

**Out on the street: a comparative study of forced evictions before the European Court on
Human Rights and European Committee of Social Rights**

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Abstract

This thesis is dedicated to the analysis of cases of forced evictions before the European Court of Human Rights and the European Committee of Social Rights. It starts with an assumption that forced evictions and poverty are intertwined, and that low-income individuals are most at risk. It presents standards of both bodies and tries to uncover what sort of international protections are available and most useful for a fight against forced evictions. Cases are grouped in two categories: evictions due to privatization and evictions of Roma persons. Specific cases were picked based on the most similar case selection methodology.

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Introduction

Forced evictions aren't anything new.¹ This somewhat neglected issue in the context of human rights, calls for attention now more than ever. Millions of people are evicted or threatened with eviction every year, leaving them homeless or in extreme poverty. Those already marginalized are at the biggest risk of losing their homes or land due to housing being dependent mostly on the global capital markets and private interests. Losing one's home is a traumatic experience on its own, which can be followed by beatings and degrading treatment; however, consequences after the fact are continuous as the evictee is now more vulnerable to other violations as well. A home is not only a roof over one's head – it's a place to “live in peace, security and dignity” and with that, the very core of human rights is compromised when you are forcefully evicted.² This reinforces the notion that all human rights are interdependent and connected. Forced evictions have effects on a general level as well, as they contribute to overall inequality and marginalization of those most vulnerable, especially women, children and minority groups.

As housing sector is becoming increasingly more privatized and treated more as a commodity to be traded with on the financial global market than a fundamental human right, the need for protection of housing rights in general, but protection from forced eviction especially, is urgently necessary.³ Furthermore, we are still witnessing the effects of housing as a financial tool destroying economies around the world since 2008.⁴ In its essence, evictions prioritize one person's (or company's) right to property over another person's right to one of his fundamental rights on which

1 A UN Conference on Human Settlements in 1976 which references forced evictions.

2 UNHABITAT. Fact Sheet No. 21/Rev. 1: The Right to Adequate Housing. (Geneva: United Nations, 2009) pp. 8.

3 Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/34/51, 18 Jan. 2017, pp 1.

4 Mary Patillo, “Housing as a commodity versus rights,” *Annual review of Sociology* 39 (2013): 509-512.

other rights depend.⁵ Moreover, the concept of discrimination is closely linked to the issue of forced evictions. As mentioned before, already vulnerable groups are the most at risk of being on the losing side of this balancing. In the context of western liberal societies, tenants are not only legally more disadvantaged, but also culturally and socially, since right to property is adorned as one of the most important rights.⁶

Right to protection from forced evictions is guaranteed to everyone – regardless of whether they own the property, rent or occupy a dwelling.

This paper will look into the European experience with forced evictions by focusing on the jurisprudence of the two human rights mechanisms of Council of Europe. Even though the European Convention on Human Rights does not explicitly contain protections against forced evictions, the Court's case-law gradually developed these protections in a number of cases. On the other hand, the European Social Charter system is more complex, in that two documents exist. Forced evictions are not included explicitly in the European Social Charter from 1961, which forced the Committee to take a more creative approach when deciding such cases, framing it under other provisions. However, the Revised Charter, which is slowly replacing the original Charter, does contain right to housing, and therefore protections against forced evictions. Unfortunately, since this system allows states to pick and choose article they want to be bound by, right to housing article remains unduly under ratified.⁷

⁵ Foundation Abbe Pierre and FEANTSA, *Second Overview of Housing exclusion in Europe 2017*, (2017): 82.

⁶ Peter Dreier, "The Status of Tenants in the United States", *Social Problems*, Vol. 30, No. 2 (December 1982): 179-198.

⁷ Only 14 states ratified some provisions of Article 31 which covers right to housing, from that only 10 ratified the article in whole. See: Council of Europe, *Acceptance of Provisions of the Revised European Social Charter (1996)*, available at <https://rm.coe.int/1680630742> [Accessed on 05/06/2020].

By examining cases and the standards set out by the European Court and the European Social Committee respectably, this paper will try to show how forced eviction cases can be framed in order to grant international protections to benefit the unprivileged parts for the society. Cases are grouped in two categories: evictions due to privatization and evictions of Roma people. The cases picked are based on “most similar case selection” in each category.⁸

The first part I will focus on the theoretical framework of forced evictions, how they are extracted from right to housing on the international level and then go into the textual interpretations found in the European Convention on Human Rights and the European Social Charter from 1961 and the Revised European Social Charter (RESC).

In the second and third part, I will subsequently analyze and compare the cases before the two bodies divided in two categories mentioned above. I will try to find common standards and differences in each group of cases and see what the future trends might be. In conclusion, I will summarize the findings and weigh on different forms of protections available in two systems, which forum to pick when facing a violation and also give recommendations on how these protections can be improved in future. This paper contributes to the overall analysis of the European human rights mechanisms, containing original analysis of cases not compared before, in the fights against poverty.

⁸ Ran Hirschl, The Question of Case Selection in Comparative Constitutional Law, *The American Journal of Comparative Law*, (2005), pp 142.

Chapter 1- Theoretical framework

A. *The United Nations*

“(F)orced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society”.⁹ This is how the UN Commission on Human Rights expressed its concern with the alarming situation regarding evictions in 1993. Protection against forced eviction derives from the right to adequate housing, so the best way to start defining this phenomenon is to start with the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR). Although non-binding, General Comments do provide a highly authoritative and influential interpretation of international standards, and so when talking about a right which is deemed unpopular, such as the case of the right to housing, these interpretations come in handy.

General Comment No. 4 and No. 7 helped set out obligations of the states in regard to evictions.¹⁰ When establishing criteria of what constitutes adequate housing in the General Comment No. 4 the CESCR identified *legal security of tenure*, as the very first one. If a person does not possess security of tenure, then they are only living there because somebody else allows them to, and that cannot possibly amount to a dignified way to live.¹¹ This created a positive duty of the state to protect against forced evictions, especially against forced evictions by private actors.

⁹ UN Commission on Human Rights, Resolution 1993/77, *Forced evictions*, E/RES/1993, (10/03/1993).

¹⁰ Hohmann, Jessie, *The Right to Housing: Law, Concepts, Possibilities*, (Oxford: Hart Publishing Limited, 2013), pp 20.

¹¹ Ibid. pp 21.

Not only that, it stated that forced or arbitrary evictions are *prima facie* incompatible with the Covenant and can only be justified in exceptional circumstances.¹² From this, it is obvious that not all evictions are prohibited.

Forced evictions are explicitly defined in General Comment No. 7, as permanent or temporary removal against the will of individuals or groups from homes and/or land they occupy without legal (and other) protection.¹³ This definition has been accepted as the main definition in international human rights law.¹⁴

The term “forced” in forced evictions is used interchangeably with various other terms such as “arbitrary”, “illegal”, “unfair”. Essentially, it is used to describe an arbitrary act against which there are insufficient or no legal protections.¹⁵ Evictions need to be carried out in the accordance with the law, which is in conformity with international standards.¹⁶

Legal protection before the order includes genuine consultation with the affected person; reasonable notice; consideration for possible alternative measures etc.¹⁷ But most importantly, deciding whether the eviction is even necessary in the first place, by taking alternative measures into account.¹⁸ Even when removals are necessary, such as evictions from dangerous zones, these standards must be followed, otherwise they become forced evictions. These procedural protections and due process are the most important aspect in differentiating between forced and allowed evictions.

¹² CESCR General Comment No. 4, 1991, §18.

¹³ CESCR General Comment No. 7, 1997, §3.

¹⁴ OHCHR, *Fact Sheet No. 25(Rev. 1), Forced Evictions*, 2014, No. 25/Rev. 1, available at: <https://www.refworld.org/docid/5566d6744.html> [accessed on 05/06/2020]

¹⁵ CESCR General Comment No. 7, 1997, §3.

¹⁶ *Ibid.* §3.

¹⁷ *Ibid.* §15.

¹⁸ Miloon Kothari and Patricia I. Vasquez, “Policy Debate- UN Guidelines on Forced Evictions: A Useful Soft-Law Instrument?”, *Institut de hautes études internationales et du développement* 6.2 (2015):1-22.

However, not only does the decision to evict need to be in conformity with the international standards, the way the measure is carried out, also needs to follow international requirements, meaning legal protections are applied during the eviction process as well. For instance, evictions should not be done in the middle of the night or in bad weather, no harassment or violence must be employed.¹⁹ And finally, protections after the eviction include compensation or possible alternative housing, and legal remedies also fall into the legal protection requirement when dealing with evictions.²⁰

B. The European Convention on Human Rights

As it is known, the European Convention, and subsequently, the European Court of Human Rights (hereinafter: Court), deals mostly with civil and political rights, leaving social and economic rights to the European Committee of Economic and Social Rights. However, there is not a clear distinction between these two groups of rights, and the Court explained multiple times that the Convention must be interpreted in the light of the present-day conditions. Not only that, but the Court established that many civil and political rights have “implications of social and economic nature.”²¹ Housing rights, from which the protection against forced evictions are extracted, fall within this gap between political and civil on one hand, and economic and social rights on the other. An obvious example is when voting rights, for instance, are dependent on having a permanent address, therefore persons who were evicted and rendered homeless cannot enjoy this

¹⁹ CESCR General Comment No. 7, 1997, §15.

²⁰ Ibid.

²¹ *Airey v Ireland* 6289/73 (09/10/1979), §26.

political right.²² Complaints can be formulated in two ways: by invoking Article 8 of the Convention or under Article 1 of Protocol 1.²³ However, Article 14 can also be raised when vulnerable groups are concerned.

1. Article 8

Home is not merely roof and four walls; it is a place which influences our identity and our contact with the rest of the community. Social and cultural ties determine not only the content of the house, but ultimately its shape.²⁴ On top of that, home affects the person's "self-determination, physical and moral integrity, maintenance of relationships with other and a settled and secure place in the community."²⁵

The Court stated numerous times that "home" is an autonomous concept; therefore, it is independent from all domestic definitions.²⁶ A sufficient and continuous link between a person and the place they inhabit, is of central importance when determining if something can be considered a "home", which is essentially the broadest safety net, and the scope of the protections under the Convention.²⁷ Also, it reaffirms the importance of a social aspect to the right to housing.

Additionally, the lawfulness of the occupation is not relevant for the Court when assessing whether something constitutes a home or not.²⁸ This follows the UN notion that everyone enjoys

²² OHCHR, *Fact Sheet No. 25(Rev. 1), Forced Evictions*, 2014, No. 25/Rev. 1, pp. 1, available at: <https://www.refworld.org/docid/5566d6744.html> [accessed on 05/06/2020]

²³ Housing violations have been raised with other rights, for example Article 3 and Article 6, however those cases are not as relevant for violations of forced evictions.

²⁴ Hohmann, Jessie, *The Right to Housing: Law, Concepts, Possibilities*, (Oxford: Hart Publishing Limited, 2013), p 169-196.

²⁵ *Connors v UK* No 66746/01, (27/05/2004), § 82.

²⁶ *Chiragov and Others v Armenia* No. 13216/05 (16/06/2015), §206; See also George Letsas, "Truth in the Autonomous concepts: How to interpret the ECHR", *EJIL*, Vol. 15, No. 2, (2014): 283.

²⁷ *Prokopovich v Russia* No 58255/00 (18/11/2004), § 32; *Buckley v the UK* No. 20348/92 (25/09/1996), §54; *Gillow v the UK* No. 9063/80 (24/11/1986), § 46; *Pualic v Croatia* No. 3572/06 (22/10/2009), § 33.

²⁸ *Winterstein and Others v France* No. 27013/07 (17/10/2013), §141; *Yordanova and Others v Bulgaria* No. 25446/06 (24/04/2012), §103.

the right to housing regardless of whether a person owns, rents or dwells on said land or house. And this is especially important for this analysis, as the cases selected regard specific situations in which poverty plays a big role, and in which lawfulness is questioned.

Respect for one's home under Article 8 provides protection for an existing home, meaning it cannot be construed as to impose positive duties on a State to provide a home when a person does not have one.²⁹ Right to respect one's home usually means right to access, right to occupy and right to peacefully enjoy that home.³⁰ Forced evictions are, therefore, extracted from last two characteristics of that right.

Because Article 8 protects the individual's right to physical and moral integrity, and can have an effect on his identity, the state's margin of appreciation is narrower than in case of Article 1 of Protocol 1.³¹ The Court held multiple times that the loss of one's home is the most extreme form of interference, and taking into consideration principles of proportionality and reasonableness is crucial when ordering such a measure.³² This is especially important when the eviction order may render the individual homeless, such is in case where that was his only "roof over his head".

Evictions, which are regarded as an interference under Article 8 paragraph 2, must be justified by the three-part test. Firstly, the measure needs to be in "accordance with the law", which does not indicate that the mere existence of the law is enough, but the quality of it is also taken

²⁹ Chapman v the UK 27238/95 (18/01/2001), § 99.

³⁰ Padriac Kenna, Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights. *European human Rights Law Review*. No. 2 (2008): 193-208.

³¹ Connors v UK, § 82; Gladysheva v Russia No. 7097/10 (06/12/2011), § 93. See also: Antoine Buyse, "Strings attached: the concept of 'home' in the case law of the Human Rights", *European human Rights Law Review*, No. 3 (2006): 296.

³² McCann v the UK No. 19009/04 (13/05/2008), § 50; FJM v the UK No. 76202/16 (29/11/2019), §37; Orlic v Croatia No. 48833/07 (21/06/2011), § 65.

into consideration.³³ This means that the law needs to be clear and adequate and effective safeguards are needed. This also implies that the law has to be compatible with international standards. Therefore, as mentioned above, just the mere presence of a domestic law, does not make an eviction “legal”.

Second condition for the measure to be considered justified is to have a “legitimate aim”. Legitimate aims are enumerated in the second paragraph of the article and in eviction cases, governments most often tend to use right of others³⁴, environmental protection³⁵ and right of State to reclaim its property.³⁶

Thirdly, the interference needs to be “necessary in a democratic society”, and from this requirement, the principle of proportionality is bred, in a sense that it needs to be proportionate to a legitimate aim pursued.³⁷ “Necessary” in this context means there is a “pressing social need” for such a measure. From Court’s case law, two dimensions of proportionality test can be observed.³⁸ The first one is whether the law itself is proportionate, meaning whether the law calls for adequate procedural safeguards. Therefore, when assessing if the interference was within the State’s margin of appreciation, the Court will check whether the procedural safeguards were present. Safeguards in this context are an obligation of a State to provide an independent tribunal to determine whether that measure, meaning the eviction, was in line with the Article 8.³⁹

³³ Roman Zakharov v Russia No. 47143/06 (04/12/2015), § 227-303; Olsson v Sweden No. 10465/83 (24/03/1988), § 61.

³⁴ Zehentner v Austria No 20082/02 (16/10/2009), § 55.

³⁵ Chapman v the UK, § 82.

³⁶ Cosic v Croatia, § 16.

³⁷ Connors v UK, §81-83.

³⁸ Jonnette Watson Hamilton, “Landmark Cases in Land Law,” review of *Landmark cases*, by Nigel Gravelles, Canadian Business Law Journal 56, no. 3 (June 2015): 427-438.

³⁹ McCann v UK, § 50.

The second one, is whether that measure is proportionate “in these circumstances” and in manner it was enforced. The Court takes into consideration the vulnerability of the applicant, which is relevant for this paper, since the vulnerability of the evictee is an overarching notion.⁴⁰ Poverty, health, minority group social marginalization, were all considered during different cases by the Court.⁴¹ In such cases, Article 14 is raised, however known as the Cinderella provision, this article is often left behind.⁴² This issue will be later discussed in analyzed cases.

The Court makes a difference between public, State-owned or socially owned housing and private housing, in regard to the need for judicial review. When it is privately rented, standards change, as in that context there are two competing private interests that need to be balanced.⁴³ But more importantly, a fair balance needs to be struck between Convention rights of two individuals, one’s right to respect of home and the other’s right of enjoyment of property.⁴⁴ This implies that states have an obligation to impose procedures and procedural safeguards which will protect tenants from unlawful evictions from other private entities.⁴⁵ Evictions due to privatizations, which will be discussed later, are a prime example of this.

Article 8 is often raised together in conjunction with Article 14, especially when deciding on Roma eviction cases. However, the Court does not tend to elaborate further on Article 14, and simply states that no separate issue is raised under Article 14. This is unfortunate, as discrimination is more often than not an important underlying factor to these evictions, if not the obvious reason for them.⁴⁶ The Court needs to pay more attention to the discrimination background in these cases

⁴⁰ Zehentner v Austria § 61.

⁴¹ Zehentner v Austria; A.-M.V. v Finland No. 53251/13 (30/10/2015); Yordanova and Others v Bulgaria.

⁴² Oddny Mjöll Arnardóttir, “Vulnerability under Article 14 of the European Convention on Human Rights”, *Oslo Law review*, Vol. 4, No. 3 (2017):150-171.

⁴³ FMJ v UK §45; Vrzić v Croatia 43777/13 (12/07/2016).

⁴⁴ Vrzić v Croatia §43

⁴⁵ Surugui v Romania No. 48995/99 (20/04/2004), § 59.

⁴⁶ Yordanova and Others v Bulgaria.

and recognize prejudice and stereotypes as factors of high importance. These are not only cases of people losing their homes, they are losing them because they are members of the Roma community.

2. Article 1 of Protocol 1

On the other hand, Article 1 of Protocol 1 covers a wide range of economic interests, including moveable and unmovable property, leases, rent etc.⁴⁷ In a number of cases, social assistance was qualified as property, therefore those entitled to it, enjoyed protections under the right to property.⁴⁸ Additionally, the Court held that interest in the continuations of tenancy can also fall within the scope of “possessions”.⁴⁹

The second paragraph allows for the states to adopt laws that are necessary to control property in the general interest. However, this must go through a similar limitation test as that of in Article 8 (2). The interference must be prescribed by law and pursue a legitimate aim. Moreover, proportionality is between means employed and aims pursued needs to be established, which implies that a “fair balance” has to be struck between the “general interest” and the individual concerned.⁵⁰ This means that losing tenancy rights and being evicted can be raised under this right. However, this right can be problematic, especially when talking about low-income individuals. Raising this right is useful only when an individual does indeed own something. On the complete

⁴⁷ Monica Carss-Frisk, *A guide to the implementation of Article 1 of Protocol 1 to the European Convention on Human Rights*, Human rights handbooks, No. 4, 2001; Bernadette Rainey, Elizabeth Wicks, Clare Ovey– *The European Convention on Human Rights* (7th ed., OUP, 2017), 547-548.

⁴⁸ Koua Poirrez v. France No. 40892/98 (30/09/2003).

⁴⁹ Padriac Kenna, *Housing rights and human rights*, (FEANTSA, 2005), Chapter 2, p 20-21.

⁵⁰ William A. Schabas, *The European Convention on Human rights* (Oxford, 2015), 979-980.

opposite end of the spectrum, it might be actually used to justify evictions.⁵¹ Matter of fact, the Court has had applications from landlords under this right, and has unfortunately, often ruled in their favor.⁵²

In principle, it can be said that positive duties of the State, may they be formulated under Article 1 of Protocol 1 or Article 8 of the Convention, principles are similar. In both situations, fair balance must be struck between competing interests.

C. *European Charters of Social Rights*

When talking about the European Social Charter system, we have to keep in mind the difference between the 1961 Charter and the RESC, which broadened existing and introduced new protections into the system. Forced evictions and housing issues, in general, constitute a big chunk of the European Social Rights Committee's (hereinafter: Committee or ESRC) collective complaints, but also conclusions on reports which state submit as a part of their regular reporting mechanism.⁵³ With the ability to weigh in on the State's legal, operational and judicial safeguards, and its progressive approach, the Committee shows great potential to be the strongest tool in the fight against forced evictions.

However, there are obstacles. Firstly, even though RESC is slowly replacing the original Charter, some countries still have not ratified it. Apart from that, the collective complaint system

⁵¹ Scollo v Italy No. 19133/91 (28/09/1995).

⁵² Statileo v Croatia No. 12027/10 (10/07/2014), §143; Bitto and Others v Slovakia No. 30255/09 (28/01/2014), § 115-117; Lindheim and Others v Norway No. 13221/08 and 2139/10 (12/06/2012), §134.

⁵³ Conclusions Romania Article 16, 2017; Conclusions Netherlands on Article 31(2), 2015; Conclusions Slovenia on Article 31(2), 2015.

was introduced in a separate protocol, which still lacks ratification from some state parties.⁵⁴ And finally, right to housing is indeed explicitly protected in the RESC under Article 31, however, the Charter system is a pick-and-choose, or *à la carte* system, and this provision remains quite unratified, with only 10 countries subscribing to it in full.⁵⁵ Even more, conclusions on national report show that almost all countries that have accepted this provision, have trouble with its implementation.⁵⁶ Therefore, when faced with forced evictions, the Committee needs to take a somewhat of a creative approach, assessing this violation under more widely ratified rights.

The Social Charter from 1961 does not contain a specific provision on housing in general, but certain housing protections can be found under other provisions. Article 16 encompasses the right of family for social, legal and economic protection. This provision remains unchanged in the RESC and is used most frequently by the Committee when dealing with evictions. It contains a clear positive duty to protect family housing, which extends to protections from unlawful eviction.⁵⁷ Article 16 is especially useful when tackling Roma eviction practices in states, since it is often that entire communities with families are being evicted.

On the other hand, RESC contains much more detailed protections, and, as mentioned above, it explicitly deals with the right to housing, meaning that State parties have an obligation to guarantee everyone right to housing.⁵⁸ However, as mentioned, Article 31 has a low ratification rate, so the Committee assesses violations of forced evictions under various other articles. Some of them include protection of disabled persons (Article 15), migrant workers (Article 19), elderly

⁵⁴ Only 15 countries ratified this Additional protocol. See at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=0nKjHdHt [Accessed on 06/06/2020].

⁵⁵ Council of Europe, *Acceptance of Provisions of the revised European Social Charter*, available at <https://rm.coe.int/1680630742> [Accessed on 28/05/2020].

⁵⁶ Dovile Gailiute, “Right to housing in the jurisprudence of the European Committee of Social Rights”, *Societal studies*, 4(4), (2012): 1606.

⁵⁷ *ERRC v Bulgaria* No. 31/2005 (18/10/2006), § 16.

⁵⁸ *Conclusions France*, 2003.

(Article 23), protection against poverty and social exclusion (Article 30). However, apart from Article 31, the two most important provisions are Article 16 and Article 30. Legal protections under Article 16 are interpreted in the same way as under Article 31(2), which proves that framing the violation under this much more ratified provision grants the same level of protection as under Article 31.

Another provision which is frequently used by the Committee when discussing housing, is Article E, which sets out obligations against discrimination. States have a positive obligation to adopt measures in respect to vulnerable persons, especially regarding Roma communities taking into the consideration their way of lifestyle. Roma communities have been historically marginalized and disadvantaged and as a result enjoy special level of protection.⁵⁹

Paragraph 2 of Article 31 is the main protection against forced evictions. Forced evictions are defined by the Committee as a “deprivation of housing which a person occupied due to insolvency or wrongful occupation.”⁶⁰ In this sense, states have a positive obligation to establish procedures in order to limit the risk of eviction. These include duties to consult with persons concerned, look into alternative solutions and give a reasonable notice before the eviction itself.⁶¹ The way in which evictions may be carried out can also be in conflict with this provision, such as evictions taking place during the night or winter period.

However, not all evictions are forced in this sense. Evictions of illegal occupation of a land or a dwelling, may be justified under this provision, however the Committee warned about not defining “illegal occupation” too widely.⁶² When the eviction is justified under public interest,

⁵⁹ COHRE v Italy No. 58/2009 (25/06/2010) § 39-40.

⁶⁰ Conclusions Italy 2003; Conclusions Sweden 2003.

⁶¹ Digest 2018, p 228.

⁶² Ibid.

alternative housing must be provided. Legal remedies and legal aid need to be available to those who might seek to challenge these decisions in court.⁶³ However, the overarching notion in how evictions are carried out is human dignity. Dignity of the Roma have been touched upon before, since these evictions are more often than not rooted in discrimination policies, however, dignity of the poor in general needs to be more elaborated upon. Evicting or removing those already marginalized, especially without providing alternative accommodation, intensifies this marginalization and strips them away with the access to basic amenities needed for mere existence.⁶⁴ It is clear that this interpretation by the Committee is in line with General Comment No. 7.

⁶³ ERRC v Bulgaria § 52.

⁶⁴ Malcom Langford and Jean du Plessis, *Dignity in the Rubble? Forced evictions and Human rights law*, (COHRE, 2006).

Chapter 2 - Privatization

The first set of cases we will look into is regarding flats which were once socially owned under the socialist regimes but were later privatized during the transition period. After the Second World War, most of the private dwellings in now socialist countries were expropriated by the State, through the legislations on nationalization, and therefore were now considered to be collectively owned. These flats were allocated to those in need, and in turn they paid a small non-profit rent.

After the collapse of socialist regimes, these newly formed countries were plunged into market economies, which was followed by a large-scale privatization all state owned property, which included housing.⁶⁵ New housing policies were based on the competitive market principles, which in practice resulted in higher rents which exacerbated social and economic hardship. Furthermore, a new problem emerged: “previous owners” now made claims for the property they owned before nationalization, which was in direct conflict with housing rights of tenants of these socially owned flats. This housing issue occurred in a number of post-soviet countries, but our focus will be on Slovenia and Croatia, due to the underlying eviction element to them.⁶⁶

A distinctive feature of the Yugoslavian housing legal framework is the so-called specially protected tenancy rights. After the nationalization of property, dwellings were allocated to different groups of people in need (employees of public enterprises, low-income families etc.) and they became holders of a “specially protected tenancy right.” This *sui generis* right, which had its basis in law not on a lease contract, guaranteed a “permanent use of the dwelling for his housing

⁶⁵ Sasha Tsenkova, *Housing Policy reforms in Post Socialist Europe: Lost in transition*, (Physicia-Verlag, 2009).

⁶⁶ Hutten-Czapska v Poland No. 3501497 (19/06/2006); Liepajnieks v. Latvia No. 37586/06 (02/11/2010); Popovici and Dumitrescu v Romania No. 31549/96 (06/04/2006).

needs as well as for the needs of his family”, and in turn, a tenant would pay a small fee.⁶⁷ Former specially protected tenancy was transformed into lease contracts with former tenants, which enjoyed variable levels of legal protections from evictions in each country. A disclaimer is needed at this point: the choice of Slovenia and Croatia was not in the slightest due to the fact that their legislation was by any means worse than that of other ex-Yugoslav countries, but purely because the cases regarding this issue simply exist against these countries and do not exist for others.

Having said that, this type of housing cases entailed not only the alleged interference with the respect for one’s private and family life, but right to peaceful enjoyment of private property was also questioned.

The cases we will look into are *Brezec v Croatia*⁶⁸ and *Berger-Krall and Others v Slovenia*⁶⁹ before the ECtHR; and *Federation europeenne des Associations nationales travaillant avec les Sans-abri (FEANTSA) v Slovenia*⁷⁰ before the ECSR. *Brezec* and *Berger-Krall and Others* represent two distinctive problems of privatization: privatization of a formerly socially owned building; and the conflict between previous owners of expropriated flats and the current tenants. The consequence of both is the lack of legal security of the tenant, which results in eviction or threat of eviction.

⁶⁷ This fee was negligible, amounting up to 6% of the tenant’s monthly income. Petkovic, Svetomir. “The Housing System in Yugoslavia.” *International Review of Administrative Sciences* 36, No. 4 (December 1970): 311–16. doi:10.1177/002085237003600403.

⁶⁸ *Brezec v Croatia* No. 7177/10 (18/07/2013).

⁶⁹ *Berger-Krall and Others v Slovenia* No. 1417/04 (14717/04).

⁷⁰ *FEANTSA v Slovenia* No. 53/2008 (08/09/2009).

A. European Court on Human Rights

The alleged violation of Article 8 of the ECHR was raised in both cases in regard to eviction. However, there is a clear difference as to the root of the problem and therefore the principles applied by the Court. The applicant in the *Brezec* case enjoyed the specially protected tenancy right and lived in the socially owned flat for 30 years. In 1997, the building was bought by a private enterprise, in which the applicant was employed. This enterprise claimed that this building was intended for temporary use by its employees and the applicant had no legal basis to occupy this flat. Consequently, a civil action seeking her eviction was brought by this enterprise.

There are three important elements to this case.

Firstly, even though the eviction was originally sought out by a private actor, it is important to note that the applicant claimed that the privatization was done under “dubious circumstances” and that a State-run agency held 49% of the stakes in this company, to which the Government did not respond.⁷¹ It is unfortunate that the Court did not elaborate on this further as the eviction had been granted in order to protect property rights of the company. The Court instead simply assessed whether the Croatian domestic courts examined the proportionality of the measure in regard to the legitimate aim pursued. As already mentioned, procedural safeguards are not explicitly contained in Article 8 but from Court’s prior case-law, decision-making process of a measure such as eviction needs to be fair and afford due respect to the interests safeguarded by the article.⁷² It could be said, however, due to the large percentage of the ownership in the company by the Government, that

⁷¹ *Brezec v Croatia*, § 32.

⁷² *Connors v UK* § 81-84; *Giacomelli v Italy* No. 59909/00, § 82; *Maumousseau and Washington v France* No 39388/05 (06/12/2007), § 62; *V.C. v Slovakia* No. 18968/07, § 141.

framing the violation as an issue of negative obligations, limited the protection granted to the applicant.

On the other hand, it could be argued that the overarching issue was that the State failed to properly protect users of the specially protected tenancy before, during and after selling the property. As a result, the State failed to fulfil its positive obligation to protect special tenancy right, by providing the applicant with another publicly owned flat, which in turn led to the conflict between the private owner and the applicant in the first place.⁷³

Secondly, the sufficient and continuous link principle was essential in finding a violation in this case.⁷⁴ The Court reiterated that regardless of the fact that the owner intended this flat for temporary use, it is undisputed that, the applicant lived here altogether for 40 years. An important element raised by the applicant was that this flat was of an “existential issue” for her, which was also, unfortunately, not expanded further by the Court.⁷⁵ By recognizing the poor financial situation of the applicant more clearly, the Court could have made a more assertive stand in the fight against forced eviction of the poor.

And thirdly, the applicant in this case claimed that she was subjected to aggressive attitude by the company in order to pressure her to move out on her own. This led to her having to take out a bank loan in order to buy a new flat, which left her in a “precarious position (...) and with scarce resources for subsistence.”⁷⁶ This element of chicanery and external pressure by the owners is present in the *Berger-Krall* case as well, which inherently leaves the applicant to either move out on their own or to suffer under the current regime until a formal eviction order is issued.

⁷³ Brezec v Croatia, Judge Dedov concurring opinion.

⁷⁴ Gillow v the UK § 46; Winterstein and Others v France §141.

⁷⁵ Brezec v Croatia, § 47.

⁷⁶ Ibid. § 32.

Berger-Krall and Others v. Slovenia showcased a different problem arising from a sudden privatization of housing: previous owners whose property was expropriated by the Socialist regime were now entitled to take it back. Former “specially protected tenancy” right was translated into a privileged contractual lease agreement, under which the previous owners formally possessed the property, but the tenants continued to live there for an indefinite time with the payment of a non-profit rent. However, due certain legislative changes, the rent was substantially increased (it has risen more than 600% since 1991) and the number of grounds on which the tenant can be evicted was expanded.⁷⁷ Therefore, the issue in this case is regarding the specifics of the Slovenian post-socialist housing legislation, which led to the overall decrease in legal protections of the tenants.

The case was argued under Article 8 and Article 1 of the Protocol 1, taken both alone and in conjunction with Article 14. We will firstly analyze the Court’s assessment under Article 8 for the sake of the structure of this Chapter, even though it was the second violation claimed in the case.

In this case, it was undisputed that the dwellings in question constituted “homes”, the issue here was whether the eviction of the applicants was justified or not. The legitimate aim claimed was protection the rights of others, namely, the rights of the previous owners to their property. Therefore, the question was whether the State fairly balanced these two conflicting rights. One might wonder if the right to property in such cases can have the same weight as Article 8, especially when the homes in question represent an existential issue for these tenants. Building on that, one has to bear in mind that 50 years have passes since the property in question was owned by the

⁷⁷ *Berger-Krall and Others v Slovenia*, § 150.

previous owners, or more likely their grandparents. When put like that, balancing between these two rights does not seem very convincing.

In any case, the applicants claimed they initially enjoyed the rights protected by Article 8 after the denationalization, but subsequent legal developments, which increased their rents and changed the rules for the purchases of these flat at favorable prices, worsened their position in several ways.⁷⁸ Namely, new fault-based grounds for eviction were introduced, from nine to now thirteen reasons. Three grounds seem the most problematic. Firstly, the tenant could be evicted if they owned another dwelling, regardless whether it was “empty” or “real”.⁷⁹ In reality, if a tenant owned a holiday home outside of the city she lived and worked in, which was the case of one of the applicants in *Berger-Krall*, that could be considered a legitimate ground for eviction.⁸⁰ The second one was the right of the owner to enter the dwelling twice a year, and refusal of entry became a ground for eviction.⁸¹ And the third option was for the previous owner to move the tenant to a new adequate flat at any time and without any reason.⁸²

Furthermore, the new leasing relationship was also seen as a problem for previous owners, who owned this property essentially only on paper. This led to “personal and judicial disputes” where the previous owners used all legal means available to evict former tenants.⁸³ This form of pressure from the previous owners led to some of the tenants moving out on their own, before a formal eviction order was issued. This demanded more attention by the Court as a special factor to the problem of evictions. Instead it stripped some of the applicants of their victim status under

⁷⁸ Ibid. § 215.

⁷⁹ Ibid. § 150.

⁸⁰ Ibid. § 230.

⁸¹ Ibid. § 216.

⁸² Ibid. § 40.

⁸³ Ibid. § 217.

Article 34 of the Convention since they vacated the premises voluntarily.⁸⁴ That being said, the Court stated in its prior case-law that the threat of eviction came within the scope of Article 8, even though it was not executed.⁸⁵ I would argue that the same should have been applied in the current case, since the pressure from previous tenants, which in the case of applicant no. 4 resulted in depression and attempted suicide, was directly responsible for their decision to move out “voluntarily”.⁸⁶

There are two other points of criticism in regard to Court’s assessment. The first one touches upon the financial situation of the remaining applicants. In the case of applicant no. 2, since at the time of her eviction, she claimed, she was living on the “verge of poverty, moving from different flats and (...) student rooms”, it is obvious that she is to be considered a vulnerable person, and that her flat was of an existential importance.⁸⁷ It is worth mentioning that the Slovenian courts themselves classified her eviction as forced.⁸⁸ Applicant no. 6 was threatened with effective bankruptcy, after the Supreme Court reversed the existing case-law deciding that “users of denationalized flats could not demand the continuation of a non-profit lease following the demise of the tenant” (which in his case, was his father who died some 10 years before that). This prompted the previous owner to ask for a market rent for that period, which the applicant could not possibly afford.⁸⁹ The third remaining applicant owned a holiday house in another city, and the house did not have heating nor thermal insulation. Yet, it was declared “adequate” by the

⁸⁴ Ibid. § 225.

⁸⁵ Larkos v Cyprus, No. 29515/95 (18/02/1999), § 28.

⁸⁶ Berger-Krall and Others v Slovenia. § 226.

⁸⁷ Ibid. §224.

⁸⁸ Ibid.

⁸⁹ Ibid. § 228.

domestic courts and an eviction order granted. This applicant stated that she had to choose between homelessness and moving outside of the city she worked in.⁹⁰

Therefore, all three remaining applicants could be considered on the low-income spectrum of the society in Slovenia at that point. And the Court explicitly noted that in its assessment, which deserves praise.⁹¹ Unfortunately, when assessing the necessity of the measure, the Court stated that the rents were lower than ones on the free-market, and none of the applicant has submitted evidence showing that they could not afford rent.⁹² It seems that this goes directly against what was stated by the applicants and which the Court accepted. This is unfortunate as this was a perfect opportunity to recognize a link between privatization of flats and financially detrimental effects it has on former tenants in post-soviet countries. That the lack of paperwork, against the statements already made and accepted, was a decisive factor in finding a no violation of Article 8, is very regrettable.

The second point of criticism of the Court's assessment is that it declared that the new grounds of eviction are "essentially similar" to other lease agreements of other Member States and that they were justified due to the reinforced protections enjoyed by the former holders of specially protected tenancy rights, and the limitations placed upon the previous owners.⁹³ However, as stated before, these protections in practice were not as strong, as evidently, the applicants were faced with pressure and chicanery from the previous owners, and the new grounds left them more vulnerable since it was in the previous owners' best interest to evict them. Additionally, I will have to reiterate that the property rights of the previous owners cannot have the same weight as the

⁹⁰ Ibid. § 249.

⁹¹ Ibid. § 266.

⁹² Ibid. § 272.

⁹³ Ibid. § 273.

rights under Article 8 of the tenants. Previous owners' right to this property was the product of complex inheritance legalization which I will not even attempt to uncover, but having in mind approximately two generations had passed since it was nationalized, I would argue that it should have been a mitigating factor when balancing it against Article 8 rights of the tenants.

This case was also raised under Article 1 of Protocol 1, both alone and in conjunction with Article 14, however only parts of these claims are relevant in regard to forced evictions. The main issue claimed by the applicant was that their special tenancy rights amounted to property rights, which they based on Court's prior-case law, and that the new housing legislation violated that right by the decrease in the protection of their tenancy rights.⁹⁴ New grounds of eviction weakened the legal security of the applicants, which is one of the criteria to adequate housing mentioned in the General Comment 7, and directly corresponds to protection against forced evictions. Additionally, the Court once again noted that financial situation of the applicants was a factor, in principle, but however did not take it into account in the overall assessment.⁹⁵ In conclusion, the question of whether "fair balance" was struck between the previous owners and the tenants was crucial in determining whether there was a violation.⁹⁶

One further point worth noting here is that *FEANTSA v Slovenia* decision before the ECSR was mentioned explicitly in this case.

⁹⁴ On legitimate expectation to lease *See: Stretch v UK*; Cancellation of special tenancy rights are considered possession *See: Mago v Bosnia and Herzegovina* § 95; Right to purchase dwelling by the holder of special tenancy rights is considered a possession *Brezec v Croatia* § 45.

⁹⁵ *Berger-Krall and Others v Slovenia* § 182.

⁹⁶ *Ibid.* § 211-212.

B. European Committee of Social Rights

What makes *FEANTSA v Slovenia* a perfect comparator, is that the legislation complained about in this decision is the very same one discussed above. FEANSTA⁹⁷ claimed that by adopting the Housing Act 1991, Slovenia failed to ensure an effective right to housing to its citizens.⁹⁸ The Act in question did not provide for former holders of the specially protected tenancy rights the same security of tenure when privatizing flats acquired through nationalization, which left 13,000 families in “an extremely precarious position.”⁹⁹ The cost of rent and the new grounds of eviction, discussed above, added to the overall lack of insecurity of tenure of these families. Thus, once again, we have a confirmation of economic hardship that the process of transition caused.

Slovenia ratified the Revised European Social Charter in 1999, and therefore in this case FEANTSA complained that the Slovenian legislation is not in conformity with Article 16 and Article 31, taken separately and in conjunction with Article E.

Admittedly, the main issue in this complaint were not evictions *per se*, but the destabilizing effecting of the new legislation, however its substance has a great overlap with the fact-pattern of the *Berger-Krall* case. Since the legislation in question decreased occupancy rights of special tenancy holders, especially in regard to not being able to purchase the flat they have been not only living for years, but also invested in, together with the increasing rent, these tenants were left with

⁹⁷ FEANTSA is an European organization that focuses on homelessness, and has a consultative status with the Council of Europe, therefore it has standing to lodge collective complaints under the Article 1(b) of the Additional Protocol from 1995.

⁹⁸ FEANTSA v Slovenia § 6.

⁹⁹ Ibid.

little options. Most of the tenants were now elderly which added an additional layer to the hardship.¹⁰⁰

FEANTSA also raised that previous owners also employed all kinds of methods in order to evict these tenants, so they can sell the flats at market value.¹⁰¹ Therefore, it could be argued that the evictions, or threats of eviction are an overarching issue in this complaint. Unfortunately, the Committee did not elaborate on that issue explicitly, but rather focused on the inability of the tenants in denationalized flats to purchase their homes at an advantageous price, a right which the tenants of flats acquired in public property through other means, enjoyed. This difference in treatment is what amounted to discrimination under Article E.

In summary, both bodies tackled the issue of privatization as a culprit in enjoyment of housing rights in Europe. Forced evictions in these cases were an unfortunate result of transitional legislation which privatized almost 2/3 of the entire housing stock. It is evident that the change in legislation left former tenants worse off in general, however especially due to the fact that they were more susceptible to evictions, both on legal grounds, but also in reality, since the previous owners, naturally, did not want to be limited in the use of these properties. Additionally, the balancing between the right to property and housing rights, seems questionable, especially in this context where that property belonged to the owner's family some 50 years ago, but the tenants lived and invested in that flat for years.

¹⁰⁰ Ibid. § 57.

¹⁰¹ Ibid. § 53.

Chapter 3 - Evictions of Roma families

The practice of forced evictions disproportionately affects Roma, Sinti and Traveller communities throughout Europe.¹⁰² Historically marginalized, the Roma communities stand on an intersection of economic, racial and social stigmas, which exist as a backdrop to issues such as housing. Segregated informal settlements, without basic amenities such as plumbing and sewage, are a visible result of deep-rooted discriminatory practices aimed at these minority groups. The main issue occurs when these settlements are built without official authorization or registration, increasing the legal insecurity of tenure and the risk of forced evictions. Lack of basic infrastructure and building permits are then used against these communities as a reason for eviction. A vicious cycle then follows where states refuse to develop lands that these communities occupy, since they do not hold official titles, but at the same time, deny official recognition of the tenure due to the inadequate infrastructure.¹⁰³

There are three distinctive characteristics which set this type of eviction apart from the rest. Firstly, there is a certain group component to it, as entire communities are often evicted together at the same time. If alternative accommodation is not provided, entire families with elderly and children are rendered homeless and with nowhere to go. This group component is especially interesting in the context of the ECtHR, having in mind that it only deals with individual petitions.¹⁰⁴ That being said, culture and cultural identity is also an element which both the ECtHR

¹⁰² Difference between Roma and Sinti is based on self-identification even though formally Sinti belong to Roma communities; Travellers are distinct ethnic minority group found in France, Italy and the UK, which lives an itinerant lifestyle.

¹⁰³ Commissioner for Human Rights, Human rights of Roma and Travellers in Europe, 2010, p. 20.

¹⁰⁴ Although Art. 34 of the ECHR gives standing to 'group of individuals' as well, the term is understood to refer to groups "which have been established in a regular way according to the law of one of the Contracting States." P. van Dijk, F. van Hoof, A. van Rijn, L. Zwaak (eds), *Theory and Practice of the European Convention on Human Rights* (5th ed, Intersentia, 2018), 48.

and ECSR took into consideration when examining these cases.¹⁰⁵ This meant that certain needs and a traditional lifestyle need to not only be recognized but also facilitated in the context of housing policies.¹⁰⁶ It should be noted that this mostly concerns the Traveller community, which will not be in the focus of this Chapter, nevertheless, this distinctive feature needs to be identified.

Since antigypsyism, “the last acceptable form of racism in Europe” is still very much present on the continent, the concept of vulnerability presents itself as the third characteristic of these cases.¹⁰⁷ ECHR has taken that approach firstly in *D.H. and Others*, and confirmed it in subsequent case-law stating that “as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority” and therefore, “require special protection”.¹⁰⁸ ECRS took a similar approach, explicitly acknowledging Roma communities as a vulnerable group and held States, especially “repeat offender” states, to significant positive obligations.¹⁰⁹

Firstly, we will look into *Yordanova and Others v Bulgaria*¹¹⁰ before the ECtHR and following that we will examine how the European Committee dealt with Roma eviction cases in *European Roma Rights Centre v Bulgaria*¹¹¹ and *European Roma Rights Center v Greece*¹¹²

¹⁰⁵ *Chapman v UK*; *Buckley v UK*; *Winterstein v France*. ESCR uses ECtHR judgements directly in *ERRC v Greece*; *ERRC v Bulgaria*; *FIDH v Ireland* No. 110/2014 (12/05/2017).

¹⁰⁶ *Connors v UK* § 84

¹⁰⁷ Mr. Alvaro Gil-Robles, Commissioner for Human Rights report, November 2004, para 144.

¹⁰⁸ *D.H. and Others v Czech Republic*, No. 57325/00, (13/11/2007) § 182; *Orsus and Others v Croatia*, No. 15766/03 (16/03/2010).

¹⁰⁹ Term “repeat offender” found in: Hohmann, Jessie, *The Right to Housing: Law, Concepts, Possibilities*: 61. For case-law see: *ERRC v Greece* No. 15/2003 (08/12/2004); *ERRC v Bulgaria*, No. 31/2005 (18/10/2006); *FIDH v Ireland* No. 110/2014, (12/05/2017).

¹¹⁰ *Yordanova and Others v Bulgaria* No. 25446/06 (24/04/2012).

¹¹¹ *European Roma Rights Centre v Bulgaria* No. 31/2005 (18/10/2006).

¹¹² *European Roma Rights Center v Greece* No. 31/2005 (18/10/2006).

A. European Court of Human Rights

Yordanova is the leading case, in terms of the Court's progressive reasoning, in the sphere of forced evictions. The first element that sets this case apart is the use of interim measure by the Court to halt the eviction. This was turning point for the Court since until then it granted the measure under Rule 39 of the Rules of the Court only in cases regarding Article 2, 3, 4 and 5.¹¹³ Thus, a new form of immediate, yet temporary, protections was unlocked for rights encompassed under Article 8.

The applicants in this case are Roma families, who settled down in Batalova Vodenitsa neighborhood in Sofia. Some families arrived there in the 1960s, while some moved there later in the 1990s, and they subsequently built their homes on State land without any prior authorization. As a result, this neighborhood area slowly developed into a Roma settlement with around 200 people living there.¹¹⁴ This settlement did not have sewage or plumbing and could therefore not be legalized without substantial prior renovation. It is obvious that this situation did not have a solution, since the residents could not afford to improve their houses which was needed for the legalization, but legalization was needed for public services such as waste collection to be available for them.

They have been living there fairly undisturbed until 2005 when the land in question was sold to a private investor and the district mayor ordered their eviction. A notable feature in this case was the apparent lack of political will to recognize the problems this community faced.

¹¹³ On interim measures see: B. Rainey, E. Wicks, C. Ovey, *Jacobs, White, and Ovey - The European Convention on Human Rights* (7th ed., OUP, 2017), 22-24.

¹¹⁴*Supra note*, §1-14.

Instead, local authorities used the dissatisfaction of non-Roma population to justify this measure. The Court later directly addressed this issue, stating that national strategies did not show much results if there is a clear lack of implementation on the regional and local level.¹¹⁵

The applicants claimed that their eviction would violate their rights under Article 8, among other rights as well. Therefore, the main issue to be assessed first was whether these houses constituted a “home” in terms of Article 8. As discussed above, the matter of (un)lawfulness of the dwelling is not important for the Court in examining whether something is to be classified as a home or not.¹¹⁶ By using the “sufficient and continuous link” standard inexplicitly, the Court easily found that these houses were in fact “homes” for these applicants, and therefore that their expulsion not only interfered with their “homes” but since this was a community of several hundred people whose livelihoods and family ties depended on living in close proximity, their “private and family life” were affected as well.¹¹⁷ Court’s recognition of this communal aspect, as well as its understanding for their unwillingness to move, is a definitive step forward towards a more comprehensive understanding of Roma rights and housing.

In this vein, there are three notable aspects to this case, which make this judgement a landmark judgement. Firstly, the Court addressed for the first time in the eviction case, the European Social Charter and the European Committee of Social Rights decision together with the ICESCR and General Comment No. 7. Even though, seemingly only listed as relevant law, these documents were used to entrench the notion that principles of Article 8 are closely linked together

¹¹⁵ Yordanova and Others, §128.

¹¹⁶ McCann v the UK § 46.

¹¹⁷ Adelaide Remiche, “Yordanova and Others v Bulgaria: The influence of the social rights to adequate housing on the interpretation of the civil right to respect for one’s home,” *Human Rights Law Review* vol. 12 (4), (2012): 787-800.

to the principle of adequate housing, found in the ESC and the ICESCR.¹¹⁸ If they were to be evicted, the applicants would be separated from their families and the relationships they built over a long period of time, but also most of them claimed to be economically dependent on trading amongst themselves. Therefore, this sort of forced evictions contains not only the civil right aspect but the socio-economic element as well.

Another strong point that the Court had made is the denial of the Government's justification for the eviction by invoking the unlawfulness of the applicants' occupation. Therefore, the right to property (of the State) is not a legitimate reason on its own to remove people occupying it without authorization. The Court elaborated by saying that wide margin of appreciation does exist in spheres such as housing policies in general, however, it will be narrowed down when "intimate and key rights" are at stake.¹¹⁹ This is a surprising statement made by the Court, since right to property is deemed as one of the most important rights in western liberal societies.¹²⁰ Simply providing the proof of ownership is not enough to render entire communities homeless, unless it was found to be "necessary in a democratic society". The existence of sufficient procedural safeguards, in particular whether the decision-making process was fair and afforded due respect to the interests safeguarded by Article 8, are the ones determining the proportionality of the measure.¹²¹

Furthermore, the Court acknowledged the specific "disadvantaged" status of the group in question, especially pointing out that when entire communities are concerned, such cases need to

¹¹⁸ Ibid.

¹¹⁹ Yordanova and Others, §118.

¹²⁰ Jeff Noonan, "Rights, Needs, and the Moral Ground for Democratic Society", *Rethinking Marxism*, Vol. 16, No. 3 (July 2014):311-325.

¹²¹ Yordanova and Others, §118.

be treated as “entirely different from routine cases”.¹²² The underprivileged status needs to be considered as a relevant factor when assessing proportionality of the measure.¹²³ By twisting the logic behind Article 14, the Government tried to argue that by granting the special treatment to this group, it would result in discrimination of the majority. The Court, however, promptly rejected this argument by stating that certain positive obligations do exist in order to remedy inequalities, which might encompass the duty to treat certain groups differently in order to do so.¹²⁴

Having said this, the third praise-worthy element is that the consequence of eviction, meaning homelessness, is recognized as a distinct feature of the proportionality assessment. Neither were alternative measures to eviction considered, nor was alternative housing provided after assessing it was necessary by the domestic authorities. Therefore, the Court found that both the circumstances and the consequences are a viable factor in assessing the proportionality. As a result, violation of Article 8 was found.

Unfortunately, the Court missed its chance to make a stronger statement regarding the discriminatory element, based on racial and ethnic origin. Throughout the case the issue of racial tensions has been raised, from the protests of the non-Roma residents to the dismissive comments made by local political leaders. Especially having in mind that the European Committee of Social Rights dealt with this exact issue in its decision which will be examined later. The Court found no violation of Article 8 in conjunction of Article 14. However, there is an apparent need for the Court to explicitly examine evictions of Roma communities under this article, since the reasons for evictions and the lack of procedural safeguards may be discriminatory in its core. In the present case, the law allowing the removal was neutral in its substance, but disproportionately effected this

¹²²Yordanova and Others, §121.

¹²³ Ibid. §129-133.

¹²⁴ Ibid. §129.

community, and it could be argued that it amounts to indirect discrimination.¹²⁵ This will be discussed in the next part.

B. European Committee of Social Rights

ERRC v Greece is the first case to examine a violation of the right to housing before the ECSR. The complainant organization claimed that Greek legislation denied effective right to housing to Roma communities by discriminating against them. The result of this legislation is racial segregation and widespread discrimination of Roma communities. Lack of secure tenure and discriminatory practices of authorities subject this community disproportionately to forced evictions.¹²⁶ The complaint consisted of three separate issues regarding housing, however we will be only focusing on the last one, the systemic eviction of Roma from sites or dwellings unlawfully occupied by them.¹²⁷

Since Greece did not ratify the Revised Charter, the claims had to be brought under Article 16 in conjunction with the Preamble, which contains a proscription against discrimination. The Committee found that one of the fundamental purposes of the Charter is to promote social inclusion and solidarity, but more importantly, it stated that States have an obligation under the Charter to respect differences, especially in the context of Roma inclusion. It used the example of *Connors v UK* by the ECtHR which established that there is a positive obligation on States to “facilitate the

¹²⁵ Prohibiting different treatment of persons in similar situations might not lead to equality in all cases, indeed similar treatment might leave them at a particular disadvantage. See: European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination* (Luxembourg: Publications Office of the EU, 2018): 53; Mathias Moschel, “The Strasbourg Court and Indirect Race Discrimination: Going beyond the education domain,” *The Modern Review* 80(1) (2017): 121-132.

¹²⁶ *European Roma Rights Center v Greece* §11.

¹²⁷ *Ibid.* § 17.

gypsy way of life”, therefore we see how the Council of Europe bodies try to develop standards, at least in this field, with somewhat cohesion although the Court is less engaging with the ESCR than the other way around.¹²⁸

Even though the scope of Article 16 does not contain an explicit prohibition of forced evictions, the Committee stated that this Article contains an obligation to provide and promote housing, which automatically extends to protection from unlawful eviction.¹²⁹ The Committee very plainly noted that right to housing is crucial for exercise of both civil and political but as well as economic, social and cultural rights, confirming that right to housing is one of the most fundamental rights.¹³⁰ Even though this is deemed as a progressive approach, more elaboration from Committee on this issue would be welcome.

However, the most notable feature is the three-part test that Committee established in its assessment of violation of forced eviction of illegal occupation. Namely, the State must not define illegal occupation unduly widely; eviction should be in accordance with rules of procedure and these rules should be sufficiently protective of the rights of persons concerned.¹³¹ That being said, these obligations do not seem very assertive overall, especially having in mind the use of words such as “should” instead of “must”. Additionally, the lack of clarification regarding the discrimination backdrop of this legislation is apparent. According to a follow-up report from 2018, Greece still has not adopted adequate changes to its legislation to remedy the situation of Roma families regarding forced eviction.¹³²

¹²⁸ Ibid. § 20.

¹²⁹ Ibid. § 24.

¹³⁰ Ibid.

¹³¹ Ibid. § 51.

¹³² 2nd Assessment to follow-up: International Center for the Legal Protection of Human Rights (INTERIGHTS) V Greece Complaint No. 49/2008 (06/12/2018).

What makes *ERRC v Bulgaria* (31/2005) an exciting comparator is the general similarities of issues raised as in *ERRC v Greece*, but also a great overlap with *Yordanova and Others*, which, as mentioned above, references this decision explicitly.¹³³ ERRC argued that existing Bulgarian legislation (the very same one mentioned in *Yordanova*) discriminates against Roma. As a result, Roma settlements are segregated, with inadequate infrastructure which as a result contributes to an overall lack of legal security of tenure and subjects them to forced evictions.¹³⁴ Since Bulgaria did ratify the Revised Charter, but did not Article 31, the complaint was raised under Article 16 in conjunction with Article E.

The Government challenged the scope of Article 16 initially, claiming that the protection afforded to the right to housing under this article are “considerably more restricted” to ones provided under 31.¹³⁵ However, the Committee by referring back to its interpretation in *ERRC v Greece*, stated that though different, these provisions do partially overlap, especially in notions of adequate housing and forced evictions which are “identical” in both Articles.¹³⁶ Furthermore, the Committee added that those interpretations given for provisions under the Charter from 1961, remain in place for provisions which were not amended by the Revised Charter.¹³⁷ This essentially, broadened the understanding of Article 16, making housing the central axis of the article.¹³⁸ Not only that, Article 16 became the main tool for protections against evictions, in the light of low ratification rate of Article 31.

¹³³ *Yordanova and Others*, § 73-74.

¹³⁴ *ERRC v Bulgaria*, § 7.

¹³⁵ *Ibid.* §13.

¹³⁶ *Ibid.* § 16-17.

¹³⁷ *Ibid.* § 18.

¹³⁸ Hohmann, Jessie, *The Right to Housing: Law, Concepts, Possibilities*, (Oxford: Hart Publishing Limited, 2013), 61-62.

There are two main concerns in regard to Roma housing in Bulgaria, as raised by the complainant organization, which are also very similar to ones occurring in Greece. We will examine only the eviction portion of the decision.

ERRC claimed that the legislative changes made it almost impossible for Roma to legalize their dwellings, which in turn prevented them to improve the conditions of their dwellings. Additionally, this, makes it a great comparator to *Yordanova* as well, since the main culprit was the legislation. The procedure for legalization, in the present case, was not offered in Romani language and was described as complicated and expensive. At the same time, most of these dwellings were built outside of the city zones, therefore they did not have access to public services such as waste collection, electricity and plumbing. As a result, these settlements did not meet requirements for legalization anyway.¹³⁹

When approaching this case, the Committee used the same three-part test as in *ERRC v Greece*, however this time it added other interpretations as well, which strengthened the protections under the Article.¹⁴⁰ It emphasized the importance of dignity of persons concerned and stressed the need for alternative accommodation to be provided.¹⁴¹ It added that procedures for evictions must be established in the law and that legal remedies and legal aid needs to be provided to those who seek redress from the courts. On its face, this seems as an important addition to the protections against evictions, especially the provision of legal aid, as access to legal remedies present themselves as a specific hurdle oftentimes.¹⁴² Unfortunately, using its standard language, the Committee failed to elaborate further what these obligations entail specifically.

¹³⁹ ERRC v Bulgaria, §45-46.

¹⁴⁰ Conclusions France Article 31§2, 2003 p 225; Italy, p. 345; Slovenia, p. 557; Sweden, p. 653.

¹⁴¹ ERRC v Bulgaria, § 52.

¹⁴² Special Rapporteur on adequate housing's report on Access to justice for the right to housing, 15 January 2019. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/007/29/PDF/G1900729.pdf?OpenElement>

Moreover, the Committee recognized that persons may be driven to commit illegal deeds, in this case illegally occupy land, if they cannot effectively benefit from the rights provided by the legislation. This, in turn, does not justify any sanctions against these people by the State, nor can it continue to deprive them of their rights. The Committee thus, directly holds State accountable for such situations.

Finally, the Committee did assess the discriminatory element to the legislation, state that it does in fact disproportionately affects Roma families, by permitting them to legalize their dwellings and rendering them homeless. Based on the Committee's conclusions from 2011, Bulgaria did not improve its legislation to be in conformity with Article 16.¹⁴³

In conclusion, Roma eviction cases constitute a big portion of the overall eviction cases before the both bodies. What is noticeable is that both the Committee and the Court dealt with same countries, on the same grounds. Seemingly, both bodies mention and somewhat rely on the standards established by the other one, therefore in principle, obligations appear to be intertwined. However, the Committee relies on standards established by the ECtHR much more than *vice versa*, with the Court mentioning the Committee's decision in the relevant law but not in the merits part of the judgement. The result of this is most noticeable in their assessment on the discriminatory part of the cases, where the Committee found that Bulgaria was discriminating against Roma 6 years before the case got to the Court, which did not find separate issue under Article 14. On the other hand, the concepts of vulnerability and the disadvantages status of this group is similar with

¹⁴³ Conclusions Bulgaria Article 16, 2011.

both bodies. This praise-worthy conclusion of both bodies established stronger positive obligations on the States when solving Roma housing issues in general.

Conclusion

Poverty and evictions are intertwined, making persons who are already vulnerable to be most at risk for their right to adequate housing to be interfered with. Even though a number of international instruments do contain right to housing, it is still considered a black sheep of human rights and is looked upon with skepticism, in all its unattainability and expensiveness. This forced the ECtHR and ECSR to get more creative with how these violations get framed, which allowed them to further develop their case-law in this field. This is especially relevant in the sphere of Roma evictions, where evictions were framed as a matter of family protection and family life. Economic vulnerability and social exclusion both were taken as a factor by both bodies when dealing with evictions. Therefore, standards established by the ECtHR and the ECSR show a certain overlap, though the Committee is much more willing to borrow from the Court's jurisprudence than the other way around. This is most obvious regarding the discrimination aspect of these cases, where the ECSR is much more prepared to tackled on this issue than the Court. Additionally, as we saw from these two types of cases, these two bodies tend to take on similar cases, deciding on violations from the same countries regarding similar issues.

There is an apparent difference in balancing rights to property and individual's protection from forced evictions between privatization cases and Roma cases. Though both regard low-income persons, these bodies are much more comfortable in granting additional protection for Roma communities, by confirming their disadvantaged status as a minority group. Though Roma persons are subjected to other forms of vulnerability, and do deserve a heightened status of protection, hopefully, in the future, poverty as a disadvantage on its own will be recognized by these bodies.

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