the community assembly of Roma. However, this document does not address the issue of forced evictions of Roma and other related rights.

Consequently, the right to housing in Ukraine is drafted in various legal standards. For example, the right to housing in the Constitution of Ukraine is written in two provisions that complement each other. Moreover, the interpretation of these provisions in the Housing Code of Ukraine were very specific about the conditions under which the right to adequate housing could be guaranteed. These two standards are designed for citizens of Ukraine— however, most Roma are reportedly stateless, as shown in the ERRC report titled “Statelessness, Discrimination and Marginalisation of Roma in Ukraine”<sup>169</sup>. The lack of formal registration and identification documentation among Roma affects their right to adequate housing. Furthermore, living in homes without any ownership or rental agreements place Roma at risk of forced evictions. It means that for stateless Roma, the constitutional rights and the rights in the Housing Code of Ukraine are limited. Thus, there is only one applicable legal standard for protection of the rights of undocumented Roma, which is the “Strategy for Protection and Integration of Roma National Minority into the Ukrainian Society by 2020”.

### ***3.2 Cases of Forced Eviction of Roma in Ukraine***

As stated in the previous chapters of this thesis, for many reasons Roma have been discriminated in various sectors. However, in recent years, the Roma community in Ukraine became a target of discriminatory programs, attacks and forced evictions. Forced evictions of Roma were conducted by the national police, radical right-wing organizations and even by the non-Roma mobs. In many cases, forced evictions in Ukraine were conducted with radical elements, and those who carry them out have not been held accountable for their crimes. The attacks were committed in three cities of Ukraine, Lviv, Ternopil, and Kyiv. Furthermore, anti-Roma programs have an openly racist intention and were organized by the radical right-wing

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<sup>169</sup> "Statelessness, Discrimination and Marginalization of Roma in the Western Balkans and Ukraine."(ERRC). Accessed on October 3, 2018. Available at: [http://www.errc.org/uploads/upload\\_en/file/roma-belong.pdf](http://www.errc.org/uploads/upload_en/file/roma-belong.pdf)

organization “C14”. The international community reacted to the non-investigation of crimes towards Roma and LGBT community. Therefore, on the 1<sup>st</sup> of June 2018, the United Nations in Ukraine urged the Ukrainian government to investigate all attacks against minorities. The Head of the UN Human Rights Monitoring Mission in Ukraine, Fiona Frazer<sup>170</sup> stated that “*Ukrainian authorities should bring perpetrators to account and by guarantying the right to non-discrimination and equality*”. Thus, in this chapter, I illustrate anti-Roma programs in Ukraine, that were considered by the ECtHR and recent forced evictions of Roma organized in 2017-2018 by radical right-wing organization “C14”.

When it comes to the first cases of forced evictions of Roma in Ukraine, the first case lodged in the ECtHR is the case of *Burlya v. Ukraine*<sup>171</sup>. In this case, on 7 September 2002, a 17- year old man, Mr. K. M., was allegedly murdered by four Roma men in Odessa region. The next day, a non-Roma resident of the village demanded that the Roma should be expelled from the village. On the same day, the village council held a meeting, where the chairman of the council Mr. P.S., proposed a resolution to “*support the decision of the meeting of the village residents to expel persons of Gypsy ethnicity from the village*”. The applicants claimed that the head of the local police and a representative of a city administration warned Roma inhabitants about the resolution. However, the Roma decided to stay in the village, but fires were set on them the next day. In addition, other Roma also were injured, their documents, personal belongings, and cars were destroyed. The crowd threatened to kill the Roma, even while the police witnessed these attacks. Even more disturbingly, the police officers did not try to prevent this conflict or to stop it. After this program, the Roma were forced to leave the village and move to another city where they started to live with their relatives.

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<sup>170</sup> “Ukraine: UN Urges the Government to Effectively Investigate All Attacks against Minorities” (United Nations in Ukraine). Accessed on June 13, 2018. Available at: <http://www.un.org.ua/en/information-centre/news/4373-ukraine-un-urges-the-government-to-effectively-investigate-all-attacks-against-minorities>.

The ERRC represented the applicants of this case as a third-party interveners and it managed to bring the complaint under the various clauses of the ECHR. The applicants of this case complained of a breach of Article 3 of the ECHR, which is the right to be free from inhuman and degraded treatment, Article 8 the right to respect for private, family life and home, and Article 1 of Protocol no.1 of their right to property. The claims were further substantiated by a violation under the anti-discrimination clause, Article 14. Finally, they emphasized a breach of Article 13, which is the failure of a State Party in providing an effective domestic remedy in respect of their complaints. Ultimately, the application to the ECtHR was lodged in 2010, but the Court communicated the case to the Ukrainian Government on 11 February 2016. The ECtHR did not deliver the judgment of this case yet; accordingly, there is no final decision at this point.

The second case regarding forced evictions of Roma in Ukraine is *Pastrama v. Ukraine*. The applicant of the case is a Roma woman, who was living in a non-authorized settlement near railway tracks administrated by the State Rail Transport Administration in Kiev. On 30 May 2012, a group of plainclothes policemen came to the encampment and forcibly evicted her and other inhabitants. In addition, the policemen forced the men strip to the waist and photographed them. According to the aggrieved parties, the officers said that they had an order to clear the encampment in preparation for the 2012 UEFA European Championship.

In this case, the complaint was built on the basis of Article 14 of the ECHR, which is prohibition of discrimination based on race and ethnicity. In addition, the complaint was brought under Article 3 of the ECHR and Article 1 of Protocol no. 12 too. In its third-party intervention<sup>172</sup>, the ERRC raised a very important issue related to the forced evictions of Roma. In the written comment, submitted by the ERRC, they state the problem of anti-gypsyism, police brutality and institutional racism. By referring to the surveys from the European Union and the Organization for Security and Cooperation in Europe, the ERRC established the issue of

<sup>172</sup> "Third Party Intervention Pastrama v. Ukraine 18 November 2016."(ERRC). Accessed October 5, 2018. Available at: [http://www.errc.org/uploads/upload\\_en/file/third-party-intervention-pastrama-v-ukraine-18-november-2016.pdf](http://www.errc.org/uploads/upload_en/file/third-party-intervention-pastrama-v-ukraine-18-november-2016.pdf)

ignorance and toleration of the high risk of mistrust in the police. Therefore, Roma in Europe often suffer from violent crimes too because they do not trust the police.

When speaking about the recent forced evictions of Roma in Ukraine, it is important to mention a program in Odessa Oblast. On the 27<sup>th</sup> August of 2016, the anti-Roma program happened in Loshnivka, the village in Odessa Oblast. Ethnic tensions and police negligence were so severe that it created conditions for forced evictions of Roma population. The main facts of this case are summarized by Jonathan Lee<sup>173</sup> and presented as mob law, which became the basis of anti-Roma program. On 27<sup>th</sup> of August the dead body of a 9-old girl was found. A 21-old male of Roma origin was claimed to be guilty of that crime based on murder and rape. The local non-Roma inhabitants of that village decided to organize a lynching of Roma community, and as a result demolished their houses that led to forced evictions. During the program, police officers remained silent and uncooperative, without taking any direct actions against the angry mob.

The next day, state officials met with nearly 200 villagers and decided to remove Roma community from the village. The Roma decided to leave the village voluntarily because they were afraid of threats on their lives. The Village Council decided to officially evict the Roma based on the violent mob attacks that had no legal standing whatsoever. The order for forced eviction was prepared without provision of alternative accommodation, therefore the Roma had to move to informal settlements in fields. Even after one year from bringing the complaint to the Odessa Administrative Court on the basis of police negligence, the case has not made any progress at all. National courts in Ukraine are very reluctant to investigate effective forced evictions that threaten Roma, and this further excludes Roma from social life<sup>174</sup>.

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<sup>173</sup> “Mob rules against Ukrainian Roma in 21st century pogrom” (ERRC). Accessed June 13, 2018. Available at: <http://www.errc.org/news/mob-rules-against-ukrainian-roma-in-21st-century-pogrom>.

<sup>174</sup> Popenko, Viola “ Forced evictions of Roma: European race state policies or influence of radical right-wing actors?” (Final paper, Critical Race Theory: Race and Law from the United States to Europe, CEU, 2018)



After a year and a half, the Roma of village Loshinivka still live with their relatives in overcrowded housing. Compensation for their demolished houses were not provided and alternative housing was also absent. According to Ukrainian Pravda<sup>175</sup>, Volodimir Kondur, an injured party, submitted a complaint about inactivity of the National Police of Ukraine to the regional prosecutor's office. However, a criminal procedure was closed because of the absence of the crime. Namely, a prosecutor did not find the connection between the forced eviction of Roma and inactivity of the police. In addition, in the Odessa regional court, the complaint also specified the inactivity of the police and unlawful actions of the chairman of Loshinivka village council. Furthermore, according to the Center for Legal Monitoring "Dignity"<sup>176</sup>, the trial is still ongoing, but the suspect for the crime could go free because of the strong alibi.

The next forced eviction that happened in Ukraine is connected to the organized anti-Roma program in Lviv. On the 10<sup>th</sup> of May of 2018, several Roma families were evicted from their homes. According to some witnesses, a number of athletic men in masks attacked the shanty camp with fire. The Roma were beaten when their homes were demolished by the unknown persons. The Roma fled very fast and left their documents and personal belongings. The representative of the Kharkiv Human Rights Protection Group, Michael Kenio<sup>177</sup> claimed some people were transported by ambulance because of the injuries committed by the perpetrators. Ombudsman Lyidmila Denicova<sup>178</sup> ordered an immediate investigation into the attack and National Police of Lviv ordered a simple criminal case based on hooliganism. The

<sup>175</sup> "Чому Ромські Погроми Тривають, Або Чого Нас Так І Не Навчила Лошинівка | Українська Правда \_Життя," accessed October 5, 2018, <https://life.pravda.com.ua/society/2018/04/24/230544/>. [Why anti-Roma programs continue or what we did not learn from Loshinivka]

<sup>176</sup> Герасимова, Тетяна. "Суд по делу об убийстве в Лошиновке будет проходить открыто, засекретят только документы. Центр правового моніторингу Гідність." Accessed on October 6, 2018. Available at: <http://gidnist.org.ua/sud-po-delu-ob-ubijstve-v-loshhinovke-budet-proxodit-otkryto-zasekretiyat-tolko-dokumenty/>. [Gerasimova, Tatiana. "The trial on Loshinivka will be held openly, only documents will be restricted"]

<sup>177</sup> "Roma Burned From Their Homes by Masked Men as Violence Escalates in Ukraine," (ERRC). Accessed June 13, 2018. Available at: <http://www.errc.org/news/roma-burned-from-their-homes-by-masked-men-as-violence-escalates-in-ukraine>.

<sup>178</sup> "Жестокая расправа над табором цыган под Львовом: ромы скрылись и боятся говорить," *Україна Online* (blog). Accessed June 13, 2018. Available at: <https://onlineua.club/alesya/zhestokaya-rasprava-nad-taborom-tsyan-pod-lvovom-romy-skrylis-i-boyatsya-govorit.htm>. [A brutal reprisal on Roma camp in Lviv, Roma disappeared and afraid to speak]

party responsible for organizing that attack is the radical non-governmental organization “C14”<sup>179</sup>.

Following the actions of the program in Lviv, the murder of Roma young men, who were victims of this program, must not be ignored. Moreover, one minor and his mother were attacked with knives and suffered serious wounds. The crime was committed by a twenty-year old organizer of a program, and seven other minors, members of non registered organization “Sober and wicked youth”. As a result, the head of the National Police Serhiy Kniyazev<sup>180</sup> claimed, based on the attack on the Roma, a criminal procedure was opened according to Article 115<sup>181</sup> of the Criminal Code of Ukraine. Serhiy Kniyazev also claimed, that suspected minors of the attack could be punished for fifteen years or even subject to life imprisonment. As a result, in Lviv and Lvivska oblast, instructions for parents were prepared by teachers for preventing hate crimes. International communities also have reacted to this crime, for example the PACE President Michele Nicoletti<sup>182</sup>, shared his shock and condemned a “racist attack” that should be not be exempt from from impunity based on serious violence against Roma population in Ukraine. In addition, in his Twitter, a Director of Communications at the Council of Europe Daniel Holtgen<sup>183</sup> stated, that “We condemn another attack on #Roma people, as reported by police today. We are horrified this time one person was killed. We expect a full and transparent investigation without delay.”

The radical nationalistic organization “C14” was involved in the forced evictions of Roma in Kiev. In the Lysa Hora, nature reserve of Ukraine, an anti-Roma program took place

<sup>179</sup> Viola Popenko “ Forced evictions of Roma: European race State policies or influence of radical right-wing actors?”

<sup>180</sup> “Напад На Табір Ромів У Львові: Підозрювані - Члени Угрупування Твереза І Зла Молодь” | Українська Правда.” Accessed on October 6, 2018. Available at: <https://www.pravda.com.ua/news/2018/06/24/7184373/>. [The attack on Roma in Lviv: suspected persons – members of “Sober and angry youth”]

<sup>181</sup> “Criminal Code of Ukraine.” Accessed on October 6, 2018, Available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=438599](http://www.wipo.int/wipolex/en/text.jsp?file_id=438599).

<sup>182</sup> “President condemns attack against a Roma community in Ukraine.”(PACE). Accessed on October 6, 2018. Available at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=7122&lang=2&cat=15>.

<sup>183</sup> “We condemn another attack on #Roma people, as reported by police today. We are horrified this time one person was killed. We expect a full and transparent investigation without delay.”(CoESpokesperson).Available at: <https://twitter.com/coespokesperson/status/1010868685446307840>

and makeshift homes of Roma families were burnt. According to the Kharkiv Human Rights Protection Group<sup>184</sup>, the program is a result of the cooperation of radical organization “C14”, “Municipal Guard” and the Holosiyiv District Administration. The head of “C14”, Sergiy Mazur<sup>185</sup> stated that on the previous day, he had asked the Roma to leave their shanty camp and gave them 24 hours to do so. According to him, some Roma left their homes right after his notification, but the rest left their dwellings only the next day and it was done voluntarily. However, the video<sup>186</sup> published by the organization “C14” very clearly shows how brutal youngsters (who were most likely C14 members), were chasing after the Roma and were throwing stones on them.

As it is mentioned by the Ukrainian Independent Information Agency “UNIAN”<sup>187</sup>, THE coordinator of non-governmental organization “C14” Serhiy Mazur was placed under house arrest. In addition, the National Police of Ukraine started a criminal procedure against Serhiy Mazur according to two provisions of the Criminal Code of Ukraine. Namely, they mentioned Article 194<sup>188</sup>, which is willful destruction or engagement of property and Article 296<sup>189</sup>, that addresses hooliganism committed by a group of persons.

Consequently, among the main actors that provoke anti-Roma programs in Ukraine is officially registered non-governmental organization with nationalistic program “C14”. The radicalism of that organization presents new contemporary challenges of Roma people in

<sup>184</sup> “Ukrainian Neo-Nazi C14 Vigilantes Drive out Roma Families, Burn Their Camp.” (Human Rights in Ukraine) Accessed on June 13, 2018. Available at: <http://khp.org/en/index.php?id=1524441220>.

<sup>185</sup> “Сергій Мазур - Цигани Знову Окупували Лису Гору. Цього Разу Їх Ще більше,” Accessed on June 13, 2018. Available at: [https://www.facebook.com/permalink.php?story\\_fbid=168630903846922&id=100021000394552](https://www.facebook.com/permalink.php?story_fbid=168630903846922&id=100021000394552). [Serhiy Mazur-Gypsies occupy Lysa Hora again. That time more people arrived]

<sup>186</sup> ““Милиция, бл#дь?!” - разгон табора ромов на Лысой горе в Киеве. ВИДЕО,” Цензор.НЕТ, Accessed on June 13, 2018. Available at: [https://censor.net.ua/video\\_news/3063272/militsiya\\_bld\\_razgon\\_tabora\\_romov\\_na\\_lysoyi\\_gore\\_v\\_kieve\\_video](https://censor.net.ua/video_news/3063272/militsiya_bld_razgon_tabora_romov_na_lysoyi_gore_v_kieve_video). [“Police,..?!” - eviction of Roma camp from Lysa Hora in Kiev]

<sup>187</sup> “Погром табору ромів на Лисій горі у Києві: координатора праворадикалів С14 Мазура відправили під домашній арешт” УНІАН. Accessed on October 6, 2018. Available at: <https://www.unian.ua/society/10192017-pogrom-taboru-romiv-na-lisii-gori-u-kiyevi-koordinatora-pravoradikaliv-s14-mazura-vidpravili-pid-domashniy-aresht.html>. [Anti-Roma pogrom on Lysa Hora in Kiev; coordinator of radical right-wing organization “C14” Serhiy Mazur is under the home arrest]

<sup>188</sup> “Constitution of Ukraine.”

<sup>189</sup> Ibid.

Ukrainian society. However, there is a presence of domination of mob laws that were designed by local authorities for finding reasons to evict the Roma. In addition, the ineffectiveness of the National Police of Ukraine and reluctance of the State responses, in general, make Roma suffer from mob lynching, evictions, and even murders in some very extreme cases. Anti-gypsyism in Ukrainian society make Roma victims of various human rights violations that should very seriously be investigated at the national state. For this reason, only application to international human rights bodies can improve situation of Roma and guarantee some financial reparations.

### ***3.3 Radical Right-Wing Actors, Reluctant Government Responses and Critique of the Relevant Legislation in Ukraine***

From the discussion on forced evictions of Roma mentioned above, I summarize the main reasons for violation of Roma rights in Ukraine. There are several features that can be examined from the forced evictions of Roma in recent cases and in cases that were brought by the ERRC to the ECtHR. In the beginning of this chapter, I emphasized the main gaps in the legislation of Ukraine, that restricts the exercise of the right to housing for Roma. This part will be followed by a short description of the main radical right-wing organization “C14” that organized several forced evictions of Roma. Finally, the information about bias and reluctant National police of Ukraine is also outlined.

Listing the main legal standards that can be used for protection of the right to housing for Roma, I referred to four main documents. As previously stated, the Constitution of Ukraine contains two provisions for protection of the right to housing for Roma. Thus, Article 47<sup>190</sup> was drafted taking into consideration the positive obligation of the State to provide housing. Moreover, there are special conditions for social protection of vulnerable communities, including social housing, which should be provided. The pivotal thing in this clause is also connected to the protection from forced evictions and it is stated that evictions may only be carried out

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<sup>190</sup> “Constitution of Ukraine”

pursuant to a court's decision. Another article, namely Article 48<sup>191</sup> also contains provisions about the right for adequate housing. However, the definition of housing in Ukrainian legislation is not stated clearly, and it is difficult to interpret what kind of housing could be recognized under the definition of "home". In the case of the Housing Code of Ukraine<sup>192</sup>, social housing is designed for different vulnerable groups, but this legislation is old and was adopted from the Soviet time in Ukraine, which does not have any connection with contemporary challenges in Ukraine. Law on National Minorities in Ukraine<sup>193</sup> does not have any concrete provision about the housing for national minorities. Finally, in the Decree of the President of Ukraine On the "Strategy for Protection and Integration of Roma National Minority into the Ukrainian Society by 2020"<sup>194</sup> the provision of improvement of housing conditions is stated, but the mechanism of protection of Roma from forced evictions is not mentioned.

In the above paragraphs about anti-Roma programs in Ukraine, I clearly highlight the involvement of "C14". It is important to state the roots of that organization. "C14" is a Ukrainian right-wing organization, that declared a following of Ukrainian nationalism. According to political scientist Andreas Umland<sup>195</sup>, C14 has all necessary features of a neo-Nazi organization. That organization was created as a youth wing of the extremist party "Svoboda". It is also well known for organizing youth events with nationalist propaganda, summer camps, and football competitions. It gained national popularity during the Euromaidan revolution in Ukraine in 2013-2014. When the armed conflict in the East of Ukraine started, "C14" was part of Azov and Right Sector militia. In the light of fighting against Russian-backed separatist, "C14" received huge public support, that seemed to give a hero status to the members of "C14". In the front lines, they committed a lot of criminal actions, but they were tolerated because of the image of the safeguards for the Ukrainian nation.

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<sup>191</sup> Ibid.

<sup>192</sup> "Housing Code of Ukraine."

<sup>193</sup> "The Law On National Minorities in Ukraine."

<sup>194</sup> "The Strategy for protection and integration of Roma national minority into the Ukrainian society by 2020."

<sup>195</sup> "Andreas Umland: Right Sector," (Voices of Ukraine (blog)), Accessed on March 24, 2014. Available at: <https://maidantranslations.com/2014/03/24/andreas-umland-right-sector/>.

These days, “C14” is more infamous for its anti-Roma programs, in creating obstacles to prevent the promotion of human right events and protests by human right organizations. Moreover, members of C14 were involved in violent attacks on people taking part in the annual Kyiv Pride March, demolishing exhibitions, peaceful protests, and commemorations. It is important to state that the far right fear serves to oppress human rights and fundamental freedoms in Ukraine. The most dangerous thing is that so far, members of “C14” were not punished by the National Police of Ukraine. According to political scientist Vyacheslav Likhachev<sup>196</sup>,

the most disturbing element of their recent show of force is that so far it has gone fully unpunished by the authorities. Their activities challenge the legitimacy of the state, undermine its democratic institutions, and discredit the country’s law enforcement agencies.

Therefore, anti-Roma programs are part of a neo-Nazi scenario, that appears to be under no restriction from the State<sup>197</sup>.

When it comes to anti-Roma programs, the reaction of the National Police of Ukraine is very reluctant. For example, for anti-Roma programs that happened in Kyiv, the National Police of Ukraine decided to open a criminal procedure against “C14” based on Article 296<sup>198</sup> of Criminal Code of Ukraine. This punishment seems to be very light for the type of aggression and hate that was instigated by “C14”. To claim hooliganism for “C14” is just a cosmetic response to the violence committed by a neo-Nazi organization. In addition, it is more effective to use a different article from the Criminal Code of Ukraine. Article 161<sup>199</sup> of the Criminal Code of Ukraine would be more suitable, where paragraph three of this article cites the punishment of imprisonment from five to eight years for an organized group that violated a citizen's equality based on race, nationality or religious preferences. However, that article is not applicable in case

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<sup>196</sup> “Anti-Roma Programs in Ukraine: C14 and Tolerating Terror,” HOPE not hate. Accessed on June 8, 2018.

Available at: <https://www.hopenothate.org.uk/2018/06/08/anti-roma-programs-ukraine-c14-tolerating-terror/>.

<sup>197</sup> Viola Popenko “Forced evictions of Roma: European race State policies or influence of radical right-wing actors?”

<sup>198</sup> “Criminal code of Ukraine,” Accessed on June 16, 2018. Available at:

<http://www.legislationline.org/documents/action/popup/id/16257/preview>.

<sup>199</sup> Ibid.

of anti-Roma programs, because the injured party has to submit an official complaint to the National Police of Ukraine. The injured party should be represented by the Roma, who are the victims of anti-Roma programs. Unfortunately, the Roma are very intimidated by the uncontrolled violence of “C14” and they are simply afraid of further persecutions organized by that radical organization.

A big obstacle to the protection of Roma rights is connected to mob laws. As it happened with the Roma community in Loshinivka and in case of *Burlya v. Ukraine*, the special resolutions or orders were prepared by the heads of the municipality. Almost identical facts of these cases are followed and backed up by the decisions of local administrations, which acted as a legal basis for the expulsion of the Roma communities. Biased perceptions of the Roma, a generalization of community, and negative sentiments of non-Roma inhabitants often provide favorable grounds and justificationa for the forced evictions of Roma from their houses. Municipalities and other local authorities do not have the authority to pass legislation about the evictions of particular citizens. As it is stated in the Constitution of Ukraine, evictions could be proceeded only based on the court’s decision. Thus, the expulsion of the Roma communities was committed illegally.

To sum it up, Roma are victims of imperfect legislation, radical actors and reluctant responses by the police force. Ukrainian legislation does not fully protect Roma from forced evictions, and does not guarantee housing rights. This situation often places Roma into victimized positions. The induced reaction of the National Police of Ukraine to hate-crime violations and active attacks of “C14” stresses violation of the right to housing, private and family life, discrimination, inhuman and degrading treatment.

### ***3.4. Reflections and Recommendations for Ukraine under the International Human Rights instruments***

As stated in the previous sub-chapters of these cases, the right to housing for Roma in Ukraine is severely violated. There are several mechanisms when the right to housing and other

related rights for Roma are simply ignored by the State. What is most dangerous is that in recent years non-State actors, in other words, radical right-wing organizations have started to neglect and oppress Roma communities in Ukraine. Therefore, in this sub-chapter of the thesis, I stress the importance of international legal mechanisms that can help combat anti-gypsyism in Ukraine. Thus, the stated above cases where the Roma rights were violated would be referred to in the light of case law of the ECtHR, ESCR, and UN human rights protection systems. In addition, for each case of forced eviction of Roma in Ukraine, the appropriate jurisprudence is going to be analyzed.

Three different jurisdictions are taken into account when the relevant case would be investigated. Thus, the advantages and disadvantages for Ukrainian cases in the light of three different international jurisdictions would be illustrated and the visibility of the body will be counted, the possibility of financial compensation for the injured party, political attention and other indicators are mentioned. Therefore, the first case for analysis is a case of expulsion of the Roma from Loshinivka, followed by two forced evictions committed by the organization “Sober and wicked youth” in Lviv and “C14” in Kiev.

The first case analyzed here happened with the Roma community in Loshinivka, Odessa region. It is important to state that the facts of this case are very similar with the facts of the case of *Moldovan v. Romania* delivered by the ECtHR. Even more, in the context of Ukraine, the case when the mob law was passed by the local municipality, the murder happened, inactivity of the National Police and delaying of the trial occurred, were also similar to the case of *Burlya v. Ukraine*. However, the case of *Burlya v. Ukraine* is still pending, but there is a big opportunity for finding the State's violation of housing rights, discrimination, and property rights. For this reason, I believe that the best place for lodging a complaint in case of forced evictions of the Roma community in Loshinivka is the ECtHR. Following the reasoning of the ECtHR in case of *Moldovan v. Romania*, I believe that the case of *Burlya v. Ukraine* and case of forced eviction of the Roma from Loshinivka could potentially have the same outcome. More specifically, I



think that the ECtHR will find a violation of Article 3, which is the prohibition of torture and cruel, inhuman and degrading treatment. This violation could be proved by the inhuman conditions for living in overcrowded apartments, most times in a very poor environment that could cause health issues and restricted access to education and employment. Then, it is also possible to find a violation of Article 8 of the ECHR because when the houses of Roma were burned by an angry mob, the interference to private and family life happened. Article 6 Section 1 is also another one, where the ECtHR may find a violation because the proceedings in Loshinivka last longer than it should. Finally, in the case of forced evictions of Roma in Loshinivka and in the case of *Burlya v. Ukraine*, there is clear, discriminatory intention against the Roma, and their ethnicity is the main reason for forced evictions and passing of the mob law. Finally, not only is the developed case law of the ECtHR relevant in cases of forced evictions of Roma in Ukraine, but also the financial disbursement for injured and aggrieved applicants are important.

It should be noted, that the (R)ESC has created a system of the Collective Complaints procedure, which addresses the implementation of Social Charter in the State parties. Nevertheless, Ukraine neither signed nor ratified an Additional Protocol for providing a system of collective complaints. For this reason, a violation for social rights in Ukraine could not be addressed in the form of collective complaints, even from specially accredited non-governmental organizations.

In the jurisdiction of the UN, it seems that the HRC and the CERD are the most relevant Committees for ensuring the right to housing for Roma. Ukraine has ratified and acceded to the First Optional Protocol<sup>200</sup> and agreed to allow the citizens of Ukraine to submit their complaints to the HRC. The CERD have established the same Individual complaints mechanism as in the jurisdiction of the HRC. These Committees, after the deciding on the merits, follow up with their

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<sup>200</sup> “OHCHR | Optional Protocol to the International Covenant on Civil and Political Rights,” accessed October 11, 2018, <https://www.ohchr.org/en/professionalinterest/pages/opccpr1.aspx>.

decision, and if it is determined that a violation of the right has taken place, the State should submit the measures that were taken to address the violation within three months. Thus, despite a very big attraction of political attention to the issue, Committees do not have an influential measure for financial reparations. However, under the jurisdiction of the CERD, non-equal, discriminatory treatment of Roma people was addressed.

In case of forced evictions of Roma in Lviv, the issue of racism arises not only by the burning of houses of the Roma, but also because of hate-crimes. In contrast to the cases of forced eviction of Roma, the forced eviction in Lviv was performed by a non- State actor. Thus, to a certain degree, reference to the cases of forced evictions of Roma under the jurisdiction of the ECtHR, the ECSR and the CERD is very relevant. In my opinion, lodging a complaint under the jurisdiction of the ECtHR is the most effective way of investigation of anti-Roma programs in Lviv. Referring to the case law of the ECtHR, the most suitable cases for comparing with the recent forced evictions are cases of *Winternstein and others v. France* and *Yordanova and others v. Bulgaria*. In the case of *Winternstein and others v. France*, the remarks of the third-party intervention are very substantial and could be applied in the same manner for the forced evictions of Roma in Lviv. In other words, the ERRC used the main aspects of the right to housing that were violated. The same situation happened in Lviv when members of “Sober and wicked youth” demolished “sheds” where Roma lived. Thus, the demolishing of temporary accommodation should take place only under the same conditions for “ordinary” houses, after the court's decision, after ensuring relevant legal safeguards, access to a court and positive obligation of the State to provide alternative accommodation. In addition, “sheds” should be included as interpreted into the concept of “home”, which is drafted in Article 8 of the ECHR and Article 1 Protocol 1 to the Convention, which reinforces the right to property. Another case of forced evictions that was addressed by the decision of the ECtHR case of *Yordanova and others v. Bulgaria*. In this case, the Roma was recognized by the Court as a socially

disadvantaged group that needed special protection. Moreover, racial tension also was addressed, and defined as possible direct discrimination based on ethnicity.

The anti-Roma programs that resulted in murder could be adjudged not only by ECtHR, but also by another jurisdiction. Despite the fact that in several European countries, anti-Roma programs resulted in murder, in the case law of the ESCR or UN human rights protection mechanisms, these kind of cases rarely occur. Thus, the ECtHR appears to be the only suitable jurisdiction that has governance over the anti-Roma programs in Lviv. However, there is a possibility, that criminal proceedings lodged in Pustomitivsky regional court of Lviv oblast would be investigated in a neutral manner and based on a principle of fair trial.

The last case analyzed in this chapter is connected to the forced evictions of Roma in Kiev. As I already stated above, the forced eviction of the Roma in Kiev was committed by the radical right-wing organization “C14”. In my opinion, this case can be addressed both in the ECtHR and in the HRC. The facts of this case have several issues that could be investigated under these jurisdictions effectively, even with developing fair merit. When it comes to the ECtHR, the right to housing in this domain is addressed in several cases. Thus, the most relevant case for referring is the case of *Winternstein and others v. France*, where despite the reference to Travelers the concept of “home” is addressed very successfully and could be referred to Roma as well. In addition, racist motives are also taken into consideration. Unfortunately, this case could be used only in the light of the interpretation of the right to housing, and it does not give a reference for merits, reasoning, dissenting opinions or other practical issues that could be used in the investigation of the case of forced evictions of Roma in Kiev. It is also important to the state that in the case of *Winternstein and others v. France*, forced evictions of Roma were performed by the State party based on the reason that the Travelers illegally occupied State territory. In contrast to these facts, forced evictions of Roma in Kiev were organized without the involvement of the State. The State rather showed its inactivity, when anti-Roma programs was carried out by the right-wing organization.

Under the supervision of the UN human rights protection mechanism, the HRC has accepted several cases, where housing rights of Roma were violated. Thus, in the case of *Antonious Geopolous, Chrysafo Georgoulou and their seven children*, the demolishing of houses occurred as an unlawful interference to privacy, where “cleaning operations” by the Municipality of Patras was conducted. In Kiev, when anti-Roma programs were carried out, a right-wing organization “C14” demolished the sheds of the Roma for the same reason as Municipality of Patras. It means that forced evictions of Roma was covered by the cleaning operation of a natural reserve, that ignored the presence of shanty houses and demolished personal belongings of the inhabitants. From the perspective of the application of the case, bringing a complaint to the HRC is less complicated than the ECtHR, as political attention could be drawn to the issue. However, the forced evictions of Roma in Ukraine was performed by a non-State actor, which creates additional complications for consideration. For this reason, the ECtHR seems to be the most relevant jurisdiction for the protection of Roma from forced evictions.

Consequently, forced evictions of Roma in Ukraine have different features that correspond to the right to housing for Roma. From the cases stated in the second chapter of this thesis, it is possible to make a clear distinction between the violation of the housing rights of Roma in the present case law of the ECtHR, ECSR, and UN human rights protection mechanisms. Despite the main differences, which is the participation of the State parties in the forced evictions of Roma, Ukraine has a very distinctive characteristic, which corresponds to the involvement of radical right-wing organizations. In spite of this, the most relevant jurisdiction to address these problems is the ECtHR—the issue of the right to housing, forced evictions of Roma, racial discrimination, non-equal treatment, and other human rights violations. It is important to recognize that submitting a complaint under the jurisdiction of the ECtHR would be possible only after all domestic remedies have been exhausted. This is in accordance with the rules of the international law, and within a period of six months from the date on which the final

decision was taken (in the national courts). Nevertheless, this criterion may be justified, because the ECtHR also considers the award of monetary compensation for injured parties, which is very relevant in cases of forced evictions of socially disadvantaged groups.

## CONCLUDING REMARKS

The right to housing is one of the socio- economic rights that appears to be respected in various countries. However, due to the illusory non-binding specificity of this right and because of the inactivity of States, there are many different vulnerable groups these days who still live in undignified conditions. When it comes to the right to housing for Roma, the right to housing occupies a central role in the protection from the forced evictions. Starting from the very beginning of historical interpretation, the right to housing for Roma is connected to a difference in treatment for Roma, including segregation, discrimination and social exclusion. Moreover, there is no one concrete reason or factor that can explain the undeveloped living conditions of Roma.

In the introduction and in the first chapter of this thesis, I noted several reasons, that contribute to the isolated slums and poor living conditions for Roma. Namely, I found a connection between the collapse of communism and the uncovering of a new social status of Roma, where, without the State's support, led to the new negative stereotypes of Roma. This stereotype would have begun from the point of restriction of access to Roma for new social buildings. As highlighted, the main reason for denying access to new social housing for Roma was motivated by the stereotypes of Roma as uneducated and did not know how to use basic utilities without damaging them.

Forced evictions of Roma in this thesis are framed under the notion of the right to adequate housing that has a close connection to other relevant rights. Thus, interference to the private life of aggrieved Roma by the State or non-State actors is taken into consideration. Deficiencies of adequate legal protection, access to the fair trial and non-biased application of the law are factors that are stressed in Chapter Two when concrete case law is analyzed. In

addition, the violation of the right to housing is presented as the main reason for segregation in education, high rate of unemployment and denial of rights of Roma women.

The aim of this thesis is to consider the main positive examples of court decisions and legislation in the area of protection against forced evictions and legal protection of tenure. From this thesis, the appropriate investigative mechanism with a fair approach, in the context of recent forced evictions of Roma, was identified. Under the three jurisdictions, the comparative analysis was conducted in three different frameworks, namely the ECtHR, ECSR, and UN human rights protection mechanisms. This analysis had two main purposes— the first one is connected to identifying the concept of "*home*" that is derived from the right to adequate housing, and provides protection from forced evictions. The second reason for anatomizing the stated above jurisdictions is connected to the practical application of the developed case law in the context of Ukraine. The identified jurisdiction and appropriate international court could shed light on the issue of forced evictions of not only Roma, but also other socially disadvantaged groups. Moreover, the recommendations written in this thesis have practical relevance for Roma communities that suffer from forced evictions conducted by non-State actors.

Under the jurisdiction of the ECtHR, the notion of "*home*" has come from case law. Thus, according to the cases where this concept has interpreted the notion of "*home*", home was seen as an autonomous concept that goes beyond the classification of domestic law. In addition, in the domain of the ECtHR the concept of "*home*" also derived its interpretation from the unique test, set by the Court that was designed for "sufficient continuing of links". The most relevant article from the ECHR that composed the right to housing is Article 8, where the positive obligation of the State was established in the context of protection of private and family life, *home* and correspondence. Moreover, under this Article, the concept of "*home*" is presented under the definition of the "occupied place of residence". Finally, in the framework of the ECtHR, the right to housing specifically for Roma and the definition of "*home*" comes in conjunction with Article 13, which protects effective remedies for the aggrieved persons, and

Article 14, which is an anti-discrimination clause. Furthermore, the right to housing in this domain could be protected under Article 1 Protocol 1 of the Convention. Despite the non-existence of a concrete right, these interpretations could address the issue of the adequate housing, the right to housing and prohibition of forced evictions in the various articles. For this reason, in this domain, the right to housing is stated fully and with reference to the case law, that makes this jurisdiction more attractive for the protection of the right of Roma in housing. That makes interpretations of the supranational court, in other words, ECtHR more influential than an interpretation of the right to housing under the ECSR and UN human rights protection mechanism. The ECSR under the revised Charter provides a substantial definition of the right to adequate housing. Moreover, it established a broad clause that specifies housing to be up to an adequate standard of living, housing as a tool for the protection of homelessness, and providing housing under accessible price. According to case law, the right to housing under this jurisdiction is equipped with the State's responsibility in the practical and effective protection of this right, that makes achievement of this right progressive. Furthermore, the right to housing under this domain recommends fulfillment of this right without discrimination, requiring a specific policy for vulnerable groups. Thus, under Article 31, adequate housing is presented in a broad aspect. Additionally, Article 16 protects the right of the family in the social, legal and economic perspective, and Article 30 protects against poverty and social exclusion. However, in this jurisdiction, protection from forced evictions is not provided. Hence, on the one hand, it is a very practical and progressive provision; but on the other hand, it does not give real protection of the right to housing. In other words, this provision does not have a practical application for Roma in Ukraine. Thus, relying on the fulfillment of the right to housing under the Social Charter would not achieve a favourable result, since Ukraine did not ratify the Collective Complaint Procedure.

In this thesis, under the UN HR protection mechanism, two main domains were analyzed. For this reason, the jurisprudence of the Committee on the Elimination of Racial Discrimination



and the Human Rights Committee was taken as examples for violations of housing rights of Roma. It should be noted, that in this jurisdiction, the right to housing is interpreted under different legal provisions. Thus, under Article 11 on the International Covenant on Economic, Social and Cultural Rights the right to adequate housing is recognized as an adequate standard of living conditions. In addition, General Comment No.4 on the right to adequate housing and General Comment No.7 on forced evictions are the most relevant legal standards. When it comes to the ICCPR, the right to housing is framed under the unlawful interference with privacy, family, and home. Finally, the HRC protects the right to housing specifically for Roma very specifically via Articles 26, 27 and 7.

The case law of the above stated jurisdictions gives us a clear scenario for the better application of international investigative mechanisms, into the Ukrainian context. In the case of Ukraine, forced evictions of Roma are very unusual and subject to non-standard, extreme, unfair racial treatment. Moreover, forced evictions of Roma became a typical narrative and action of a right-wing organization "C14". These racially motivated persecutions of Roma underline the inactivity of the National police and biased access to justice for Roma.

This thesis finally corresponds to the cases of forced evictions of Roma in Ukraine. By giving a reasonable analysis and providing a detailed description of the case law from three different jurisdictions, two main findings were discovered. Thus, for the case of forced evictions of Roma from Loshnivka, the most effective instrument for investigation of violation of the right to housing would be the ECtHR, following the protections offered in the ECHR. Moreover, for the cases of anti-Roma programs in Ukraine conducted by non-State actors, the main jurisdictions for addressing the issue of racial intolerance would be the ECSR and the ECtHR.

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