WRITTEN COMMENTS

of the European Roma Rights Centre, Concerning Serbia

For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013).

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

errc
european roma rights centre

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INTRODUCTION

This submission to the United Nations Committee on Economic, Social and Cultural Rights (the Committee) concerns Serbia's observance of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This list of critical issues is presented by the European Roma Rights Centre (ERRC) to assist the Pre-Sessional Working Group to the 52nd session of the Committee with country specific information on housing issues affecting Roma ethnic minority in relation to Serbia's second periodic report (the State Report).

This paper presents only a list of critical issues in relation to the right to adequate housing as a part of the right to an adequate standard of living enshrined in the Article 11 of the ICESCR with an aim to demonstrate areas where the Serbian Government has failed sufficiently to meet its obligations under the ICESCR, General Comment No. 4 on the right to adequate housing (1991) and General Comment No. 7 on the right to adequate housing: forced evictions (1997) of the Committee. Throughout this submission, we respectfully suggest questions that the Committee may wish to pose to the Serbian Government during its examination of Serbia's second report.

The ERRC gives full permission for this submission to be placed on the website of the Office of the High Commissioner for Human Rights and for it to be referred to by Committee members as a source of information during discussions with the Serbian Government.

According to the 2011 population census there are 147,604 Roma in Serbia, comprising 2.05% of the country's population. This makes Roma the second largest minority in Serbia after the Hungarian national minority. However, unofficial sources estimate that the number of Roma in Serbia is significantly higher, in the range of 250,000 to 500,000.

Nationwide, comprehensive data on the socio-economic situation of the Roma in Serbia do not exist. Nationwide statistics are in general based on the census results; Roma, however, in majority do not disclose their identity in census-taking which creates a serious obstacle for the production of reliable data.[1]

HOUSING AND AN ADEQUATE STANDARD OF LIVING – ARTICLE 11

According to research conducted in 2002, there were 593 Roma settlements in Serbia, each with a minimum of 15 families. In 2002, 43.5% of all settlements were classified as 'unhygienic' or 'slums'.[2] Most of these settlements are segregated and located on the outskirts of larger cities, some even being physically isolated by fences. Houses are often built with scrap materials, with neither sufficient protection from the elements nor a complete network of electricity. More than a quarter of settlements do not have a water supply and only one third have paved roads. A more recent survey report related to Serbia in 2011 indicates that 22% of Roma do not have access to improved water sources and 39% to improved sanitation compared to 12% and 16% of non-Roma[3].

Apart from substandard living conditions, forced evictions remain a pertinent problem disproportionately affecting the Roma community in Serbia between 2009 and 2013. Evictions in this period overall were greater than the previous four-year period, although they tailed off in 2012/2013. The vast majority of evictions were carried out or are imminent in Belgrade.

Between 2009 and 2012, the ERRC and several local NGOs who form part of the Platform for the Right to Adequate Housing have registered 18 forced evictions, affecting more than 650 Romani families including more than 2,700 individuals. Almost all instances of forced evictions were marked by the same human rights violations, notably the failure to provide evictees with adequate (or indeed any) alternative accommodation, as

1 ERRC, *Serbia: Country profile 2011-2012*, July 2013, pg. 7, available at: http://www.errc.org/cms/upload/file/serbia-country-profile-2011-2012.pdf.

2 UNDP, *Human Development Report Serbia 2008: Regional cooperation*, Belgrade, 2008, available at: http://www.undp.org.rs/download/nhdr2008_eng.pdf.

3 UNDP/WB/EC, Regional Roma survey 2011.

Serbia has undertaken to do under the Covenant[4] or to consult affected communities throughout all stages and provide due process and compensation.[5]

Circumstances under which these evictions have taken place are various – from large scale eviction of 1,000 people in one day to evictions of single families; evictions from homes in informal settlements, municipal apartments or even from the alternative accommodation provided following an earlier eviction; evictions due to urban development projects, sports events, occupation of private property or no particular reason at all; evictions ordered by local administrative authorities or the court; evictions rendering people homeless or providing inadequate alternative accommodation.[6]

Among those forcibly evicted have been children, older persons, disabled persons, pregnant women and internally displaced persons from Kosovo. Most of the forced evictions were executed within a short period of time, without genuine consultations with the affected population, without the protection of their personal property, provision of adequate alternative housing and right to an adequate remedy.[7]

The two biggest mass evictions were from informal Romani settlements in Belgrade located under the Gazela Bridge in 2009 (175 families) and in Belvil in 2012 (257 families). Both evictions were result of the urban development projects which involved international financial institutions. Some of the families were resettled on the outskirts of Belgrade into metal containers which do not meet adequacy criteria,[8] while others were forced to return to their previous places of permanent residence, usually to the small and impoverished municipalities in the south of Serbia where they were provided with inadequate accommodation, usually lacking security of tenure.[9] Current ERRC research revealed that most of those sent back to the south of Serbia again went back to informal settlements in Belgrade , where some of them faced another eviction, or migrated to Western Europe.

Roma are disproportionately affected by these evictions, suggesting breaches of Article 2(2) of the Covenant taken with Article 11(1).

The Serbian legal system does not recognise the right to adequate housing as a self-standing right, nor does it contain legislation to prevent forced evictions. On these issues the domestic legal framework is either silent or, where certain provisions do exist, they tend to be incompatible with the international human rights standards on adequate housing. Different procedural and material domestic laws are applicable in cases of eviction depending on whether administrative or judicial authorities are deciding the case, as well as on the nature of the case itself, i.e. illegal occupancy, demolition due to lack of construction permit or expropriation.[10]

The Constitution of the Republic of Serbia does not provide explicit protection of the right to adequate housing, including the right not to be subjected to forced evictions. However, by stipulating direct implementation of the human and minority rights as guaranteed by the Constitution, generally accepted rules of international law, and ratified international treaties and law (Article 18) the constitutional order in Serbia guarantees the right to adequate housing. Nonetheless, in several cases that the ERRC has brought before the Serbian courts on behalf of the victims of forced eviction (or in threat of eviction), the courts have failed to take into consideration invoked international human rights treaties, especially the Covenant.

The legal framework regulating evictions is complex, inadequate and inconsistent. It is comprised of several laws regulating different areas (housing, construction, communal services, and expropriation) and includes: the Law on General Administrative Procedure, the Law on Execution and Security, the Law on Housing, the Law on Planning and Construction, the Law on Communal Services and the Law on Expropriation.[11] As a result,

4 See General Comment 7, § 16 ('*Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available*').

5 *Ibid.* pg. 18-19.

6 Platform for the Right to Adequate Housing, "Legal Standards and Eviction of Roma in Serbia", draft working paper, December 2012.

7 *Ibid.*

8 ERRC, *Serbia: Country profile 2011-2012*, July 2013, pg. 19-21.

9 ERRC, "Serbia: Romani Families Face Uncertain Future One Year After Forced Eviction of Belvil Informal Settlement", press release, 26 April 2013, available at: http://www.errc.org/article/serbia-romani-families-face-uncertain-future-one-year-after-forced-eviction-of-belvil-informal-settlement/4135.

10 Platform for the Right to Adequate Housing, "Legal Standards and Eviction of Roma in Serbia", draft working paper, December 2012.

11 ERRC, *Serbia: Country profile 2011-2012*, July 2013, pg. 17.

Roma subject to forced evictions in Serbia are victims of breaches of Article 4 of the Covenant (specifically, the requirement that limitations on rights be 'determined by law'), taken with Article 11(1): the law on forced evictions is so vague and complex as to lack the quality of law[12] that Article 4 of the Covenant requires.

In 2009 the Parliament passed the Law on Social Housing (LSH) which regulates conditions for the sustainable development of social housing, the manner of securing and utilising funds for the development of social housing and other relevant questions (Article 1). Persons entitled to social housing under this law are those without a home or a home of an adequate standard, and who cannot afford housing under market conditions. Most importantly, the LSH sets criteria for allocating social housing, including: housing status, income level, health condition, disability, size of the household, property status. Persons belonging to vulnerable groups, including Roma, have priority when determining the order of allocation of social housing (Article 10).[13] However, the very few social housing programmes that exist at the local level funded from the City or municipal budget are not in line with the criteria set forth in the Law on Social Housing, making it more difficult to access social housing programs.

The Government adopted the National Strategy for Social Housing (the Strategy) in February 2012, defining conditions for the development of social housing in Serbia. The issue of Roma housing and informal settlements is implicitly regulated through the section on improving housing conditions in substandard settlements. The Strategy does not make any reference to standards on the right to adequate housing, or provision of alternative accommodation in instances of forced eviction.[14]

Suggested questions to the Government:

- Please provide information on whether any of the rights contained in the Covenant, and especially the right to adequate housing as a part of the right to an adequate standard of living, has been applied by the national courts of law.
- What specific measures have been adopted or planned in order to incorporate the right to adequate housing, including the prohibition of forced evictions, into the domestic legal framework, in line with international human rights standards, either by amending the existing or enacting new legislation?
- What measures have been adopted in order to establish appropriate requirements and procedures to be followed prior, during and after the eviction in line with the General Comment No. 4 and General Comment 7 and to ensure that all legal safeguards are available both to individuals and groups?
- Does the Government intend to clarify and/or simplify the law on forced evictions so as to render the law more accessible to those affected by it?
- Does the Government plan to amend the Law on Social Housing so that it includes provisions on adequate alternative accommodation for the persons threatened with evictions, or those who were rendered homeless due to forced evictions?
- What concrete measures have been adopted to amend the housing policies in a way that they include diverse solutions for adequate and affordable accommodation?
- What concrete measures have been adopted in order to ensure that any future eviction has an action plan developed in meaningful consultation with the potentially affected persons and civil society organisations, provided with enough time for public discussion and review as well as allocated funds for its implementation?
- What professional training and capacity-building activities have been implemented for civil servants working on housing issues, construction and urban development, as well as for the judiciary, on the housing rights in the international law?
- Does the Government collect data on the number of forced evictions, number of affected individuals and conditions under which the eviction took place?

12 See, e.g., *Malone v United Kingdom* (judgment of the European Court of Human Rights of 2 August 1984), § 67 (interpreting the requirement that interferences with the right to respect for private life be 'in accordance with the law'): '*the phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention. The phrase thus implies… that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities*".

13 ERRC, *Serbia: Country profile 2011-2012*, July 2013, pg. 17.

14 ERRC, *Serbia: Country profile 2011-2012*, July 2013, pg. 17-18.

- Does the government have any data on the sustainability of its relocation activities when sending people from Belgrade to their previous places of permanent residence, usually in Southern Serbia?
- Does the government have any information on whether people stay in these locations or return to other informal camps in Belgrade, or leave Serbia?
- What measures has the Government taken to improve the housing situation and living conditions for Roma?
- Does the Government plan to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and if so, when?