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## Notes

# Forced Evictions: Racial Persecution and Social Exclusion of the Roma Minority in Romania

*The increase in forced evictions of Roma communities in the European Union is cause for alarm. In Romania, the Member State with the largest Roma population, they are part of a consistent practice of racial segregation and social exclusion. The discriminatory intent of forced evictions and the lack of domestic procedural safeguards constitute a violation of the country's international and regional treaty obligations. However, despite a recent influx of cases that reveal the influence of prejudice over the relevant state action, the European Court of Human Rights has failed to resolve the matter. Even where it found breaches of the right to respect for one's private and family life, it failed to recognize the discriminatory purpose of official policies. This Note proposes a new legal framework for the Court to adopt in its adjudication of cases concerning forced evictions of vulnerable minorities. It argues that due to the profound impact forced evictions have on the Roma community, the Court should view them as a violation of the prohibition of cruel, inhuman and degrading treatment or punishment. By doing so, it would increase pressure on national governments and effectively compel them to comply with international standards governing forced evictions.*

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## INTRODUCTION

In the winter of 2010, with temperatures plummeting to  $-20^{\circ}\text{C}/-4^{\circ}\text{F}$ , seventy-six Roma<sup>1</sup> families were evicted from their homes in the center of the Romanian city of Cluj-Napoca.<sup>2</sup> They were relocated to the industrial area of Pata Rât, a measure that effectively amounted to racial segregation.<sup>3</sup> Found in close proximity to both a landfill and a former chemical waste dump, Pata Rât is a slum inhabited by members of the Roma community, many of whom had been gradually removed from the city center over the past decades.<sup>4</sup> It is divided into three neighborhoods: two, in a twist of irony, called Dallas I and Dallas II, and the third is the landfill itself. Together they house over 1,500 people.<sup>5</sup>

Of the families evicted in 2010, forty were provided with alternative accommodation: a room for each family in overcrowded social housing units, with no hot running water and no heating.<sup>6</sup> The

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1. This Note uses the term “Roma” in accordance with the Council of Europe’s definition: “Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies.” *Descriptive Glossary of terms relating to Roma issues*, COUNCIL OF EUROPE (May 18, 2012), <http://a.cs.coe.int/team20/cahrom/documents/Glossary%20Roma%20EN%20version%2018%20May%202012.pdf> [<https://perma.cc/S67J-UVPU>].

2. See Press Release, Amnesty Int’l, Romani Community Is Fighting Against Forced Evictions and Housing Segregation in Romania (Dec. 17, 2015), <https://www.amnesty.org/en/documents/eur39/3100/2015/en> [<https://perma.cc/4ECJ-H5BL>].

3. AMNESTY INT’L, MIND THE LEGAL GAP: ROMA AND THE RIGHT TO HOUSING IN ROMANIA (2011), <https://www.amnestyusa.org/sites/default/files/eur390042011en.pdf> [<https://perma.cc/9AAV-5T8N>].

4. See generally Jerome Taylor, *The Truth About Romania’s Gypsies: Not Coming Over Here, Not Stealing Our Jobs*, THE INDEP. (Feb. 11, 2013), <http://www.independent.co.uk/news/world/europe/the-truth-about-romanas-gypsies-not-coming-over-here-not-stealing-our-jobs-8489097.html> [<https://perma.cc/CJ5G-MRPJ>]; Claudia Ciobanu, *Romania’s New Kids On The Block*, OPEN DEMOCRACY (Nov. 28, 2016), <https://www.opendemocracy.net/can-europe-make-it/claudia-ciobanu/romanas-new-kids-on-block> [<https://perma.cc/W8FY-P6LG>]; *Inside Romania’s Toxic Waste Dump*, SKY VIDEOS (Jan. 26, 2016), <https://www.youtube.com/watch?v=zA7FKyYHFpc>, [<https://perma.cc/4BPN-C6WN>]; Ionuț Dulamita, *Oameni Tratați ca Niște Animale: “Să vină cu macara, să ne ridice și să ne arunce în mare,”* THINK OUTSIDE THE BOX (Oct. 6, 2014), <http://totb.ro/oameni-tratati-ca-niste-animale-sa-vina-cu-o-macara-sa-ne-ridice-si-sa-ne-arunce-in-mare/> [<https://perma.cc/9G2V-U7HJ>].

5. Robert Kushen, *Unfinished Business: Roma Inclusion in Europe*, AL JAZEERA (Apr. 8, 2014), <http://www.aljazeera.com/indepth/opinion/2014/04/unfinished-business-roma-inclusi-20144895951886264.html>, [<https://perma.cc/NRM8-PEPT>].

6. AMNESTY INT’L, *supra* note 3, at 8.

other thirty-six families were told to construct their own houses nearby, presumably on the toxic waste site.<sup>7</sup> Practically, they were left homeless.

The Roma of Pata Rât have continued to live in substandard conditions, without access to basic health care, social services, educational opportunities, or a healthy living environment.<sup>8</sup> Their unresolved and unstable housing situation has exacerbated the vulnerability of their circumstances. It effectively prevents the social and economic development of Roma families, furthering the victimization of their community. Their situation, however, is by no means an anomaly in Romania or Europe.<sup>9</sup> Forced evictions of entire Roma communities have been a regular occurrence for the past several years all across the continent—in Italy,<sup>10</sup> France,<sup>11</sup> Hungary,<sup>12</sup> and Serbia,<sup>13</sup> among others. Despite escalating media coverage of these events, both national and international authorities have failed take meaningful action.

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7. *Id.*

8. See, e.g., *Briefing from Amnesty Int'l et al. to the Romanian Government on the right to adequate housing with right to the marginalized Romani communities*, AMNESTY INT'L (Feb. 1, 2013), <https://www.amnesty.org/en/documents/eur39/001/2013/en/> [<https://perma.cc/JJH7-N979>] (“10% of children have been placed in special education classes since being relocated to Pata Rat despite having never been previously enrolled in such classes.”).

9. Romania was selected for this Note for several reasons. Firstly, it has the largest Roma minority in all of Europe. Secondly, it is a party to all the major relevant treaties and conventions. Thirdly, its complicated history of property law present an interesting case for background analysis.

10. See, e.g., *Roma Evictions Triple in Italian Capital*, THE LOCAL (Oct. 5, 2015), <http://www.thelocal.it/20151005/roma-evictions-triple-in-italian-capital> [<https://perma.cc/Y52F-6E4G>].

11. See, e.g., *French Left and Right unite on mass evictions of Roma: Hollande's socialists force thousands more Roma onto the streets*, EUR. ROMA RTS. CTR. (Dec. 12, 2016), <http://www.errc.org/article/french-left-and-right-unite-on-mass-evictions-of-roma-hollandes-socialists-force-thousands-more-roma-onto-the-streets/4538>, [<https://perma.cc/5TTV-HRQ2>].

12. See, e.g., Stephen Fee, *Fearing Eviction, Hungary's Roma wonder "are we next?,"* PBS NEWSHOUR (Sept. 21, 2014), <http://www.pbs.org/newshour/updates/producers-notebook-hungarians-believe-criminality-roma-blood/> [<https://perma.cc/HK8P-AAW5>]. See also *Hungary: Halt Evictions of Roma Families*, AMNESTY INT'L (June 29, 2015), <https://www.amnestyusa.org/get-involved/take-action-now/hungary-halt-eviction-of-roma-families-ua-8315>.

13. See, e.g., *Serbia: Forcibly Evicted Roma Still Awaiting Resettlement Despite EU Millions*, AMNESTY INT'L (Apr. 8, 2015), <https://www.amnesty.org/en/latest/news/2015/04/serbia-forcibly-evicted-roma-still-awaiting-resettlement-despite-eu-millions/>, [<https://perma.cc/3HRB-T3BF>].

The forced eviction of entire communities is a known problem in the international legal field. Defined as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or lands which they occupy, without the provision of or access to appropriate forms of legal or other protection,<sup>14</sup> forced evictions have destructive repercussions far beyond the loss of property. Mass evictions can impair cultural and educational development, ravage familial and social ties, and extinguish sources of livelihood. They amount to gross violations of fundamental human rights.<sup>15</sup>

As members of the international community, States are under the legal obligation to ensure their citizens’ rights to adequate housing, which includes, inter alia, “the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.”<sup>16</sup> This duty implicitly incorporates a protection from forced evictions from one’s home. Although these rights must be provided without discrimination of any kind, vulnerable social groups, particularly minorities, are often the first to be deprived of such safeguards.<sup>17</sup>

In Europe, the European Court of Human Rights (the Court) stands as the bastion of human rights. It has been tasked with interpreting and applying the European Convention of Human Rights (the Convention), and is the last resort for victims alleging violations thereunder by members of the Council of Europe.<sup>18</sup> Although the Court has examined forced evictions of the Roma in several instances, it has failed to successfully combat this issue. Until now, it has granted local authorities a large margin of appreciation. Even though, in limited circumstances, it has found a breach of human

14. Comm. on Econ., Soc. and Cultural Rts., Rep. on the Human Right to Adequate Housing (Art. 11(1)), ¶ 8(a), U.N. Doc. E/1992/23 (Dec. 13, 1991).

15. See UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 25, Forced Evictions and Human Rights* (May 1996), <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf> [https://perma.cc/36BU-3UX3]. See Comm. on Hum. Rts., Res. 1993/77, at 2 (Mar. 19, 1993).

16. Special Rapporteur on Adequate Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, at 5, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007), [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf) [https://perma.cc/9N2D-PRKS].

17. See *id.* (“without discrimination of any kind on the basis of race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status”).

18. See European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14, arts. 32, 34, 35, Nov. 4, 1950, E.T.S. No. 5 [hereinafter European Convention of Human Rights].

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rights provisions providing the right to adequate housing, its jurisprudence has failed to capture the gravity of these violations.

This Note proposes a more effective interpretative framework for the Court to adopt in its struggle against these violations. It points towards a regional solution that would exert political pressure and intensify public scrutiny of government action, and inaction, regarding forced evictions of the Roma. Moreover, the Note stakes out new ground in legal scholarship on the Roma, both through its focus on forced evictions and on the Court. It argues that the current scope of the analysis chosen by the Court is inadequate to address the gravity of the problem of forced evictions. In their ability to upturn one's entire life, evictions are a deeply traumatic experience for the individual and the community. They dismantle traditional ways of life, humiliating those involved. Thus, this Note urges the Court to examine forced evictions through a new lens; it argues that under the standard established by the ECHR, forced evictions do amount to inhuman and degrading treatment as set forth in the Convention. By agreeing to label them as such, the Court would invite further public scrutiny, intensify media attention, and exert pressure on national governments. The weight of the Court's opinion would broaden legal acceptance that forced evictions are a gross violation of human rights, possibly leading to expansion of international and local jurisprudence on the issue.

This analysis proceeds in four parts. Part I provides context for the current situation of the Roma in Romania. It briefly examines the minority's history in the country, and its implications for today's housing situation, going on to present the domestic legislation currently in place and its consequences for forced evictions. Part II proceeds with an analysis of the legal doctrines implicated by Romania's international treaty obligations, with a particular focus on the International Covenant of Economic, Social and Cultural Rights. Part III depicts the European legal framework and sets forth an extensive, chronological assessment of the Court's case law on forced evictions of the Roma. Part IV presents the proposal for a new interpretative framework. It advocates that the Court should examine forced evictions as a type of cruel, inhuman and degrading punishment, in order to give adequate consideration to the magnitude and the disastrous consequences of the problem. This Note concludes by emphasizing the significance of the proposed solution and its potential effects on other targeted groups.

## I. ROMANIAN ROMA: A HISTORY OF INSTITUTIONALIZED RACISM

A. *The Roma in Romania: From Slavery to Communism*

It is not widely known that the Roma were enslaved upon their arrival in the territories of today's Romania, only to remain so for the next 500 years.<sup>19</sup> Considered "less than human"<sup>20</sup> by the local populations, they were sold, exploited, and violated.<sup>21</sup>

Even after the abolition of slavery in Romania in 1864,<sup>22</sup> the Roma continued to be the targets of both official and unofficial acts of discrimination and violence.<sup>23</sup> The legacy of slavery perpetuated their low socioeconomic status, their ethnicity a limiting factor in obtaining most types of employment or education, or acquiring any property rights.<sup>24</sup> It was only in the interwar period, with the introduction of agrarian reforms that granted Roma ownership over small plots of land, that some communities began to assimilate into the local social structures.<sup>25</sup>

This process came to a halt with the ascent of fascism and the growth of Romanian nationalism in the late 1930s and 1940s. General Ion Antonescu's<sup>26</sup> regime, relying on old prejudice and social di-

19. See VIOREL ACHIM, *THE ROMA IN ROMANIAN HISTORY* 27 (2004). See also CATHY O'GRADY & DANIELA TARNOVSKI, CENTER FOR DOCUMENTATION AND INFORMATION ON MINORITIES IN EUROPE–SOUTHEAST EUROPE, *MINORITIES IN SOUTHEAST EUROPE: ROMA OF ROMANIA* 5 (2001), [http://www.edrc.ro/resurse/rapoarte/Roma\\_of\\_Romania.pdf](http://www.edrc.ro/resurse/rapoarte/Roma_of_Romania.pdf) [https://perma.cc/S5Q2-XZDG].

20. ALLIANCE AGAINST ANTIGYPSYISM, *ANTIGYPSYISM—A REFERENCE PAPER* 7 (2016), <http://antigypsyism.eu/wp-content/uploads/2016/10/Antigypsyism-reference-paper-Layouted-version.pdf> [https://perma.cc/89NC-L6QW].

21. *Id.*

22. Oana Oprean, *The Roma of Romania 15–16* (Aug. 2011) (unpublished Ph.D. thesis, DePaul University) (online at <http://via.library.depaul.edu/etd/96/> [https://perma.cc/97FZ-DNW9]).

23. See generally IAN HANCOCK, *THE PARIAH SYNDROME: AN ACCOUNT OF GYPSY SLAVERY AND PERSECUTION* (1987).

24. O'Grady, *supra* note 19, at 7; ELENA ZAMFIR & KATALIN ZAMFIR, *THE ROMA POPULATION: SOCIO-ECONOMIC SITUATION AND COORDINATES OF A SUPPORT PROGRAM* 29 (1993).

25. See ACHIM, *supra* note 19.

26. General Ion Antonescu was a military leader, who became the Prime Minister of Romania in 1940 after the abdication of King Carol II. He was temporarily allied with the ultra-nationalist and anti-Semitic Iron Guard, but after their failed coup d'état in 1941, he took sole control of the country. He allied Romania with Nazi Germany; throughout World War II, his regime caused the deaths of as many as 400,000 people.

visions, implemented policies aimed at the ethnic cleansing of the country of Jews and the Roma.<sup>27</sup> Between 1942 and 1944, over 25,000 Roma were deported to Transnistria for slave labor;<sup>28</sup> expelled from their homes, they were crammed into overcrowded settlements and forced to live in abominable conditions.<sup>29</sup> Typhus and constant food and medicine shortages were rampant in these settlements.<sup>30</sup>

After the collapse of the Antonescu regime in 1944, the Roma were returned to Romania. Only between 6,000 and 14,000 survived the conditions in Transnistria.<sup>31</sup> Although no longer the targets of official policies of racial segregation, their stigmatization and social isolation continued even after the end of the war.

### *B. The Origins and Consequences of the Housing Crisis*

The roots of the current housing crisis faced by the Roma can be traced back to official practices from the communist era. Starting in 1948, the authorities adopted a policy of sedentarization, which amounted to a forced abandonment of the group's traditional nomadic lifestyle and mass participation in the socialist project.<sup>32</sup> The Ro-

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27. Michelle Kelso, 'And Roma Were Victims, Too.' *The Romani Genocide and Holocaust Education in Romania*, 24 *INTERCULTURAL EDUC.* 61, 63 (1993).

28. A region found to the northeast of Romania, it is a strip of land located between the river Dniestr and Ukraine. O'Grady, *supra* note 19, at 8. See also Marian-Viorel Anasta-soaie, *Roma/Gypsies in History of Romania: An Old Challenge for Romanian Historiography*, 3 *ROMANIAN J. OF SOC'Y AND POL.* 262, 269 (2008).

29. Note from an agent carrying out intelligence work in Ochakov from December 5, 1942: "... the Gypsies lived in conditions of indescribable squalor. There was insufficient food. They were given 400g of bread for those fit for work and 200g for children and the elderly. . . As a result of the lack of nourishment provided, some Gypsies, and these formed the majority, lost so much weight that they were skeletal in appearance. Every day, recently especially, ten to fifteen Gypsies would die. They were covered in parasites. There were no doctors available and they had no medicine . . . They have received no soap since they arrived and so consequently they have not washed and have not been able to wash the shirts that they wear." ACHIM, *supra* note 19, at 176-77, 177 n. 45.

30. Kelso, *supra* note 27, at 63.

31. *Id.* ("The official statistic sanctioned by the Romanian Government states that 11,000 Roma died. It was compiled by a commission investigating the Romanian Holocaust, and I believe it discounts the numbers of deaths. My estimates are based on a census carried out by gendarmes in 1944, which found that some 6000 Roma had returned to Romania after the deportation. However, these data were incomplete and most likely the true figure falls someplace in between the two estimates.")

32. See Bogdan Suditu & Daniel-Gabriel Vâlceanu, *Informal Settlements and Squatting in Romania: Socio-Spatial Patterns and Typologies*, 7 *J. OF STUD. & RES. IN HUM.*

ma's rights as a minority group were overlooked, and the group became a target of Romanization policies aimed at its assimilation with ethnic Romanians.<sup>33</sup> In the 1970s, Nicolae Ceaușescu's regime instituted a program of "systematization," which, for the Roma, only meant further forced displacement.<sup>34</sup> Roma settlements on the edges of major cities were demolished, and whole communities were moved from rural areas into semi-urban colonies and impoverished, segregated urban areas, at no point acquiring any real tenure rights to the properties.<sup>35</sup>

The collapse of communism in 1989 aggravated the housing difficulties faced by the Roma. They were now living in informal dwellings of various kinds: houses whose previous owners had been evacuated during the communist era; nationalized buildings owned by the State; homes constructed in violation of urban planning; houses illegally built on unoccupied land, and several other types of settlements.<sup>36</sup> In 1990, the government passed Law 61/1990, later expanding its reach with Law 95/1992, which allowed tenants of nationalized residential units to purchase their apartments at advantageous prices.<sup>37</sup> In 2001, Law 10/2001 was implemented to allow tenants living in re-privatized buildings a five-year grace period during which they could remain in their homes for market rate rent; afterwards, the owner could repurpose his property.<sup>38</sup>

Even though this legislation appeared to outline a magnanimous scheme for tenants of both public and private buildings, it worked to the disadvantage of poor, marginalized communities. Few Roma who lived in State housing had the resources to buy their homes and thus only continued to rent their apartments.<sup>39</sup> By 2001, even fewer could afford to pay rent at the rates set by the market.<sup>40</sup> They were left at the mercy of a corrupt State and predatory land-

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GEOGRAPHY 65, 68 (2013).

33. *See id.* at 69. *See also* ACHIM, *supra* note 19.

34. *See* Oprean, *supra* note 22, at 22.

35. ANGUS FRASER, ȚIGANII: ORIGINILE, MIGRAȚIA ȘI PREZENȚA LOR ÎN EUROPA 289–99 (2008).

36. *See* Suditu and Vâlceanu, *supra* note 32, at 70.

37. Lavinia Stan, *The Roof over Our Heads: Property Restitution in Romania*, 22 J. OF COMMUNIST STUD. & TRANSITION POL. 180, 185–87.

38. Michele Lancione, *Eviction and Housing Racism in Bucharest*, OPEN DEMOCRACY (Sept. 15, 2015) <https://www.opendemocracy.net/can-europe-make-it/michele-lancione/eviction-and-housing-racism-in-bucharest> [<https://perma.cc/4TXF-KBJ7>].

39. *See* Suditu and Vâlceanu, *supra* note 32.

40. *See* Lancione, *supra* note 38.

lords, unable to fend for themselves in a political climate that furthered their social exclusion.

*C. Violence against the Roma: From Mass Attacks to Forced Evictions*

After the collapse of Ceaușescu's regime in 1989, the instability that engulfed the country did not fail to reach the Roma. Throughout the 1990s, they became the targets of mass attacks; during this time, there were more than thirty clashes in Romania that resulted in acts of physical violence against the Roma or their homes.<sup>41</sup> Their protection was low on the new authorities' list of priorities, who often unofficially sanctioned these outbursts of public rage.

Since the transitional period, instances of discrimination and acts of violence against the Roma population have increased substantially.<sup>42</sup> Reports by the European Commission on Racism and Intolerance have time and time again highlighted the prevalence of prejudice in societal attitudes and political discourse, and their tragic repercussions for the Roma.<sup>43</sup> Systematic, institutionalized racism, known as antigypsyism, still stands as a barrier to the Roma's development in all spheres of life.<sup>44</sup> Although the government did in fact

41. See Oprean, *supra* note 22, at 28–30.

42. *Id.* at 25 (“Examples of cruelty and discrimination against the Roma people includes the burning to the ground of their homes, being forced to leave the villages where they had set up their homes, and in some cases being severely attacked and killed.”).

43. See EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, COUNCIL OF EUROPE, ECRI'S COUNTRY-BY-COUNTRY APPROACH: REPORT ON ROMANIA (1999), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-I-1999-009-EN.pdf> [<https://perma.cc/P39M-G45N>]; EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, SECOND REPORT ON ROMANIA (2001), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-II-2002-005-EN.pdf> [<https://perma.cc/BQP5-5MBM>]; EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, THIRD REPORT ON ROMANIA (2005), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-III-2006-3-ENG.pdf> [<https://perma.cc/KLG8-C6KL>]; EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, FOURTH REPORT ON ROMANIA (2014), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf> [<https://perma.cc/XWZ3-QXCD>].

44. Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma ‘gypsy.’ The Roma were seen as “the other,” fundamentally different from mainstream society by virtue of possessing traits presumptively shared by all members of the group. These include both negative stereotypes and positive, exoticized traits. *Antigypsyism—A Reference Paper*, ALLIANCE AGAINST ANTIGYPSYISM (July 2016), <http://antigypsyism.eu/wp-content/uploads/2016/10/Antigypsyism-reference-paper-Layouted-version.pdf> [<https://perma.cc/ZYS7-FBDS>]. The ECRI recalls that anti-

adopt broad anti-discrimination legislation and even created a specialized judicial body tasked with combating the problem, this has not proved successful.<sup>45</sup> Negative stereotypes of Roma continue to negatively impact their treatment in the criminal justice system, the media, the public sphere, politics, employment, education, and, evidently, housing.

Data gathered from European Union Member States has consistently shown high levels of housing deprivation among Roma.<sup>46</sup> In Romania, their historical stigmatization has made this group a particularly vulnerable target of forced evictions proceedings.<sup>47</sup> In 2004, the local authorities of the town of Miercurea-Ciuc forcefully evicted ten to eleven Roma families from buildings owned by the municipali-

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Gypsyism is “a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.” European Commission Against Racism and Intolerance, *General Policy Recommendation No. 13 on Combating Anti-Gypsyism and Discrimination Against Roma*, COUNCIL OF EUROPE (June 24, 2011), [https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N13/e-RPG%2013%20-%20A4.pdf](https://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf), [<https://perma.cc/MDE7-JDRJ>].

45. In 2000, the government adopted Governmental order 137/2000 on the prevention and sanctioning of all forms of discrimination. It also created the National Council to Combat Discrimination, which was expected to oversee the implementation of the new legislation. The Council remains a politicized body, since support from political parties is a sine qua non condition for appointment to it. It is also severely under-funded, with a current budget of 900,000 euros. It most frequently issues warnings or recommendations, and sometimes fines. For example, in 2012 it imposed fines on 35 out of the 113 cases where it had found a breach of the anti-discrimination law. These fines remain extremely low. *See generally*, EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, COUNCIL OF EUROPE THIRD REPORT ON ROMANIA (June 24, 2005), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-III-2006-3-ENG.pdf> [<https://perma.cc/KLG8-C6KL>]; COUNCIL OF EUROPE, EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, FOURTH REPORT ON ROMANIA (2014), <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf> [<https://perma.cc/XWZ3-QXCD>]. *See also*, *Written Comments of Romania* *CRISS Follow-up to the ECRI's Third Report on Romania*, ROMANI CENTRUL ROMILOR PENTRU INTERVENTIE SOCIALA SI STUDII, [http://www.romanicriss.org/PDF/Romani%20CRISS\\_ECRI%20report.pdf](http://www.romanicriss.org/PDF/Romani%20CRISS_ECRI%20report.pdf) [<https://perma.cc/2MHE-DG9J>].

46. EUR. UNION AGENCY FOR FUNDAMENTAL RTS, ANNUAL REPORT 2007—REPORT ON RACISM AND THE MEMBER STATES OF THE EU 88 (2007), <http://fra.europa.eu/en/publication/2011/annual-report-2007-report-racism-and-xenophobia-member-states-eu> [<https://perma.cc/HHT4-TEL4>].

47. Claudia Ciobanu, *Roma fear there is no place for them as Romania's cities modernize*, REUTERS (Mar. 21, 2017), <https://www.reuters.com/article/us-romania-roma-property-feature-idUSKBN16T043> [<https://perma.cc/4JQE-DZ3M>].

ty. They were provided with metallic shacks and wooden sheds on land located right by a sewage treatment plant.<sup>48</sup> In 2010, the eviction of 300 people and their forced resettlement into Pata Rât took place. In 2012, the government of Baia Mare evicted 2,000 Roma residents, offering them space in a former office building of an industrial factory as an alternative.<sup>49</sup> That same year, the mayor of Baia Mare constructed a wall around another Roma settlement to isolate them from the rest of the community, creating a de facto ghetto.<sup>50</sup> In 2013, the municipality of Eforie demolished the homes of 101 Roma.<sup>51</sup> Then, in 2015, it again threatened to evict them from the dilapidated school buildings they had squatted in after becoming homeless.<sup>52</sup>

These are only some of many instances where groups of Roma fell prey to a pattern of forced evictions, the true object of which is racial segregation. Losing one's home is a tragedy with reverberating consequences; it can lead to loss of gainful employment, forfeiture of educational opportunities for one's children, destruction of familial relationships, reduction to poverty, subversion of traditions, and the disintegration of whole communities. The social isolation and discrimination of Roma is a human rights issue encountered in most European States, and one that is consistently ignored by the public.<sup>53</sup> Although legally sanctioned forms of discrimination have

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48. EUR. UNION AGENCY FOR FUNDAMENTAL RTS, HOUSING CONDITIONS OF ROMA AND TRAVELLERS IN THE EUROPEAN UNION: COMPARATIVE REPORT 23–24 (2009), <http://fra.europa.eu/en/publication/2011/housing-conditions-roma-and-travellers-european-union-comparative-report> [<https://perma.cc/ZX85-BUSH>].

49. U.N. Office of the U.N. High Comm. on Hum. Rts, *Mandates 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*, G/SO 214 (78-15) (May 3, 2012),

50. Keith Gladdis, *Life Inside the Romanian Gypsy Ghetto That Is So Grim the Town Mayor Sealed It Off Behind A Wall*, DAILY MAIL (Feb. 28, 2013), <http://www.dailymail.co.uk/news/article-2285796/Romanian-gypsies-living-condemned-ghetto-mayor-built-wall-around.html> [<https://perma.cc/AUK7-28NA>].

51. Alexandra Anton, *Cum Justifică Primăria Eforie Evacuarea Țiganilor de la Internat: Au Devastat Clădirea!*, REPLICA (May 18, 2015), <http://www.replicaonline.ro/cum-justifica-primaria-eforie-evacuarea-tiganilor-de-la-internat-au-devastat-cladirea-222870/> [<https://perma.cc/5TDP-PZH5>].

52. Press Release, Amnesty Int'l, Romania: Eforie Municipality Threatens to Evict Roma Families for Third Time in Two Years (Apr. 29, 2015), [http://www.amnesty.eu/content/assets/public\\_statements/Romania\\_Eforie\\_municipality\\_threatens\\_to\\_evict\\_Roma\\_families\\_third\\_time\\_in\\_two\\_years.pdf](http://www.amnesty.eu/content/assets/public_statements/Romania_Eforie_municipality_threatens_to_evict_Roma_families_third_time_in_two_years.pdf) [<https://perma.cc/FP3K-4LPC>].

53. The Commissioner for Human Rights of the Council of Europe has underlined that he has “encountered one serious human rights problem in practically every member state - the prolonged exclusion and discrimination of the Roma population,” which he said could be

subsidized, anti-Roma sentiment persists.<sup>54</sup> In Romania, a State where a politician can publicly advocate for the sterilization of Roma women or express other overtly racist statements with relative impunity, it comes as no surprise that public opinion remains indifferent to the fate of the Roma.<sup>55</sup>

#### D. Relevant Domestic Legislation

Romania's constitution enshrines the State's commitment to human rights.<sup>56</sup> It also proclaims the inviolability of one's home, subject to a limited derogation provision.<sup>57</sup> The main safeguards against forced evictions are found in the Romanian Civil Code, under Law 202/2010 Article 1(38), which modified the original article 578(1).<sup>58</sup> This amendment prohibits any eviction from a residential

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reversed with a little political will. *Roma Inclusion is mission possible*, COUNCIL OF EUROPE (Dec. 10, 2014), <https://www.coe.int/en/web/commissioner/-/roma-inclusion-is-mission-possible> [<https://perma.cc/FC8W-9HY6>].

54. AIDAN MCGARRY, ROMAPHOBIA: THE LAST ACCEPTABLE FORM OF RACISM 2 (2017).

55. Rares Bulgea, a leader of the National Liberal Party Youth Organization in Alba County states that it would be better for Roma women to be sterilized after their first child in situations where social workers found that the mothers do not have the intention of raising the child in 'humane' conditions. He received a 2000 euro fine and no other punishment. Former President Traian Basescu received two convictions by the country's main anti-discrimination body. The first was in 2007, when he called a TV reporter who was trying to interview him a "stinky gypsy." The second was in 2010 when he openly proclaimed that nomadic gypsies live only off what they steal. He was fined a minor sum, and did not come under any party or public pressure to step down or quit politics. These are only two examples of politicians revealing racial prejudice; countless more can be found. See *Rares Bulgea, sanctionat de sefi de la Bucuresti pentru mesajul despre sterilizarea tigancilor*, PRO TV (Feb. 4, 2013) <http://stirileprotv.ro/stiri/politic/mesajul-presedintelui-tnl-alba-ares-buglea-sustin-sterilizarea-femeii-rrome-in-anumite-conditii.html> [<https://perma.cc/FYV5-DBLB>].

56. CONST. OF ROMANIA (1991) § 20, <http://www.cdep.ro/pls/dic/site.page?id=256&idl=2&par1=2> [<https://perma.cc/AJ8U-ESRN>].

57. *Id.* § 27.

58. ROMANIAN CIVIL CODE § 578, [https://www.dreptonline.ro/legislatie/legea\\_202\\_2010\\_masuri\\_pentru\\_accelerarea\\_solutiunii\\_proceselor\\_mica\\_reforma\\_a\\_justitiei.php](https://www.dreptonline.ro/legislatie/legea_202_2010_masuri_pentru_accelerarea_solutiunii_proceselor_mica_reforma_a_justitiei.php) [<https://perma.cc/MBF6-DT5V>]. ("Nicio evacuare din imobilele cu destinatie de locuinta nu poate fi facuta de la data de 1 decembrie si pana la data de 1 martie a anului urmator, decat daca creditorul face dovada ca, in sensul dispozitiilor legislatiei locative, el si familia sa nu au la dispozitie o locuinta corespunzatoare ori ca debitorul si familia sa au o alta locuinta corespunzatoare in care s-ar putea muta de indata. Dispozitiile alin. 1 nu se aplica in cazul evacuarii persoanelor care ocupa abuziv, pe

property between December 1st and March 1st, unless it can be shown that either the property's owner and his family have no other place to live, or those being evicted do have alternative accommodation available.

However, these protections do not extend to squatters, as the law explicitly does not apply to those living in informal dwellings. Moreover, the lack of legislation prohibiting forced evictions is complemented by completely inadequate procedural safeguards.<sup>59</sup> The owner is under an obligation to notify the occupant that he must abandon the property, but is only required to give him five days' notice.<sup>60</sup> If the occupant wishes to contest the eviction notice in court, he also only has five days since its issuance to do so.<sup>61</sup> Otherwise, he has no other legal recourse. The State's obligations towards those threatened with eviction are also very limited, with no prohibitions on the relocation of groups to unsafe or polluted areas, and no provisions mandating adequate public housing.

Current legislation favors landlords over tenants, and disregards the needs of impoverished communities. The tenuous nature of its protections allows for rampant discrimination and effectively advances segregation in the housing sector. It disproportionately affects those without security of tenure, the financial means for improvement or the public standing necessary to guarantee closer

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cai de fapt, fara niciun titlu, o locuinta, si nici celor care au fost evacuati pentru ca pun in pericol relatiile de convietuire sau tulbura in mod grav linistea publica.”).

59. AMNESTY INT'L, UNSAFE FOUNDATIONS: SECURE THE RIGHT TO HOUSING IN ROMANIA 2 (2012), <https://www.amnesty.org/en/documents/document/?indexNumber=EUR39%2F002%2F2012&language=en>, [https://perma.cc/TFE6-DLBD].

60. ROMANIAN CIVIL CODE § 1038 (“Atunci când proprietarul unui imobil dorește să îl evacueze pe ocupantul acestuia, după ce dreptul de a ocupa imobilul a încetat, proprietarul va notifica în scris ocupantul, punându-i în vedere să elibereze imobilul pe care îl ocupă fără niciun drept, în termen de 5 zile de la comunicarea notificării.”). See also Eugen Staicu, *Evacuarea din imobilele folosite sau ocupate fără drept*, LEGESTART (Apr. 8, 2015), <http://legestart.ro/evacuarea-din-imobilele-folosite-sau-ocupate-fara-drept/> [https://perma.cc/2TGQ-HNF5].

61. ROMANIAN CIVIL CODE § 1041: “(1) Cererea de evacuare se judecă cu citarea părților, în afară de cazul în care evacuarea imobilului pentru neplata chiriei sau a arenzii se solicită în baza unui contract care constituie, pentru plata acestora, titlu executoriu, potrivit legii. (2) Cererea de evacuare se judecă de urgență, în camera de consiliu, cu dezbateri sumare, dacă s-a dat cu citarea părților. (3) Întâmpinarea nu este obligatorie. (4) Dacă s-a solicitat și plata chiriei ori a arenzii exigibile, instanța, cu citarea părților, va putea dispune odată cu evacuarea și obligarea pârâtului la plata acestora, inclusiv a sumelor devenite exigibile în cursul judecății. (5) Hotărârea de evacuare este executorie și poate fi atacată numai cu apel în termen de 5 zile de la pronunțare, dacă s-a dat cu citarea părților, sau de la comunicare, când s-a dat fără citarea lor.”

scrutiny. It perpetuates the exclusion of the Roma from certain urban settings and, effectively, the public sphere, confining them to isolated, destitute areas separate from the rest of society.

## II. INTERNATIONAL LEGAL FRAMEWORK: TREATIES AND SOFT LAW

Housing rights in Romania are further protected under international law. The State's legal obligation to fulfill its international and regional treaty commitments is codified in Article 11 and Article 20 of the country's 1991 constitution.<sup>62</sup> The human right to adequate housing and other related rights create several levels of obligations for States. However, the primary obligation on the part of States is to refrain from, and protect individuals against, forced evictions from their homes and their land.<sup>63</sup>

Housing rights are enshrined, directly or impliedly, in many international instruments,<sup>64</sup> most notably in the Universal Declaration

62. CONST. OF ROMANIA (1991) § 11: "(1) Statul român se obligă să îndeplinească întocmai și cu bună-credință obligațiile ce-i revin din tratatele la care este parte. (2) Tratatul ratificate de Parlament, potrivit legii, fac parte din dreptul intern. (3) În cazul în care un tratat la care România urmează să devină parte cuprinde dispoziții contrare Constituției, ratificarea lui poate avea loc numai după revizuirea Constituției."; Article 20: "(1) Dispozițiile constituționale privind drepturile și libertățile cetățenilor vor fi interpretate și aplicate în concordanță cu Declarația Universală a Drepturilor Omului, cu pactele și cu celelalte tratate la care România este parte. (2) Dacă există neconcordanțe între pactele și tratatele privitoare la drepturile fundamentale ale omului, la care România este parte, și legile interne, au prioritate reglementările internaționale, cu excepția cazului în care Constituția sau legile interne conțin dispoziții mai favorabile."

63. "States are under the obligation to respect, protect and fulfill human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State's jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures." Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, at 3, 11, U.N. Doc. A/HRC/4/18 (2007), [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf) [<https://perma.cc/2WS3-87ZA>].

64. See Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195 (1969). Article 5 reads: "States Parties undertake to prohibit and to eliminate racial discrimination . . . and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law . . . in the enjoyment of . . . the right to housing . . ."; Convention on the Elimination of All Forms of Discrimination Against Women art. 14, Sept. 4, 1980, U.N.T.S. 1249 ("States Parties shall take all ap-

of Human Rights,<sup>65</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>66</sup> and the International Covenant on Civil and Political Rights.<sup>67</sup> Since 1986, more than ten United Nations institutions have issued statements supporting further efforts towards achieving the right to housing for all.<sup>68</sup> Most significantly, though, for the situation faced by Roma communities, the Universal Declaration holds that States are prohibited from discriminating against any person on the basis of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>69</sup> A similar provision is found in all other relevant instruments, preventing States from discrimination of any kind in the fulfillment

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appropriate measures to eliminate discrimination against women in rural areas ... to ensure ... the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications . . .”); G.A. Res. 44/25, Convention on the Rights of the Child, art. 27 (Nov. 20, 1989) (“States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development . . . States Parties . . . shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support . . . particularly with regard to nutrition, clothing and housing.”); G.A. Res. 2198 (XXI), Convention Relating to the Status of Refugees, art. 21 (Jul. 28, 1951) (“As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”); G.A. Res. 45/158, International Convention on the Protection of Migrant Workers and Their Families, art. 43 (Dec. 18, 1990) (Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: [ . . . ] (d) Access to housing, including social housing schemes and protection against exploitation in respect of rents.”); G.A. Res. A/RES/61/106, Convention on the Rights of Persons with Disabilities, art. 28 (Dec. 13, 2006) (States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability).

65. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25(1) (Dec. 10, 1948) [hereinafter UDHR].

66. G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 11(1) (Dec. 16, 1966) [hereinafter ICESCR].

67. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966) [hereinafter ICCPR].

68. Off. of the U.N. High Comm. of Hum. Rts., *Fact Sheet No. 25, Forced Evictions and Human Rights* 8 (2014), <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf> [https://perma.cc/D63H-XHVX].

69. UDHR, *supra* note 65, art. 2.

of their treaty obligations.<sup>70</sup>

This section will discuss the most significant international doctrines implicated by forced evictions, so as to demonstrate the essential nature of these rights. Although the right to housing and the prohibition on discrimination are the focus, it is crucial to note that forced evictions implicate numerous other human rights: the right to security; freedom from cruel, inhuman or degrading punishment; freedom of association; education and access of information; livelihood and land; the highest attainable standard of physical and mental health; the right to a safe and healthy environment; access to resources and many others.<sup>71</sup>

#### A. Universal Declaration of Human Rights

The Universal Declaration remains the most widely accepted human rights instrument. Although it is not a binding treaty, it has become part of customary international law and thus creates a legal obligation on the part of States to follow its principles.<sup>72</sup> In relevant part, Article 25(1) states “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, *housing* and medical care . . .”<sup>73</sup> States have the obligation to both ensure the provision of these rights and prevent any interference with their enjoyment. Furthermore, States are prohibited from discrimination in their provision of this right.<sup>74</sup>

70. *Id.* (Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.); ICESCR, *supra* note 66, art. 2(2) (“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); ICCPR, *supra* note 67, art. 2(1): “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

71. The People’s Movement for Human Rights Education, *Human Rights and Freedom from Forced Eviction*, THE PEOPLE’S MOVEMENT FOR HUMAN RIGHTS LEARNING, <http://www.pdhre.org/rights/eviction.html> [https://perma.cc/2B6W-XG6H].

72. *UN Housing Rights*, HOUSING RIGHTS WATCH, <http://www.housingrightswatch.org/page/un-housing-rights> [https://perma.cc/5GY3-X57E]; *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980) (Since 1977 “eighteen nations have incorporated the Universal Declaration into their own constitutions.”).

73. UDHR, *supra* note 65, art. 25.

74. *Id.* art. 2.

*B. International Covenant on Economic, Social and Cultural Rights*

The ICESCR sets forth the most comprehensive standard for the protection of housing rights.<sup>75</sup> Article 11(1) provides 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* . . . The States Parties will take appropriate steps to ensure the realization of this right . . .”<sup>76</sup> Furthermore, States Parties are obligated to ensure that all the rights listed in the ICESCR “will be exercised without discrimination of any kind . . .”<sup>77</sup>

Notably, the ICESCR does not oblige States to ensure the immediate provision of all the rights found therein. Instead, it is based on the principle of progressive realization, which mandates that States take deliberate steps towards the full realization of their obligations, to the maximum availability of their resources.<sup>78</sup> Moreover, progressive realization is incompatible with any regressive steps; States must refrain from acts that would deprive individuals and groups from rights that they used to enjoy.<sup>79</sup>

The meaning and applicability of Article 11 has been since elaborated on by the Committee on Economic, Social and Cultural Rights, the body in charge of monitoring the implementation of the ICESCR. In General Comment no. 4, the CESCR set forth seven factors to be used to determine whether a form of shelter constitutes adequate housing: (1) legal security of tenure;<sup>80</sup> (2) availability of services, materials, facilities and infrastructure;<sup>81</sup> (3) affordability; (4) habitability; (5) accessibility; (6) location; and (7) cultural adequacy.

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75. Bret Theile, *The Human Right to Adequate Housing: A Tool for Promoting and Protecting Individual and Community Health*, AM. J. OF PUB. HEALTH 712, 712–715 (2002).

76. ICESCR, *supra* note 66, art. 11.

77. *Id.* art. 2(2).

78. International Network For Economic, Social and Cultural Rights, *Progressive Realisation and Non-Regression*, ECSR-NET, <https://www.escr-net.org/resources/progressive-realisation-and-non-regression> [<https://perma.cc/U8QY-GM66>].

79. *Id.*

80. Comm. on Economic, Social and Cultural Rights, General Comment No. 4: The Human Right to Adequate Housing (Art. 11(1)), Rep. of the, 6th Sess., § 8(a), U.N. Doc. E/1992/23 (1991) (“Each individual should possess some degree of security of tenure, which includes legal protections against forced evictions.”).

81. *Id.* § 8(b) (“These include ‘sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.’”).

cy.<sup>82</sup> Significantly, it also stressed the fact that “enjoyment of this right [to adequate housing] must, in accordance with Article 2(2) of the Covenant, not be subject to any form of discrimination.”<sup>83</sup> However, States are under an obligation to give priority to those groups already living in unfavorable conditions.<sup>84</sup>

The CESCR expanded the existing law on forced evictions in General Comment no.7, dispelling any doubt as to whether the progressive realization principle could be used by States to justify illegal evictions. It asserted that legislation prohibiting and instituting punishment for forced evictions is absolutely indispensable, no matter a state’s resources.<sup>85</sup> Furthermore, “[t]he State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.”<sup>86</sup> If, however, a State must forcibly evict groups or individuals, it has to explore all feasible alternatives, provide an effective remedy to property loss, and ensure compliance with international human rights law.<sup>87</sup>

### *C. International Covenant on Civil and Political Rights*

The right to housing is also protected by Article 17 of the ICCPR, which States that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”<sup>88</sup> Read in conjunction with Article 2, Article 17(2) obliges States to respect and protect this right without discrimination of any kind.<sup>89</sup>

In *Naidenova et al. v Bulgaria*, the Human Rights Committee clarified the meaning of Article 17 and its applicability to Roma minorities. In reviewing the impending eviction and threatened demolition of a seventy-year-old Roma community, the Committee decided that dwellings, irrespective of whether they are located on land lawfully owned by their inhabitants, fall under the meaning of

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82. *Id.* § 8.

83. *Id.* § 6.

84. *Id.* § 11.

85. Rep. of the U.N. Comm. on Econ., Soc. and Cultural Rights on Its Sixteenth Session, Gen. Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions, § 9 ¶ 8., U.N. Doc. E/1998/22, annex IV (1999).

86. *Id.* ¶ 8.

87. *Id.* ¶¶ 13–14.

88. ICCPR, *supra* note 67, art. 17(1).

89. *Id.* arts. 17(2) and 2.

“home[s].”<sup>90</sup> It reiterated that any interference must not be unlawful or arbitrary.<sup>91</sup> Having tolerated the Roma’s illegal possession of the land for decades, the authorities’ decision to evict without a reason more urgent than illegality and without alternate accommodation was arbitrary.<sup>92</sup> Similarly, in *Georgopoulos v. Greece*, the Greek government’s eviction of several Roma families, and a subsequent refusal to allow construction of Roma settlements in another community, also constituted an arbitrary interference.<sup>93</sup> However, in both *Naidenova* and *Georgopoulos*, the Committee refused to acknowledge the impact of anti-Roma public attitudes and the ultimately racist motives behind the authorities’ actions,<sup>94</sup> citing lack of sufficient evidence.<sup>95</sup>

#### D. Soft law

Although non-binding, the 2007 U.N. Guidelines on Development-based Evictions and Displacement are valuable recommendations for State conduct in the area of forced evictions. They provide a comprehensive strategy for States to guarantee that evictions are undertaken in accordance with international human rights standards.<sup>96</sup> Most significantly, the Guidelines assert that evictions may occur only under exceptional circumstances, must be lawful, and in accordance with international human rights and humanitarian law.<sup>97</sup> They provide guidance for proper State conduct prior to and following an eviction, placing particular emphasis on the exhaustion of all alternatives to eviction and on proper resettlement.<sup>98</sup> Similarly to the CESCR’s recommendations, the Guidelines reiterate the need for governments to take special measures to prevent discriminatory im-

90. HRC Communication No. 2073/2011, § 14(2) (Nov. 27, 2012).

91. *Id.* § 14(3).

92. *Id.* § 14(5), 14(6).

93. H.R.C. Communication No. 1799/2008, § 7(3) (Sept. 14, 2010).

94. See *Cleaning Operations: Excluding Roma in Greece*, EUROPEAN ROMA RIGHTS CENTER (Apr. 2003), <http://www.errc.org/cms/upload/media/00/09/m00000009.pdf> [<https://perma.cc/9GGN-KGMY>].

95. *Id.*

96. Miloon Kothari and Patricia Vasquez, *The UN Guidelines on Forced Evictions: A Useful Soft Law Instrument?*, 6 INT’L DEV. POL. 1 (2015), <https://poldev.revues.org/2188#bodyftn5> [<https://perma.cc/GD7D-VYQK>].

97. Off. of the U.N. High Comm. Of Hum. Rts., Basic Principles and Guidelines on Development-Based Evictions and Displacement, ¶ 6, U.N. Doc. A/HRC/4/18 4 (2007)..

98. *Id.* ¶¶ 38, 43.

plementation of policies and the further marginalization of impoverished populations.<sup>99</sup>

### III. EUROPEAN FRAMEWORK

Romania's international legal obligations are supplemented by its regional commitments, stemming from its membership in the European Union and the Council of Europe.<sup>100</sup> This part sets out three distinct ways in which European institutions have attempted to address this issue by regulating the treatment of the Roma in the housing sector. First, the European Social Charter and the relevant rulings of the European Committee of Social Rights (the Committee) are analyzed. Second, general recommendations by various relevant agencies are surveyed to provide the full extent of the Council of Europe's concern for the Roma, and the urgency with which these bodies view their housing situation. Lastly, this part delves into an in-depth analysis of the European Court of Human Rights' case law concerning forced evictions of the Roma, so as to show the inadequacy of its current approach.

#### A. *European Social Charter*

The right to housing is implied in Article 16 of the original 1961 European Social Charter,<sup>101</sup> and directly provided for in Article

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99. *Id.* ¶ 29.

100. The EU has voiced its concerns about the continued discrimination of the Roma population, and has directed Member States to develop policy measures aimed at Roma inclusion in society. However, this Note focuses on the Council of Europe and the Court, as the main regional institution charged with monitoring compliance with human rights. For the EU's policy on Roma, see *An EU Framework for National Roma Integration Strategies up to 2020*, COM (2011) 173 final (April 5, 2011); *National Roma Integration Strategies: A First Step in The Implementation of the EU Framework*, COM (2012) 226 final (May 21, 2012).

101. European Social Charter Paragraph 16 in Part I reads "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development," Eur. Social Charter, Part I, ¶ 16, Oct. 18, 1961, ETS 35, 529 U.N.T.S. 89, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168006b642> [https://perma.cc/7RJX-KBJ6]. This is elaborated on in Part II: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means." *Id.* Part II, ¶ 16.

31 of the 1996 revised European Social Charter.<sup>102</sup> This right guarantees access to housing, which is structurally sound, possesses all the basic amenities, is not overcrowded and attaches security of tenure.<sup>103</sup> States are under the positive obligation not only to provide an adequate supply of housing for families, but also to ascertain that it's equipped with the necessary facilities.<sup>104</sup> The enjoyment of these rights is to be secured without discrimination on any ground, as provided in Article E.<sup>105</sup>

The Committee, the body in charge of monitoring the Charter's implementation, adjudicated three cases involving housing issues faced by the Roma, ultimately finding that a violation had occurred in all three.<sup>106</sup> It emphasized that "one of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion."<sup>107</sup> In achieving this goal, States must ensure that policies do not perpetrate social segregation.<sup>108</sup> Although States are allowed to evict illegal occupants, this procedure must be conducted in accordance with set rules that sufficiently protect the rights of the occupants, and can be employed only under narrow circumstances.<sup>109</sup> Moreover, evictions must be carried out in a way that respects the dignity of the individuals involved.<sup>110</sup>

Systematic practices of forced evictions of the Roma in Greece, Italy, and Bulgaria undeniably disregarded the human dignity of those concerned. The Roma were disproportionately targeted by eviction proceedings, and authorities regularly failed to take due consideration of their specific needs and living conditions. As a result, many families were left homeless or placed in heinously substandard

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102. Eur. Social Charter (Revised), Part II, ¶ 31, May 3, 1996, ETS 163.

103. Eur. Comm. of Social Rts., *Conclusions Article 31-1 (Italy)*, 2003/def/ITA/31/1/EN, 2003, <http://hudoc.esc.coe.int/eng/?i=2003/def/ITA/31/1/EN> [https://perma.cc/MM9B-CZ42].

104. Case T-15/2003 ERRC v. Greece [2004], § 24.

105. "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status." Eur. Social Charter (Revised), *supra* note 102, Part V, art. E.

106. Case T-15/2003 ERRC v. Greece [2004] (found a violation of Article 16, where the authorities had failed to take appropriate measures to ameliorate the substandard living conditions of around 100,000 Roma), Case T-27/2004 ERRC v. Italy [2005], Case T-31/2005 ERRC v. Bulgaria [2006].

107. Case T-15/2003 ERRC v. Greece [2004], § 19.

108. *Id.*

109. *Id.* § 51.

110. Case T-27/2004 ERRC v. Italy [2005] § 41.

accommodation.<sup>111</sup> Thus, the Committee found that lack of respect for the Roma families evinced during evictions and an accompanying disregard for their condition exhibited by the authorities amounted to a breach of the States' obligations.

### *B. General Recommendations*

Various bodies of the Council of Europe have adopted policy recommendations related to the situation of the Roma.<sup>112</sup> Already in

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111. Case T-15/2003 *ERRC v. Greece* [2004] § 17; Case T-27/2004 *ERRC v. Italy* [2005] § 12; Case T-31/2005 *ERRC v. Bulgaria* [2006] § 19.

112. Roma-related texts adopted by the Committee of Ministers of the Council of Europe include the following: Resolution 75(13) on the social situation of nomads in Europe; Recommendation No. R (83) 1 on stateless nomads and nomads of undetermined nationality; Recommendation No. R (2000) 4 on the education of Roma/Gypsy children in Europe; Recommendation Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe; Recommendation Rec(2004)14 on the movement and encampment of Travellers in Europe; Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe; Recommendation Rec(2006)10 on better access to health care for Roma and Travellers in Europe; Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe; Recommendation CM/Rec(2009)4 to member states on the education of Roma and Travellers in Europe; Declaration on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe; Recommendation CM/Rec(2012)9 on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma.

Roma-related texts adopted by the Parliamentary Assembly of the Council of Europe include the following: Recommendation 563 (1969) of the Consultative Assembly on the situation of Gypsies and other travelers; Recommendation 1203 (1993): Gypsies in Europe; Recommendation 1557 (2002): Legal situation of Roma in Europe; Recommendation 1633 (2003): Forced Returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member States; Resolution 1740 (2010): the situation of Roma in Europe and relevant activities of the Council of Europe; Resolution 1760 (2010): Recent rise in national security discourse in Europe: the case of Roma; Resolution 1768 (2010): Roma asylum seekers in Europe; Recommendation 1924 (2010): The situation of Roma in Europe and relevant activities of the Council of Europe; Recommendation 1941 (2010): Roma asylum seekers in Europe; Recommendation 2003 (2012): Roma migrants in Europe.

Roma-related texts adopted by the Congress of Local and Regional Authorities include the following: Resolution 125 (1981) on the role and responsibility of local and regional authorities in regard to the cultural and social problems of populations of nomadic origin; Resolution 249 (1993) on gypsies in Europe: the role and responsibility of local and regional authorities; Recommendation 11 (1995) on "Towards a Tolerant Europe: the contribution of Roma (Gypsies);" Resolution 44 (1997) on "Towards a tolerant Europe: the contribution of Roma;" Resolution 333 (2011): The situation of Roma in Europe: a challenge for local and regional authorities; Recommendation 315 (2011): The situation of Roma in Europe: a challenge for local and regional authorities; Resolution 366 (2014): Empowering Roma youth through participation: effective policy design at local and regional levels; Rec-

1993, the Parliamentary Assembly of the Council of Europe, in Recommendation No. 1203 on Gypsies in Europe, acknowledged the prejudice and racial hatred that has victimized this group.<sup>113</sup> In 2002, it reiterated the urgency of improving the Roma's substandard living conditions, conceding that the Roma remain a major target of overt prejudice and official discriminatory policies.<sup>114</sup> It stressed that not only does equal treatment in all fields need to be guaranteed, but positive measures must be adopted and enforced to raise the socioeconomic status of the Roma.<sup>115</sup> To achieve the aforementioned goals, Member States are to implement broad anti-discrimination legislation, while also paying close attention to the particular needs of the Roma.<sup>116</sup>

The Decade of Roma Inclusion, as the years 2005 to 2015 were designated, was intended as an affirmation of the political commitment of Member States to these objectives. Unfortunately, the project fell short of its purpose.<sup>117</sup> It largely failed at creating equal access to public institutions and bridging socioeconomic gaps between the Roma and the rest of society.<sup>118</sup> Undeterred by the clear

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ommendation 354 (2014): Empowering Roma youth through participation: effective policy design at local and regional levels. Roma-related texts adopted by the European Commission on Racism and Intolerance include the following: General Policy Recommendation No. 3 (1998) on combating racism and intolerance against Roma/Gypsies; General Policy Recommendation No. 13 (2011) on combating anti-Gypsyism and discrimination against Roma.

Other Council of Europe strategic documents related to the Roma include the following: The Strasbourg Declaration on Roma, CM(2010)133 (20 Oct. 2010); Final Declaration of the Summit of Mayors (22 Sept. 2011); Updating the Council of Europe agenda on Roma inclusion (2015–2019), SG/Inf(2015) 16 rev; Thematic Action Plan on the inclusion of Roma and Travellers (2016–2019), SG/Inf(2015)38. These are in addition to various binding and non-binding legislation related to discrimination more broadly. *See, e.g.*, Recommendation 563 (1969): Situation of Gypsies and other travelers in Europe; Committee of Ministers Recommendation No. R (83) 10 on the protection of personal data used for scientific research and statistics; Standing Conference of Local and Regional Authorities of Europe Resolution 125 (1981).

113. Recommendation 1203: Gypsies in Europe, art. 5, EUR. PARL. DOC. 6733 (1993), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=15237&lang=en> [<https://perma.cc/WA97-GZRH>].

114. Recommendation 1557: Legal Situation of the Roma in Europe, art. 3, EUR. PARL. DOC. 9397 (2002), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16999> [<https://perma.cc/968K-KAW5>].

115. *Id.* art. 15(c)–(d).

116. *Id.* art. 15(f).

117. UNITED NATIONS DEVELOPMENT PROGRAMME, DECADE OF ROMA INCLUSION, <http://www.eurasia.undp.org/content/dam/rbec/docs/DORI%20REPORT.pdf> [<https://perma.cc/9P5W-UA8C>].

118. Zeljko Jovanovic, *Why Europe's "Roma Decade" Didn't Lead to Inclusion*, OPEN

ineffectiveness of these broad policy plans, the Committee of Ministers adopted the Thematic Action Plan on the Inclusion of Roma and Travellers in March 2016 to provide a new framework for executive and legislative action on the domestic level.

The European Commission on Racism and Intolerance (ECRI), a specialized body of the Council of Europe tasked with monitoring and combating discrimination, has issued the most comprehensive guidelines on preventing and fighting the social exclusion of the Roma. The omnipresence of racist attitudes is emphasized by the ECRI as a persistent obstacle to the socioeconomic advancement of the Roma; combating it is “an integral part of the protection and promotion of universal and indivisible human rights.”<sup>119</sup> Housing was singled out as a key area where anti-Gypsism is rampant. To ensure equal treatment, the Roma must be afforded access to decent housing and cannot be the victims of segregationist policies.<sup>120</sup> Forced evictions, although strongly discouraged, must be conducted in accordance with international standards: fair notice must be provided and those concerned must be supplied with adequate alternative accommodation.

Despite the frequency with which the Roma appear as the main subject of the Council of Europe’s policies, these endeavors have attained only a minimum level of success. Ideally, these recommendations and guidelines would provide a legislative scheme through which fundamental sociopolitical change could be achieved on the domestic level. However, their lack of enforcement potential is a clear deficiency and, ultimately, their downfall.

### C. European Convention on Human Rights

The European Convention on Human Rights and its Protocols are the primary regional human rights instruments adopted by European countries. Although there is no right to be provided with housing as such,<sup>121</sup> it is implied in Article 8(1) of the Convention, which reads: “[e]veryone has the right to respect for his private and family

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SOCIETY FOUNDATIONS (Sept. 21, 2015), <https://www.opensocietyfoundations.org/voices/why-europe-s-roma-decade-didn-t-lead-inclusion> [<https://perma.cc/VN2Z-7MDC>].

119. ECRI Recommendation no. 13, *supra* note 43, at 4.

120. *Id.* at 6.

121. *Connors v. United Kingdom*, App. No. 66746/01, 2004 Eur. Ct. H.R. ¶ 113 (2004), <http://hudoc.echr.coe.int/eng?i=001-61795> [<https://perma.cc/RJ49-PCDM>].

life, his home and his correspondence.”<sup>122</sup> Significantly, the Court has adopted a broad understanding of the term “home.” It has recognized that a “home” is a matter of fact independent of any question of lawfulness of the occupation under domestic law.<sup>123</sup> In order to decide whether a particular dwelling constitutes a “home” within the confines of Article 8, the Court looks to the factual circumstances, “namely, the existence of sufficient and continuous links with a specific place.”<sup>124</sup> Hence, both squatters in building and owners of caravans have been recognized as inhabiting their homes within the meaning of the Convention.<sup>125</sup> Since the Roma are frequently evicted from illegally occupied dwellings or land, this interpretation effectively extends Article 8’s protections to this group.

Article 8(2) qualifies the Article 8(1) right, stating that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.”<sup>126</sup> Restrictions under any other circumstances are not permitted.<sup>127</sup> Furthermore, States are under an obligation to ensure and protect these rights without discrimination, as provided by Article 14.<sup>128</sup> It is crucial to note though that the Court can find violations of Article 14 only in conjunction with breaches of another Article; freedom from discrimination appears as an accessory right in the Convention, not one in itself.<sup>129</sup>

The European Court of Human Rights is the body tasked with monitoring the “engagements undertaken by the High Contracting Parties in the Convention and the Protocols.”<sup>130</sup> It has received nu-

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122. European Convention on Human Rights art. 8(1), Nov. 4, 1950, 213 U.N.T.S. 221 (hereinafter “ECHR”).

123. *McCann v. United Kingdom*, 2008-III Eur. Ct. H.R. 133, 150.

124. *Winterstein v. France*, App. No. 27013/07, Eur. Ct. H.R. ¶ 69 (2013), <http://hudoc.echr.coe.int/eng?i=001-127539> [<https://perma.cc/LN6Q-KAQG>].

125. *Stenegry v. France*, App. No. 40987/05, Eur. Ct. H.R. (2007), <http://hudoc.echr.coe.int/eng?i=001-86131> [<https://perma.cc/6E9L-5WPQ>].

126. *Id.* art. 8(2).

127. *Id.* art. 18.

128. *Id.* art. 14.

129. Oddný Mjöll Arnardóttir, *Non-Discrimination Under Article 14 ECHR: The Burden of Proof*, 51 SCANDINAVIAN STUD. L. 13, 14 (2007), <http://www.scandinavianlaw.se/pdf/51-1.pdf> [<https://perma.cc/T486-TQVY>].

130. ECHR, *supra* note 122, art. 19.

merous submissions related to human rights abuses experienced by Roma communities, including, *inter alia*, violations of the right to life,<sup>131</sup> the prohibition of inhuman or degrading treatment,<sup>132</sup> right to liberty and security,<sup>133</sup> right to education,<sup>134</sup> and the right to free elections.<sup>135</sup> As a minority group, the Roma are an exceptionally vulnerable target of all human rights violations. As the EU Fundamental Rights Agency revealed in its report on racism against the Roma, this minority continues to suffer high levels of housing deprivation across all Member States, and consistently inhabits substandard facilities as compared with the average population.<sup>136</sup> Under various pretexts, local governments have attempted to rid their communities of Roma, with forced evictions serving as the main tool.<sup>137</sup> The Court has struggled with this issue for decades and has, thus far, failed to strike a balance between safeguarding minority rights and respecting local decisions on public welfare. It has chosen to examine forced evictions as possible violations of Article 8, sometimes read in conjunction with Article 14. This Part chronologically analyzes this case law, revealing the Court's leniency towards local authorities' discriminatory practices and emphasizes the inadequacy of the Court's approach.

131. *See, e.g.,* Nachova v. Bulgaria, 2005-VII Eur. Ct. H.R. 1 (violation of Article 3 found when policeman used lethal force without the absolute necessity to do so during the arrest of two Roma relatives of the applicant).

132. *See, e.g.,* Koky v. Slovakia, App. No. 13624/03, Eur. Ct. H.R. (2012), <http://hudoc.echr.coe.int/eng?i=001-111410> [<https://perma.cc/3KAE-WDF8>] (violation of Article 3 found when men attacked a Roma settlement using baseball bats and iron bars, shouting racist slurs); Bekos v. Greece, 2005-XIII Eur. Ct. H.R. 23 (violation of Article 3 when the two Roma applicants suffered serious physical harm while in the custody of the police).

133. *See, e.g.,* Seferovic v. Italy, App. No. 12921/04, Eur. Ct. H.R. (2011), <http://hudoc.echr.coe.int/eng?i=001-103302> [<https://perma.cc/5C9H-TR5F>] (violation of Article 5§1(f) and 5§(5) where Roma woman was deported weeks after giving birth, despite the Italian law's prohibition of deportations of women until 6 months after giving birth).

134. *See, e.g.,* D.H. v. Czech Republic, 2007-IV Eur. Ct. H.R. 241 (violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1, where Roma children formed the overwhelming majority of children in special needs schools).

135. *See, e.g.,* Sejdić v. Bosnia and Herzegovina, 2009-VI Eur. Ct. H.R. 273 (violation of article 14 taken in conjunction with article 3, where Bosnian law prevented the Roma and Jewish applicants from running for the Presidency and the House of Peoples of the Parliamentary Assembly on the basis of their ethnic origins).

136. EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS: ACTIVITIES IN 2007 88 (2009).

137. *Id.*

## 1. Buckley v. the United Kingdom

*Buckley* was the first ever case before the Court concerning the rights of the Roma,<sup>138</sup> and it presented a unique, albeit forfeited, opportunity to rule on the authorities' treatment of this minority. The applicant was a British Roma citizen, living in caravans on land she legally owned.<sup>139</sup> Despite two attempts at retrospectively legalizing the three caravans on her site, she was refused planning permission on both occasions and told to remove them.<sup>140</sup> The official reasons were that provision had been made for Roma caravans elsewhere, since the applicant's area had reached its "'saturation point' for Gypsy accommodation;"<sup>141</sup> that the planned use would detract from the "rural and open quality of the landscape;"<sup>142</sup> and that the road was too narrow for multiple vehicles.<sup>143</sup> The inspector in charge of surveying the land had said that he thought it "important to keep concentrations of sites for gypsies small,"<sup>144</sup> and their number in the applicant's area had already reached the "desirable maximum."<sup>145</sup>

The applicant claimed that there had been both a violation of Article 8, and of Article 8 read in conjunction with Article 14.<sup>146</sup> To determine whether human rights abuses had occurred, the Court adopted a five-part test. It looked to whether (a) a right protected by Article 8 was at issue;<sup>147</sup> (b) whether there was an interference by a public authority;<sup>148</sup> (c) whether the interference was in accordance with the law;<sup>149</sup> (d) whether the interference pursued a legitimate aim;<sup>150</sup> and (e) whether the interference was necessary in a democratic society.<sup>151</sup> Responding in the affirmative to all of the above, the

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138. *Buckley v. United Kingdom*, App. No. 20348/92, Eur. Ct. H.R. 23 (1996) (Repik, J., partly dissenting).

139. *Id.* ¶¶ 7–12.

140. *Id.* ¶¶ 14–15, 21.

141. *Id.* ¶¶ 14, 21.

142. *Id.* ¶ 14.

143. *Id.*

144. *Id.* ¶ 16.

145. *Id.*

146. *Id.* ¶ 46.

147. *Id.* ¶¶ 52–55.

148. *Id.* ¶¶ 56–60.

149. *Id.* ¶ 61.

150. *Id.* ¶¶ 62–63.

151. *Id.* ¶¶ 64–84.

Court effectively hid behind the margin of appreciation doctrine<sup>152</sup> in its decision that no breach had occurred.<sup>153</sup> It found that in “the exercise of discretion involving a multitude of local factors inherent in the choice and implementation of planning policies”<sup>154</sup> is best left to the national authorities. Although the Court will review its findings, it will grant Member State governments’ significant leeway.

Despite the quite blatantly anti-Roma sentiment expressed by public officials, the Court also refused to find a violation of Article 14, asserting that it did “not appear that the applicant was at any time penalized or subjected to any detrimental treatment for attempting to follow a traditional Gypsy lifestyle.”<sup>155</sup> However, as Judge Pettiti points out in his dissenting opinion, this was simply not true. The local authorities’ arguments for denying the planning permission, namely the need for environmental protection of the area and the aesthetics of its rural landscape, were applied to Roma families only.<sup>156</sup> If a non-Roma British citizen had wished to live in a caravan on land he legally possessed, the authorities would not have raised similar administrative hurdles.<sup>157</sup> In its refusal to adopt a higher level of scrutiny for the review of the government’s pretextual arguments, the Court failed to truly extend the rights and freedoms espoused by the Convention to the Roma minority.

## 2. Chapman and Other Cases<sup>158</sup>

The Court again applied the margin of appreciation doctrine to the next group of cases before it, involving the Roma and forced evictions, to find no breach of Article 8.<sup>159</sup> Five Roma families living in the United Kingdom had all been refused planning permission

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152. *The Margin of Appreciation*, COUNCIL OF EUROPE: LISBON NETWORK, [https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp) [<https://perma.cc/H3ST-27RD>] (“The term ‘margin of appreciation’ refers to the space for maneuver that the Strasbourg organs are willing to grant national authorities, in fulfilling their obligations under the European Convention on Human Rights.”).

153. *Buckley*, App. No. 20348/92, Eur. Ct. H.R. ¶¶ 74, 85.

154. *Id.*

155. *Id.* ¶ 88.

156. *Id.* at 28–29 (Pettiti, J., dissenting).

157. *Id.* at 28 (Pettiti, J., dissenting).

158. The Court issued separate statements of fact, but the same overview of the law and assessment of the case for each applicant.

159. *Chapman v. United Kingdom*, 2001-I Eur. Ct. H.R. 41, 74.

for their caravans and required to move off the occupied land.<sup>160</sup> The Court applied the five-step test it had used in *Buckley* to decide whether a violation of Article 8 had occurred,<sup>161</sup> focusing in on the question whether the interference was necessary in a democratic society. It reasserted that such interference, for a legitimate aim, can be considered necessary if it answers a pressing social need *and* if it is proportional to the aim pursued.<sup>162</sup> The Court held itself less equipped than local authorities to investigate domestic needs and conditions, again granting them a wide margin of appreciation in the determination of whether the interference was legitimate.<sup>163</sup> It avowed to scrutinize State action, placing particular emphasis on the presence of procedural safeguards as decisive in the inquiry of whether this margin was exceeded.<sup>164</sup>

In these cases, the authorities' legitimate aim was the protection of the public rights of others through the preservation of the environment.<sup>165</sup> Even if one decides to leave the legitimacy of the aim undisputed, the proportionality of the government's actions to the consequences for the applicants is dubious at best. The evicted Roma families were thrust into complete instability, deprived of access to healthcare, education, and their traditional lifestyle.<sup>166</sup> One of the applicants, Lee, was offered alternative housing on garbage sites or old sewage beds. Another, Smith, who was refused planning permission for either a caravan or a bungalow, was granted the opportunity to move into an excessively expensive flat, an urban area or highly polluted land.<sup>167</sup> Chapman was offered no alternative accommodation sites. The other two families found themselves in similarly undesirable situations. As the dissenting opinion pointedly states, the environmental arguments were not of "such a nature or degree as to

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160. *Chapman*, 2001-I Eur. Ct. H.R.; *Coster v. United Kingdom*, App. No. 24876/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/eng?i=001-4134> [<https://perma.cc/5JDA-PZPX>]; *Beard v. United Kingdom*, App. No.24882/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/eng?i=001-4135> [<https://perma.cc/SW2W-EET9>]; *Lee v. United Kingdom*, App. No. 25289/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/eng?i=001-4138> [<https://perma.cc/EC52-BDP7>]; *Smith v. United Kingdom*, App. No. 25154/94, Eur. Ct. H.R. (2001), <http://hudoc.echr.coe.int/eng?i=001-4137> [<https://perma.cc/W88M-6PK9>].

161. *See supra* notes 146–50.

162. *Chapman*, 2001-I Eur. Ct. H.R. at 71.

163. *Id.* at 74.

164. *Id.* at 71–72.

165. *Id.* at 68.

166. *Id.* at 81 (Ridruejo, J., Bonello, J., Tulkens, J., Strážnická, J., Lorenzen, J., Fischbach, J., and Casadevall, J., jointly dissenting).

167. *Smith*, App. No. 25154/94, Eur. Ct. H.R.

disclose a ‘pressing social need’ when compared with what was at stake for the applicant[s].”<sup>168</sup>

Lastly, it is crucial to note that the Court was made aware of an emerging international consensus about the need to adopt specific measures to address the special needs of minority groups, like the Roma, in Europe.<sup>169</sup> In spite of its acknowledgement of the desperate circumstances of the Roma, it did not decide to adopt a more forceful stance on the issue. Instead, the Court ruled that it was not persuaded that the consensus was “sufficiently concrete for it to derive any guidance”<sup>170</sup> from it for setting standards for State action. It again turned a blind eye to the realities on the ground, and ruled there had been no violation.

### 3. *Connors v. the United Kingdom*

In *Connors*, the Court finally chose to narrow the margin of appreciation it had granted national authorities in the review of their interference with Article 8 rights. The applicant and his family had lived on a “gypsy site” for over a decade, under a licensing agreement that conditioned their residence on complying with local nuisance law.<sup>171</sup> They were accused of breaching this agreement and forcibly evicted, under a statutory scheme that allowed summary eviction without an opportunity to challenge any allegations in court.<sup>172</sup>

In its examination of whether this interference was necessary in a democratic society, the Court adopted a new approach towards Article 8 violations involving the provision of housing. It recognized that the rights enshrined in Article 8 were “rights of central importance to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community.”<sup>173</sup> When dealing with breaches of rights of such essential significance, the margin of appreciation granted to national authorities must be much narrower.<sup>174</sup> Although the Court acknowledged the complexity of housing policy, it reiterat-

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168. *Chapman*, 2001-I Eur. Ct. H.R. at 83.

169. *Id.* at 70.

170. *Id.* at 74–75.

171. *Connors*, App. No. 66746/01, Eur. Ct. H.R. ¶¶ 9–11.

172. *Id.* ¶ 71.

173. *Id.* ¶ 82.

174. *Id.* ¶ 86.

ed the importance of the notion of necessity in cases involving the loss of one's home and livelihood.<sup>175</sup> Here, it determined that a summary eviction procedure that circumvented judicial review and an opportunity for its subjects to contest the actions in court did not meet that threshold.<sup>176</sup>

In a substantial move, the Court recognized the vulnerable position of the Roma as a minority that required special consideration.<sup>177</sup> Yet, despite acknowledging the extent of the hardship posed by forced evictions and its particular impact on minority communities, it again failed to find a violation of Article 14.<sup>178</sup>

#### 4. Yordanova and Others v. Bulgaria

The Court again missed an opportunity to set an international standard on combating discriminatory treatment of the Roma in *Yordanova*. In the 1960s and 1970s, Roma families began constructing homes on State land in the Batalova Vodenitsa neighborhood of Sofia, without authorization.<sup>179</sup> Throughout the years, these families never sought to legalize their dwellings, citing high procedural costs and the local community's alienation as the root causes.<sup>180</sup> The local officials ignored their presence until 2005, when an eviction order was issued for the applicants' homes.<sup>181</sup> The Court was then seized to issue a judgment on the legality of the threatened evictions and their consequences for the Roma.

In its assessment of whether the interference with the applicants' Article 8 rights was "necessary in a democratic society," the Court looked closely at whether it was proportionate to the legitimate aim being pursued and if it answered a pressing social need.<sup>182</sup> While it acknowledged the legitimacy of the authorities' decision to regain possession of land from persons illegally occupying it, it pointed towards the proportionality of such a response to the status of the community.<sup>183</sup> The Roma are an underprivileged, socially and

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175. *Id.* ¶¶ 85–95.

176. *Id.* ¶ 94.

177. *Id.* ¶ 84.

178. *Id.* ¶ 97.

179. *Yordana v. Bulgaria*, App. No. 25446/06, Eur. Ct. H.R. ¶¶ 6–8 (2012), <http://hudoc.echr.coe.int/eng?i=001-100741> [<https://perma.cc/KF4K-L4WY>].

180. *Id.* ¶ 13.

181. *Id.* ¶ 31.

182. *Id.* ¶ 117.

183. *Id.* ¶ 128.

economically disadvantaged group<sup>184</sup> that has been marginalized for centuries. They are frequently unable to acquire real property or find gainful employment outside their community due to unbridled public prejudice.<sup>185</sup> For decades, the authorities had allowed them to settle down on public land and develop strong ties to the area. Once officials chose to evict the Roma, they failed to consider the risk of homelessness or take into account any alternatives to eviction that would be tailored to the special needs of the community.<sup>186</sup>

The Court compared the consequences of the eviction to the authorities' stated "pressing social need." It noted that attempts at the removal of the Roma community were made only after a public outcry called for the emptying of all "Roma ghettos" in Sofia.<sup>187</sup> A local official had made public statements about how "Roma families could not expect to live among the citizens as they did not have the necessary culture."<sup>188</sup> Furthermore, the Bulgarian government's submissions to the Court showed that they had relied on racist private complaints in their decisions;<sup>189</sup> they also admitted to a policy avoiding large concentrations of Roma in one area.<sup>190</sup> However, the officially listed reasons were the sanitary risks caused by the lack of sewage and the presence of farm animals on the property, the unsightliness of the houses, and the supposed elevated levels of crime associated with Roma presence.<sup>191</sup> Even accounting for those arguments and presuming them credible, the Court found that the interference would not be proportional and a breach of Article 8 would occur if the eviction were to proceed.

Despite the overtly discriminatory statements made by public officials and the influence of the racist attitudes on the authorities' decision-making, the Court chose not to find a similar violation of Article 14. Since the eviction hadn't yet occurred, it claimed that it did not want to speculate over whether a future order of removal would be discriminatory.<sup>192</sup> Nevertheless, it warned that discriminatory statements made by public officials, or a failure to react to them

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184. *Id.* ¶¶ 129, 131.

185. *Id.* ¶¶ 51, 62.

186. *Id.* ¶¶ 125–28.

187. *Id.* ¶ 20.

188. *Id.* ¶ 46.

189. *Id.* ¶ 90. One complaint asked that the Roma be removed and "returned to their native places."

190. *Id.* ¶ 89.

191. *Id.* ¶ 23.

192. *Id.* ¶ 147.

on the part of the authorities, could easily constitute violations of Article 14. Moreover, they could suffice for a finding of an infringement on the prohibition of inhuman or degrading treatment or punishment.

#### 5. *Winterstein and Others v. France*

The importance of the right to respect for one's private and family life, and one's home, was reiterated in *Winterstein*. The applicants, part of a group of twenty-six Roma families, had been living in their caravans on land in Herblay for many years, until the municipality retroactively classified the land they occupied as a "natural area qualifying for protection on account of the quality of its landscape and its various characteristics."<sup>193</sup> The applicants were then evicted by the local authorities and later fined for violating the eviction order.<sup>194</sup>

The Court was not convinced of the proportionality of this interference and the legitimacy of this aim. The municipality had completely ignored the applicants' condition: they were long-time residents of Herblay, they were destitute, and lacked any other housing alternative suitable for their traditional way of life.<sup>195</sup> When one compares the right to respect for one's private and family life and one's home to municipal land-use plans, the interference can hardly seem proportional, particularly in the case of a vulnerable minority.<sup>196</sup> Since forced evictions are a "most extreme form of interference with the right to respect for one's home,"<sup>197</sup> they require the utmost protections. Here, the applicants had not been subjected to adequate eviction proceedings. The authorities had failed to examine the proportionality of their interference, and did not consider the special needs of the applicants or accommodate their traditional lifestyle.<sup>198</sup> Hence, the Court ruled that they had breached their Article 8 obligations.

However, although the Court did determine that the municipality had not treated the applicants justly, it did not investigate whether a violation of Article 14 had taken place. That the Roma are a minority often targeted by both official and unofficial racial preju-

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193. *Winterstein*, App. No. 27013/07, Eur. Ct. H.R. ¶ 73.

194. *Id.* ¶¶ 16, 103.

195. *Id.* ¶ 52.

196. *Id.* ¶ 151.

197. *Id.* ¶ 83.

198. *Id.* ¶ 167.

dice was not considered.

## 6. Bagdonavicius and Others v. Russia

The most recent relevant judgment by the Court presented a unique opportunity for an expansion of its jurisprudence to include violations of Article 8 in conjunction with Article 14. In *Bagdonavicius*, the applicants were Roma families who were living in the Russian village of Dorozhnoye. They had moved there in the 1950s, when Soviet laws had forced the country's Roma population into a sedentary lifestyle and developed the area into a Roma settlement.<sup>199</sup> Even after the collapse of the USSR, most of them never attempted to legalize the ownership of their dwellings or acquire title to the land; those who did were unsuccessful.<sup>200</sup> Thus, when the local authorities initiated judicial proceedings in 2005 and 2006 in order to obtain demolition orders for the illegal homes, they won easily.<sup>201</sup>

In 2006, in a matter of days, the authorities destroyed forty-three houses in the village.<sup>202</sup> The only two houses left unscathed were those belonging to ethnically Russian families.<sup>203</sup> The local officials' explanation for the need for these evictions was an attempt to "purge" the area of drugs and crime,<sup>204</sup> a claim that the applicants felt was based on racial stereotypes of the Roma as involved in criminal activity.<sup>205</sup> In its analysis, the Court found a violation of Article 8. Although the interference with the applicants' rights was lawful, there was a breach of the State's obligations. The judicial proceedings had completely circumvented the requirement to examine the proportionality of the interference to the applicants' rights, thus inadequately safeguarding them.<sup>206</sup>

Yet, even with an openly racist eviction, the Court declined to find a violation of Article 14. This failure affirmed the Court's complete misunderstanding of the realities on the ground. It does not

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199. Press Release, Registrar of the European Court of Human Rights, *The Demolition of Homes and the Forced Eviction of Residents of Roma Origin Breached Their Right to Respect for their Private and Family Life 1* (Nov. 10, 2016).

200. *Bagdonavicius v. Russia*, App. No. 19841/06, Eur. Ct. H.R. ¶¶ 11, 18 (2016), <http://hudoc.echr.coe.int/eng?i=001-167089> [<https://perma.cc/3VFU-8VVD>].

201. *Id.* ¶¶ 19–33.

202. *Id.* ¶ 34.

203. *Id.*

204. *Id.* ¶ 16.

205. *Id.* ¶ 80.

206. *Id.* ¶ 108.

seem to appreciate the true extent of the mistreatment of the Roma by Russian authorities, and the susceptibility of this population to prejudiced attacks.<sup>207</sup> Instead of standing firm as the main guardian of minority rights in countries with a weak civil society and an unstable rule of law, the Court backed down.

#### IV. NEW INTERPRETATIVE FRAMEWORK

As the previous Part has demonstrated, the Court has failed to adequately employ its power to meaningfully combat the housing crisis. Its findings of a violation of Article 8 have produced scant reactions by the States concerned, and have not resulted in any major policy shifts. This Note proposes that the Court adopt a more forceful stance towards governments engaged in discriminatory practices towards the Roma. The Court ought to view forced evictions as a more grievous violation of human rights. Instead of narrowly seeing forced evictions as violations of Article 8, it should adopt a broader reading of Article 3's prohibition of inhuman or degrading treatment, and assess evictions through this new lens. By asserting that forced evictions constitute inhuman or degrading treatment, the Court could prevent States from invoking any justifications for their actions, and could more effectively shame them into compliance with its rulings.

This Part begins with a brief explanation of the relevant jurisprudence on Article 3, with a focus on non-traditional forms of ill-treatment. It then proceeds with an analysis of the Romanian Roma's situation within that legal framework. Lastly, this Part elaborates on the significance of adopting this new framework.

##### A. *The Meaning of Article 3*

The Court has often held that Article 3 enshrines one of the most fundamental values of a humane and democratic society.<sup>208</sup> In its entirety, Article 3 holds that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment,” a prohibition that permits no derogation under any circumstances.<sup>209</sup> In its juris-

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207. *Russia: Roma Housing Rights*, MINORITY RTS GROUP INT'L (Nov. 12, 2016), <http://minorityrights.org/law-and-legal-cases/bagdonavicius-v-russia/> [<https://perma.cc/UDQ5-A2H2>].

208. *Kudła v. Poland*, 2000-XI Eur. Ct. H.R. 197 (2000).

209. ECHR, *supra* note 122, art. 3, 15(2) (“No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.”).

prudence, the Court has developed a classification of types of ill-treatment that would fall within the scope of Article 3. Primarily, the abuse must reach a minimum level of severity.<sup>210</sup> This determination is made by examining various factors, like the duration of the treatment, its physical or mental effects, or the nature and context around it.<sup>211</sup>

The Court has drawn a distinction between torture and inhuman or degrading treatment, emphasizing that there is “a special stigma” that attaches to torture as “deliberate inhuman treatment causing very serious and cruel suffering.”<sup>212</sup> Thus, treatment is “inhuman” if, for example, it was applied for hours at a stretch and resulted in bodily injury or intense physical and mental suffering.<sup>213</sup> But for treatment to be designated “degrading,” it can, *inter alia*, arouse “in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them.”<sup>214</sup> In its assessment, the Court looks to whether the purpose of the treatment was humiliation and debasement of the person and whether it adversely affected their personality in a manner incompatible with Article 3.<sup>215</sup> The absence of such purpose, though, does not necessarily exclude a finding of a violation.

Racial discrimination and destruction of property are forms of ill-treatment that can amount to violations of Article 3. In *East African Asians v. the United Kingdom*, the European Commission of Human Rights<sup>216</sup> stated that even discrimination based on race could under certain circumstances constitute “degrading treatment” within the meaning of Article 3.<sup>217</sup> The Commission elaborated on this proposition in the case of *Cyprus v. Turkey*. There, it found that restrictions were being placed on the rights of Greek Cypriots—on

210. Ireland v. UK, App. No. 5310/71, Eur. Ct. H. R. ¶ 162; Cobzaru v. Romania, App. No. 48254/99, Eur. Ct. H.R. ¶ 61 (2007), <http://hudoc.echr.coe.int/eng?i=001-81904> [<https://perma.cc/BYC3-MES2>]; Kudła, 2000-XI Eur. Ct. H.R. at 223.

211. Cobzaru, App. No. 48254/99, Eur. Ct. H.R. ¶ 61; Kudła, 2000-XI Eur. Ct. H.R. at 223.

212. Ireland v. UK, App. No. 5310/71, Eur. Ct. H. R. ¶ 167.

213. Moldovan v. Romania, 2005-VII Eur. Ct. H.R. 167.

214. Kudła, 2000-XI Eur. Ct. H.R. at 223.

215. See Raninen v. Finland, 1997-VIII Eur. Ct. H.R. 2821 ¶ 55 (1997), <http://hudoc.echr.coe.int/eng?i=001-58123> [<https://perma.cc/VR49-2MXJ>].

216. The Commission of Human Rights was the European Union tribunal previously in charge of its jurisprudence on human rights. It is no longer in existence.

217. East African Asians v. United Kingdom, Apps. nos. 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70, Eur. Ct. H.R. 992, 994 (1973).

their right to freedom of movement, education, access to information, freedom of speech, and others—in a discriminatory manner.<sup>218</sup> These living conditions revealed that their basic freedoms were being curtailed, with the ultimate purpose being the destruction of the local community.<sup>219</sup> The Commission held that this level of discrimination amounted to degrading treatment, and thus a breach of Article 3.<sup>220</sup>

The Commission found that just as discrimination can amount to a violation of Article 3, so can the destruction of property. In *Bilgin v Turkey*, the applicant's home and possessions had been deliberately burned, in what constituted an act of violence “in utter disregard of the safety and welfare of the applicant [and his family],”<sup>221</sup> who were thus left without shelter. In its assessment of the relative gravity of the ill-treatment, the Commission took into account the applicant's dire financial situation and the ensuing impact a complete loss of all his property was bound to have on his physical and mental state.<sup>222</sup> Under such circumstances, it was clear that the applicant's rights under Article 3 had been violated.

The Court was faced with a similar scenario in more recent years in *Moldovan v. Romania*, with applicants of Roma origin. They had been attacked by a crowd of non-Roma citizens in Romania, who then, at the instigation of local police officers, burned down thirteen Roma homes in the area.<sup>223</sup> The applicants were forced to live in deplorable conditions, in huts with mud floors, in cellars, in henhouses and pigsties.<sup>224</sup> Local and national authorities consistently dismissed their grievances. Although the Court was unable to rule on the attacks that led to their dispossession,<sup>225</sup> it found that their living conditions combined with the racial discrimination they publicly experienced amounted to degrading treatment.<sup>226</sup>

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218. *Cyprus v. Turkey*, 2001-IV Eur. Ct. H.R. 1, 78–80 (2001).

219. *Id.* at 79.

220. *Id.* at 80.

221. *Bilgin v. Turkey*, 2001-VIII Eur. Ct. H.R. 197, 224 (2000).

222. *Id.*

223. *Moldovan*, 2005-VII Eur. Ct. H.R. at 185.

224. *Id.*

225. The attacks occurred in September 1993, before Romania was a party to the European Convention on Human Rights.

226. *Moldovan*, 2005-VII Eur. Ct. H.R. at 197.

### B. Degrading Treatment of the Romanian Roma

The treatment of the petitioners in *Moldovan* is not legally distinguishable from the treatment of Roma in the cases described in this Note. The Court has acknowledged that the assessment of ill-treatment and whether it attains the minimum standard of severity is relative.<sup>227</sup> This evaluation depends on all the circumstances of the case, including its physical and mental effects, and even, in some cases, the sex, age, and health of the victim.<sup>228</sup>

Forced evictions of the Roma in Romania undoubtedly meet this standard. They leave families homeless without adequate alternative accommodation, without any means of subsistence, access to healthcare, or education; as such, they amount to similarly gross violations of human rights. Evictions in Miercurea Ciuc, Cluj-Napoca, Baia Mare, and other Romanian cities, towns, and villages interfered with the human dignity of those concerned. Whole communities were displaced, forced out of homes they had inhabited for decades. Their removal caused economic marginalization, and encroached upon the economic, social, and cultural development of those affected.<sup>229</sup> The lack of adequate alternative accommodation left the Roma homeless or living in substandard conditions, doubly humiliated by the authorities' disregard for their well-being and their economic vulnerability.

The Court must also consider the status of the Roma as a vulnerable minority population in its assessment of their ill-treatment. It has previously noted that, as a result of their turbulent history, the Roma require "special protection."<sup>230</sup> The Court should take this into account in its assessment of the severity of the treatment of the Roma, acknowledging how their status in society renders them more susceptible to the negative effects of these evictions. As a population, they face widespread discrimination; official disregard and the authorities' callous neglect of the Roma's human rights heightens the severity of the violation. The Roma were left powerless in the face of a government intent on isolating them from the rest of society. To comprehend the scale of their hardship, it is essential to see this loss relative to their vulnerable status. Official indifference and public

227. *Dulas v. Turkey*, App. No. 25801/94, Eur. Ct. H.R. ¶ 53 (2001), <http://hudoc.echr.coe.int/eng?i=001-59161> [<https://perma.cc/33P9-HC87>].

228. *Id.*

229. *See supra* Part I.

230. *See, e.g., D.H. and others v. the Czech Republic (GC)*, App. No. 57325/00, 47 Eur. H.R. Rep. 3, ¶ 182 (2007), <http://hudoc.echr.coe.int/eng?i=001-83256> [<https://perma.cc/6FQB-9DZW>].

apathy aggravated the consequences of the loss of their homes, intensifying the affected individuals' suffering.

The distress of the Roma cannot be separated from the prevalence of anti-gypsism in both informal social structures and official political channels. For centuries, they have been the targets of official campaigns aimed at consolidating the prejudices held by local ethnic groups against them as the "other." To this day, they continue to endure countless injustices merely by virtue of their identity. Furthermore, in the public sphere, there is a tendency to blame the Roma for their own problems; there is a pervasive failure to see the fault of institutionalized racism in the perpetration of low socioeconomic status and a lack of opportunities for advancement.<sup>231</sup> In *East African Asians v. United Kingdom*, the Commission already acknowledged that discrimination could constitute degrading treatment.<sup>232</sup> The widespread social prejudice facing the Roma victims of forced evictions and the discriminatory intent of the authorities perpetrating them exacerbate the severity of these human rights violations. In its assessment of the circumstances of these cases, the Court ought to note these aggravating factors. By viewing the violations of the Roma's rights in the broader national context, the Court can easily find that the State's practice amount to grave ill-treatment within the meaning of Article 3.

### C. The Importance of the Distinction

A new interpretative framework would allow the Court to more effectively address the magnitude of this problem. By labeling forced evictions as a form of inhuman or degrading treatment, the Court could demonstrate that it considers these violations to be of the utmost gravity and that it will judge their perpetrators accordingly.

There is a significant way in which Article 3 differs from most other provisions in the Convention. The rights provided for in Article 8 are accompanied by a limitation in article 8(2): a public authority is not to interfere with the exercise of these rights, except under the circumstances and in the manner allowed for in the Article. Moreover, Article 15 permits a further derogation from the rights listed in the Convention in time of public emergency.<sup>233</sup> Article 3 is

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231. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, SECOND REPORT ON ROMANIA, *supra* note 43, at 17.

232. *East African Asians*, Apps. Nos. 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70, Eur. Ct. H.R. 992.

233. ECHR, *supra* note 122, art. 15.

one of only a few provisions from which no derogation is permitted.

Thus, while a State may justify its violations of other rights, no justification of a breach of Article 3 is allowed. Once the Court were to establish that the government's actions had attained the minimum level of severity, it could now allow these to be justified as necessary for public safety or any other reason. In a case like *Chapman*, the authorities could not cite the protection of rights of others to justify rendering Roma families homeless. For the Roma in Pata Rât, the government would not be able to invoke any of the limitations listed in Article 8 to vindicate their treatment. Furthermore, States would no longer be able to hide behind the margin of appreciation granted by the Court. A violation of Article 3 could not be rationalized as a permissible policy within the purview of local authorities.

A finding of a violation of the prohibition of torture and inhuman or degrading treatment or punishment also carries significant reputational harm. States do not want to be labeled as engaging in torture, for obvious reasons. As a new member of the EU, Romania is even more sensitive to ensuring that its human rights record does not portray it in a negative light on the European stage.<sup>234</sup>

This understanding of State interactions with international law and their behavior is supported by the theory of compliance. States are rational, self-interested actors that wish to preserve a positive reputation.<sup>235</sup> They honor their international legal obligations because of the reputational effects that stem from compliance.<sup>236</sup> Thus, when the impact of noncompliance on a State's reputation is high, it provides an incentive to abide by its commitments, while when the negative impact of defection is low, these incentives are smaller.<sup>237</sup> Compliance with international legal obligations has clear benefits for States, showing them as cooperative, credible partners in international relations.<sup>238</sup>

The Court ought to capitalize on the reputational concerns of the member states of the Council of Europe. The costs of a finding of a violation of Article 3 are high—labeled as a perpetrator of torture, unwilling to abide by its commitments to the Convention, a State is likely to be seen as an outcast within the European communi-

234. See generally Lisa Conant, *Compelling Criteria? Human Rights in the European Union*, 21 J. EUR. PUB. POL. 713 (2014).

235. Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1841 (2002).

236. *Id.* at 1848–9.

237. *Id.*

238. *Id.* at 1849–50.

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ty. For a country like Romania, the costs of ostracization by other Member States is particularly high. A ruling by the Court that the country's practice of forced evictions of the Roma amounts to ill-treatment would more effectively target this behavior. The stigma of such a decision is more likely to induce Romania to adjust its practices, and could allow the Court to more adequately extend the Convention's protections to this vulnerable minority.

#### CONCLUSION

Forced evictions are used to further the oppression of the Roma. They are an overt showing of discrimination, and their effect is to segregate urban spaces according to race. These discriminatory practices are intended to degrade the Roma and thus suffice for the Court to find a violation of Article 3. Combined with the atrocity of the living conditions that follow their forced evictions, this treatment rises to the level of debasement necessary to establish a breach of the Convention.

As the main European institution charged with protecting human rights, the Court has a particular obligation towards vulnerable minority populations. By identifying and combating major violations, it raises media and public awareness of crises that could otherwise go unpunished. Its judgments can create momentum that would be the decisive step towards alleviating the crisis. A finding of a violation of Article 3 in situations involving forced evictions targeting the Roma would constitute a strong stance on the issue; the reputational harm suffered by the perpetrators could induce compliance. Moreover, it would show the Court does not remain indifferent to racial segregation in the housing sector and would reaffirm its commitment to combating discrimination. The current political climate necessitates vehement opposition to any State practices that undermine minority rights, and the Court must express its condemnation of human rights abuses with requisite force.

*Julia Grabowska\**

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