



Housing Rights of Roma and Travellers Across Europe

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Editorial

Housing Rights of Roma and Travellers Across Europe

Housing is recognised as a fundamental human right across Europe. The right to adequate housing is part of international law. It is embedded in the United Nations Declaration of Human Rights and in major international and European human rights treaties.

In Europe, where large numbers of Roma and Travellers continue to live in substandard conditions falling far below even the minimum criteria of adequate housing, there is an urgent need to draw attention to the realization of housing rights. Under international human rights law, states have legal obligation to take steps "by all appropriate means" to protect, respect and fulfil the human right to housing. While it is acknowledged that constraints due to the limits of available resources allow for the progressive realization of this right, international law also imposes obligations that take immediate effect. Such obligation of particular importance for Roma and Travellers is that the right to housing is "exercised without discrimination". Yet direct and indirect discrimination against Roma in access to housing remains widespread.

Violations of housing rights of the Roma and Travellers take different forms and the examples of such cases are many. Under the various international and European human rights monitoring mechanisms, it has been pointed out that Roma and Travellers live in poor housing conditions, often in squalid shanty towns and temporary camps in segregated and environmentally hazardous areas without access to public services, employment and schools and without adequate access to public utilities. Lack of security of tenure is the key housing problem Roma and Travellers face. It renders the Roma and Travellers vulnerable to arbitrary and forced eviction, housing harassment and other threats.

Access to adequate housing is a precondition to the enjoyment of most fundamental human rights. It is essential to the fulfilment of human life with dignity and to break the cycle of exclusion, segregation, deprivation many Roma and Travellers experience.

Housing Rights Watch has chosen to dedicate a special publication to the issue of Roma and Travellers' housing rights. The articles in this publication present the housing situation of the Roma in five EU member states from a legal perspective. In the first article, Kateřina Hrubá shares her experience and lessons learnt in strategic litigation in the Czech Republic through an example of a case of residential segregation. In the following article, Nicolas Bernard and Céline Romainville describe the legislation in Belgium and the problems stemming from the non-recognition of caravans as homes. The article shows how urban planning rules fail to address the needs of Travellers and reinforce the stigma they suffer from the rest of society. Adeline Firmin and Noria Derdek explain how specific conditions and restrictions prevent Roma citizens of the EU from accessing the right to housing in France. Vasile Galbea presents three cases of forced eviction in Romania. In neither case were the communities involved in searching for alternatives to eviction. Even if such alternatives were provided, they were in the form of segregated Roma housing only and located in hazardous areas which lacked basic services and infrastructure. In the final article, Guillem Fernández Evangelista analyses the Spanish and Catalan legal framework that contributed to a high degree of residential integration of the Roma population in Spain.

Housing Rights Watch would like to extend its sincere thanks and gratitude to all contributors to this publication.

Letters to Housing Rights Watch If you would like to share your ideas, thoughts and feedback, please send an e-mail to dalma.fabian@feantsa.org or housingrightswatch@gmail.com

*The articles from this publication do not necessarily reflect the views of FEANTSA and Fondation Abbé Pierre.
Articles can be quoted as long as the source is acknowledged.*

Ethnic Discrimination and Segregation in Housing as a Violation of Personality Rights - Strategic Litigation Cases in Kladno, Czech Republic

By KATERÍNA HRUBÁ, ZŠvule práva, Czech Republic

Roma in the Czech Republic (CR)

The Roma minority constitutes the largest national minority in the CR. According to the qualified estimations the number of Roma amounts to 150,000 – 300,000 (thus 1,4 – 2,8 % of the whole population of the CR).¹ High level of discrimination against Roma persists, especially in the area of education, housing, employment and access to other important social goods by not only private entities but also by the public administration authorities.² Discriminatory practices of landlords (private landlords as well as municipalities) hinder equal access of Roma to adequate housing and as a result, today at least 300 socially excluded Roma localities exist in the CR.³ Substandard housing negatively impacts on the health conditions of the Roma population.⁴ The stagnation or gradual worsening of the Roma situation is apparent comparing current figures to similar data

from the previous ten years. This shall be perceived as an indicator that the integration instruments implemented so far are not sufficient.⁵ Legal protection against systematic discrimination or other illegal steps taken by the public administration, by the state or by private entities is practically not available to most Czech Roma.⁶

The discriminatory approach of the public administration is apparent mainly in the area of housing, as Roma are practically solely left with the option to rent apartments from the cities and municipalities.⁷ They are discriminated when requesting apartments, their contracts are being unlawfully changed to less advantageous and Roma families are unlawfully moved out to hygienically unhealthy buildings and to segregated, socially excluded locations on the outskirts of towns or regions. City representatives, being part of the state public administration, introduce a

1 Official estimates of the Roma population provided by The Czech Governmental Council for National Minorities, available at <http://www.vlada.cz/scripts/detail.php?id=16149>. The number of the Czech population, according to the Czech Statistical Office (<http://www.czso.cz/>), is 10.515.818 (data from 30 June 2010).

2 Persisting vulnerable situation of Roma has been confirmed i.a. within Reports on the State of Human Rights in the Czech Republic in 2008 and in 2009, Reports on the Situation of Roma Communities in the Czech Republic in 2008 and 2009 and Reports on the Situation of National Minorities in the Czech Republic in 2009. The 26,70% of all Roma pupils attending elementary schools are taught according to the Framework Educational Program of Elementary Education for Children with Light Mental Disability, whereas only 2,17% of non-Roma pupils follow this substandard curricula. Monitoring of the Framework Educational Program, implemented by the Institute for Information in Education in 2009, confirmed persisting unequal chances of Roma children within educational system and their segregation (Report on the Situation of Roma Communities in the Czech Republic in 2009, pg. 38 – 44). The level of unemployment reached, according to qualified estimates, 70 – 100% in socially excluded Roma localities. In comparison, the average unemployment rate amounted to 8% in 2009 in the CR (Report on the Situation of Roma Communities in the Czech Republic in 2009, pg. 48.)

3 The Analysis of Socially Excluded Roma Localities in the Czech Republic and the Absorption Capacity of the Participants Involved in this Field, GAC Ltd., 2006, detected nearly 300 of excluded Romani localities with substandard housing. The Analysis, including the interactive Map of Socially Excluded Roma Localities, is accessible at <http://www.esfcr.cz/mapa/index.html>. - The Longterm Monitoring of the Situation in Roma Localities – Czech Localities, GAC Ltd., 2009, has confirmed, that the lack of adequate housing and the lack of social housing/housing for families in crisis belong to the most urgent problems of Roma in the CR, accessible at <http://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/dokumenty/dlouhodobymonitoringu-situace-romskykh-lokalitet—ceske-lokality-70628/>.

4 Romani Population and Health – The Czech Republic – The national Report 2009 as one of the outputs of the international comparative study SASTIPEN, Health and Romani Population.

5 The Czech Government acknowledges the continuing worsening of the situation of socially excluded Romani communities and their long-term unfavourable position within the Czech society, in which the Roma minority is still not accepted by the majority society and faces discrimination to a larger degree (included in the Government statement on the occasion of the adoption of The Concept on Roma Integration for the Time Period 2010 – 2013, available at <http://www.vlada.cz/cz/ppov/zalezitosti-romske-komunity/dokumenty/koncepcje-romske-integrace-na-obdobu-20102013-71187>). - United Nations High Commissioner for Human Rights Navi Pillay has expressed concern over the deteriorating situation of Roma in the Czech Republic while submitting her Report on 5 March 2010., quoted at <http://www.un.org/apps/news/story.asp?NewsID=33967&Cr=pillary&Cr1>.

6 CR lacks a complex legal regulation of low-cost or free legal help. More information about the problem of insufficient access of marginalised people to legal aid and justice in CR is available at www.opu.cz/index.php?option=com_docman&task=doc..gid=90 or http://www.pili.org/2005r/dmdocuments/CzechUpdate_Bukovska.pdf.

7 Rented flats on the free market are inaccessible for socially marginalised Roma in the majority of cases as owners of flats are not willing to hire their flats to Roma people. Exceptions are overcharged housing possibilities in dormitories and outworn houses. Owners of these realities misuse unequal position of the Roma on the market and the fact that Roma have no other choice than to accept disadvantageous terms. - The Residential Segregation, Charles University in Prague, Faculty of Science and the Ministry for Regional Development, 2010, the Chapter "Segregation of Roma Inhabitants", pg. 88 – 90.

policy of a systematic displacement of "inconvenient" and "unwanted" citizens, to please the majority population.⁸ Although admitting the situation, the Czech state stays passive arguing that the state authorities can not interfere with the autonomous powers of municipalities.

Strategic litigation as a possible tool of systemic social change

Nongovernmental organisations in the CR are working on alleviating the situation of Roma mainly through methods of social work, educational activities and minor social-legal advisory services. Nevertheless, such instruments alone do not have the potential to initiate a significant change of the situation. By creating a "practice of good defense" at courts and beginning a public debate by communicating the results of court proceedings to media, strategic litigation aims to initiate by thoroughly chosen cases a shift in application and decision-making practice of administrative and justice institutions. Czech courts have to say in clear words that Czech municipalities must not create socially excluded Roma ghettos and that the Czech state is obliged to intervene, as it amounts to serious breach of national as well as international law. Strategic litigation connects legal representation of Roma individuals, victims of discrimination and segregation, with a strategic aim to achieve a systemic social change, in favor of Roma minority integration. Starting with thorough knowledge of the field, legal representation is provided to clients whose status shows defined model attributes (a strategic potential)⁹, and who are willing to cooperate during the long-term struggle for legal solution to their life situation.

Statutory Town of Kladno – one example of many

Kladno, a middle-sized town near Prague¹⁰, illustrates the persisting residential segregation in housing due to ethnic discrimination. Roma have been forced out from ethnically mixed environments into outworn and segregated housing units, some of them even not intended for permanent living. Allegations of the town that all of them were debtors or voluntarily wanted to live with other Roma did not reflect the reality. Many of the concerned Roma did not owe rent and did not wish to live in a purely Roma location. Despite these facts, they have been pushed into environments where only their ethnicity connects them with other inhabitants.¹¹

A location called "Meat Packing Plant" ("Masokombinát" in Czech) is currently inhabited only by Roma, living in substandard conditions, paying high rent to the town. Two Roma families, clients of ZŠvule prava in two strategic litigation cases, were expelled from their previous housing due to the plan of the town to turn them into retirement homes (in one case) and due to the inadequate safety of the building allegedly falling into undermined ground (in the other case). Both families were only offered to live in the Meat Plant, even though they were able to pay rent in regular city housing and showed great interest in living among the majority population. They were moved into the Masokombinát only because of their ethnicity disregarding the impact it might have on their private and family life. The Masokombinát's flats are in very bad conditions. They are damp, mouldy with low temperatures from autumn until spring. The location is excluded from the life of the city, has no access to infrastructure, services, education

8 The strongly negative perception of Roma minority persists, as the result of representative public opinions survey from April 2010 indicates; 82% of Czechs perceive relations between majority and Romani minority bad. According to the research conducted during April 2010 by the Center for Public Opinion Research (Centrum pro výzkum veřejného mínění, CVVM) relations with the Roma minority were rated "poor" by 82 % of respondents, of whom 33 % rated relations "very poor". Only 13 % of Czechs rated relations with the Roma "good". According to CVVM, the ratings have been worsening since 2006. At that time, 69 % of Czechs evaluated co-existence between the Roma minority and non-Roma negatively, with 22 % evaluating it as positive. The results from time period 1997 – 2010 show that current ratio of negative perception of Roma belong to the worst during last 14 years (oscillating between 66 – 85%). - Results accessible at <http://www.cvvm.cas.cz/index.php?lang=0&disp=zpravy&r=1&shw=101037>.

9 So called test-case factors are the following: the issue is unprecedented (never resolved by a court judgement or alternatively new facts or change in law may give rise to the issue that requires new litigation), the case illustrates typical systemic breach of fundamental rights and freedoms requiring to be addressed, the case will have broader impact leading to systemic change beyond doing justice to individual litigant, facts of the case present a good chance of winning at court, clients are sympathetic, the case can be shared by partners regarding the sources and expertise.

10 Basic information about Kladno available also in English at www.mesto.kladno.cz.

11 The process has been confirmed e.g. by The Analysis of Socially Excluded Roma Localities in the Czech Republic and the Absorption Capacity of the Participants Involved in this Field, GAC Ltd., 2006 (together with the interactive Map of Socially Excluded Roma Localities accessible at <http://www.esfcr.cz/mapa/index.html>); The Final Reports from the Research: The Analysis of the situation of Roma socially excluded enclaves in the Middle Bohemia region, People in Need (Clovek v tísni, o.p.s.), 2005; The Field Research in Hyperreality. Notes to the Media Construction of a Socially Excluded Locality, Martin Růžička and Lukáš Radostný, outputs of the Longterm Stationary Field Research of Socially Excluded Localities, The Faculty of Philosophy, Department of Anthropology, University of West Bohemia, for the Ministry of Labour and Social Affairs, 2004; The Community Plan of Social Services in Kladno 2008 – 2010.

or medical care and is a source of an extensive and permanent stigmatization. All tenants living in Masokombinat are stigmatized in the eyes of other Kladno citizens, as for many years the locality has been considered a "prisoner's colony", a place inhabited only by criminals, prostitutes and drug addicts.¹²

A lawsuit for protection of personality has been filed in both cases¹³ on the basis of a breach of the clients personality rights¹⁴ caused by the town Kladno, when it applied un-equal treatment and failed to fulfil its obligation to integrate Romany citizens and to dedicate equal attention to all its citizens, and by the Czech state, when failing to protect its Roma citizens against such practice. The strategic goal of the lawsuits is for the court to state that social and local segregation based on one's ethnicity is a discriminatory breach of the right to personality protection, to impose the duty to abandon unlawful breaches of the right to personality protection, as well as to remove the consequences of this intervention. The lawsuits demonstrate what spheres of personal life and individual development have been breached by the segregational town policy. A very significant element of the lawsuit is to emphasize the importance of the negative consequences of social isolation as the result of the systemic acts of public administration institutions. The segregational policies of municipalities cause violations of such fundamental human rights, as the right to free movement and residence, as well as the right to respect one's private and family life. The aim is also to achieve a financial compensation of the caused nonmaterial damage.

According to the Czech Civil Code a lawsuit for the protection of personality foresees as one of the remedies of the correction of an unlawful condition the return to prior lawful condition. One of the aims of the suits is to ascertain the duty of a municipality to integrate Roma plaintiffs by providing them with housing in general and ethnically mixed conditions.¹⁵

Crucial innovative points of claims

- In both cases the respective town authority and also the Czech Republic are the defendants. While the town authorities are held accountable for unlawful conduct within their separate (autonomous) powers, the State is held accountable for offences within the powers of state administration. In this way, the claims emphasise a frequently neglected fact that an unlawful passivity, i.e. failure to act as obliged, is equal to an active unlawful conduct. The legal argumentation comprises international obligations of the Czech State that is committed to eliminate racial and ethnic discrimination on its territory regardless of the person of perpetrator.
- The claims open up a discussion about the essence and the limits of local self-government. In the CR, a legally incorrect and responsibility-avoiding attitude is widespread. It claims that the State has no legal tools to prevent ethnic discrimination if discrimination is practised within the separate self-governing competence of a municipality. Ad absurdum, this incorrect legal opinion would mean that any Czech citizen would be subject to arbitrary practices of the municipality where he or she

12 Description of the Masokombinat locality is further included e.g. in The Conception of the Criminality Prevention in Kladno for years 2009 – 2011; The Integrated Plan of Kladno Development for Integrated Operational Program – Housing Estate Kročehlavy; Social and Technical Conditions of the Masokombinat Building Nr. 698. Starting points and Recommendations for the Development of the System of Permeable Housing in Kladno, The Agency for Social Inclusion in Roma Localities, July 2010.

13 The Case M.F. versus Kladno and the Czech Republic pending at the Regional Court in Prague from 31st July, 2009 (file number 36 C 122/2009) and the Case A.K. And H.K. versus Kladno and the Czech Republic pending at the Regional Court in Prague from 31st July, 2009 (file number 36 C 175/2009), currently united into one court proceedings by the judge's decision. In December 2010, the fifth court hearing takes place, examining proposed evidence so far.

14 The court proceedings in both cases started in July 2009, it is before the Act No. 198/2009 Coll., on equal treatment and on the legal means of protection against discrimination (the Anti-Discrimination Act) came into legal force, banning i.a. explicitly the discrimination in the access to goods and services, including housing to the extent as they are offered to the public, or in their supply. That is why the legal institute of personality rights protection had to be chosen for litigation. According to the Art. 11 of the Czech Civil Code, every natural person has the right to protection of his/her personality, in particular the life and health, civic honor and human dignity, privacy, name and expressions of a personal nature. According to the Art. 13 of the CC, every natural person has above all the right to redress from interference with the right to protection of his/her personality that the consequences of these interventions are removed and that a reasonable satisfaction is provided to him/her. Under certain conditions, especially if person's dignity has been considerably diminished, the person has the right to compensation for immaterial damages also in financial means. The amount of financial satisfaction is to be declared by court with regard to the seriousness of the immaterial damages and the circumstances under which the infringement has been committed.

15 In this regard and in light of the current Czech case law this claim is untested and controversial. However, this attempt shall be a significant test of the feasibility of nation-wide and regional concepts of Roma integration (prepared and approved by the Czech Government) stipulating the necessity to integrate Roma into the majority population. If the sued municipality attempts to avoid its duty to integrate only two Roma families, it will be clear that these concepts lack any lifespan or relevance.

is registered and could not seek protection from the State (its judicial system) that is committed to protect its citizens by constitutional and international legal rules.

- The claims further practically develop the institutes of the legislation on municipalities¹⁶, which are so far too general to be effectively used in practice. A town (municipality) as a subject of local autonomy and a public corporation, is bound by duties that shall significantly modify its position in comparison with a private housing lessor. Based on the Act on Municipalities, the municipality is obliged on an equal basis and in accordance with local prerequisites and customs to develop social care and to accommodate the needs of its citizens, including housing, health, information and education. Based on the Act on the Rights of National Minorities, a municipality is obliged to fulfil the rights of Roma community members and to ensure their integration into society. The legal interpretation of these provisions – however general and vague they are - should be the same as of other legal provisions and they should not be considered as non-binding or declaratory recommendations.
- The Czech judicial practices provide quite an intense protection of personal rights even if they are violated only partially (e.g. good reputation and privacy disturbed by defamation). The claims in the described strategic cases emphasise that the claimants in question are completely deprived of their individual personality as such. Moving them out into an ethnically and socially excluded area means assigning them the status of a „problematic inhabitant“ and a kind of a “collective personality”, meaning the stereotypical image of a Roma person living in Masokombinat with irreversible consequences on their private life and the life of their families for future generations. The claims are based on the human rights concept of human dignity that is not allowed to be comprehended differently depending on various „categories“ of people, which is the case with Roma people in the CR.

- The claimants demand that the defendants expressly apologise for treating the claimants differently because of their ethnicity and formulate this moral remedy as a primary one. Nevertheless, the claim for financial compensation for non-proprietary damage caused to claimants by discrimination and segregation is to be perceived as important as well. Claims emphasise that the financial compensation is meant to substitute for the claimants' damage on the one hand and to have sanctioning and preventive effects on the other hand, i.e. the compensation should be high enough to prevent the situation from happening again in the future and also in other municipalities in relation to other minorities.
- The claims also directly approach the systemic practice prevalent in municipal housing in the town Kladno and its specific implementation. Therefore, all statements of claims contain arguments and evidence for both these aspects - individual and systemic - are mutually complementary.

Lessons learned

Each stage of case proceedings (preparatory work directly in terrain and the first 16 months of the pending court proceedings) have brought lots of valuable experience for strategic litigation methods in the Czech social and legal environment.

1. **Be ready to substitute for the job of local NGO(s).** Be ready to deliver full service to clients who entered a long-term and demanding legal dispute. It is not possible to neglect any problem either social or legal in nature that could destabilize their situation. Local organisations, for their own survival's sake, prefer “good relationships” with the town authorities over providing professional services to their clients. They are threatened by the town representatives not to obtain financial support for the coming years. It is evident that strategic legal intervention can only be made by organisations that do not operate directly in the area, have no links to the local authorities and are not under pressure of putting their own existence on site at risk.

¹⁶ The Act No. 128/2000 Coll., on Municipalities and the Act No. 273/2001 Coll. on rights of members of national minorities

2. Be ready for obstructions on the part of the sued town authorities. To a surprisingly high degree, Roma clients have been intimidated when the sued town authorities found out that Romani clients had started legal proceedings against them. The pressure put on the clients took various forms - "good-hearted warning", threats like "you could have nowhere to live", insolent remarks or intimidating actions taken by the town authorities. One client's family had to leave their flat as the town did not prolong their tenant contract. Currently they have to live in a private-run dormitory in one room and pay double-price for it. Legal representatives of the town explicitly doubt in front of the court the relevance of the cases stating that "someone stays behind it and pays for it striving to harm the Czech Republic".

3. Be ready to undergo a comprehensive monitoring of the life situation and the personality of the clients. In practice, strategic litigation method is based on an organic bond of legal instruments with targeted social work. It is absolutely necessary to be familiar with all and any relevant circumstances surrounding the client represented in a case of the protection of personal rights. First, housing is associated with almost all aspects of the family and private life (e.g. finance, health, education of

the children living in the family etc.). Second, it is imperative to get to know the personality of the client as much as possible to increase the probability that the client will not give up the case. When preparing the case background it is needed to spend some time mapping the life situation of clients, including visits to medical doctors, to schools, to bodies providing social and legal protection of children and to neighbours.

4. Be ready to combine a great amount of evidence from various sources. It is substantial to establish a strong and unambiguous structure of the claims both in terms of proofs and arguments. To demonstrate that there are provable ethnically segregated areas originated due to the actions taken by the town authorities and that these segregated areas are associated with a general stigmatization to the detriment of their population documents by the town and government authorities themselves shall be used, as well as quotations from the media, background documents from academic environment and the local NGOs. Gathering and processing the information from various sources is very time-consuming and difficult to manage. However, the outcome of this work may be crucial for the claims.¹⁷

¹⁷ The Case M.F. versus Kladno and the Czech Republic pending at the Regional Court in Prague from 31st July, 2009 (file number 36 C 122/2009) and the Case A.K. And H.K. versus Kladno and the Czech Republic pending at the Regional Court in Prague from 31st July, 2009 (file number 36 C 175/2009), have been currently united into one court proceeding by the judge's decision. On 6th December 2010, the fifth court hearing takes place, for the purposes of examining proposed evidence. The court takes the cases very seriously and the proceedings may promise important judicial precedents.

Travellers' Right to Housing in Belgium

By NICOLAS BERNARD, Professor, Facultés Universitaires Saint-Louis
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1. An issue that challenges prevailing conceptions

Not all members of the Travellers community (numbering between 10,000 and 20,000 in Belgium according to official reports) are itinerant. Some are certainly migratory, moving from place to place for a few weeks at a time (for seasonal work, for example, or on pilgrimages - and, historically, to flee persecution), but another section has chosen to settle. But even this is not cut-and-dried in so far as these former nomads still want to stay living in their caravan or motorhome "so as to keep going an open-air lifestyle they have known from childhood that allows them to maintain however tenuous a connection with the travelling life"¹.

Furthermore, while the right to housing generally includes the right to *access to* housing (rented - social or private sector - or owned), Travellers, who mostly own their caravans, are looking for a different type of public intervention: the provision of - serviced - sites. Looking at more closely, these places are much less of a "burden" and costs on the authorities than traditional types of assistance (provision of social housing, tax incentives for homebuyers, low-rate mortgages, renovation grants, rent allowances, etc.) and, paradoxically, also seems to create the most problems ...

That, in short, is the very raw deal Travellers get: their transience arouses suspicion, mistrust and hostility (the "nomad card" was scrapped only in 1975), but they are also stopped from settling permanently should they wish to.

Ultimately, is our legal system capable of accommodating this undeniably special case of mobile housing? Based as it is on the absolutely key concept of "principal residence" which determines the application of the Landlord and Tenant Act, for example, and the territorial jurisdiction of public social welfare centres (which determines eligibility for welfare benefits), does Belgium's current legal and regulatory framework grant sufficient recognition to

the specific life experience and reality of Travellers? Can the "double premise" of housing policies (namely, fixed, bricks-and-mortar dwelling unit) be reconciled with transience?

2. Are motorhomes and caravans housing?

The Walloon Housing Code defines a dwelling as "a construction or part of a construction *structurally intended for human habitation* by one or more households". This suggests that caravans and motorhomes do not qualify as dwellings in the southern part of the country. The Brussels Code gives no general statement of what is meant by "housing", but instead more specifically defines "furnished accommodation" as "a *building* or part of a building, fully or partly furnished with furniture, intended as the tenant's dwelling [...]" It can be inferred and generalized from the language used that the Brussels legislature conceives housing in purely immovable property terms. In Wallonia and Brussels, not only do caravans and motorhomes not get official recognition, but the wordings used by definition exclude mobile dwellings from the scope of regional housing codes.

But there is nothing preordained in this. Flanders, for instance, decided in 2004 to make express allowance in its Housing Code for those who live in "motorhomes" defined as a "dwelling which, while adaptable and mobile, is intended for permanent, non-recreational occupation". Over and above the purely conceptual or semantic interest, what is the importance of mobile dwellings being given recognition by the rule-making authorities? The Flemish Code has done more than make mobile dwellings subject to quality rules – it has actually enshrined the cardinal principle that "housing policy in Flanders shall create the conditions necessary for giving effect to the right to decent housing by [...] developing initiatives" including "to improve the housing conditions of residents housed in a motorhome". What form(s) might such support take?

¹ J. RINGELHEIM, "Gens du voyage: les oubliés du droit au logement?", L'état des droits de l'homme en Belgique, Brussels, Ligue des droits de l'homme & Aden, 2010, p. 85-91.

3. Support for site acquisition and development

The Flemish Community pays a subsidy – topped up by the provinces in some cases - covering up to 90% of the cost of purchasing, developing, renovating or extending a “campsite” for motorhomes² provided the site is “situated in a healthy location where connections can easily be made to the existing infrastructure, and where basic daily commercial, service and socio-cultural amenities are readily available”. Today, Flanders has five transit sites and thirty public residential sites (intended for permanent occupation). In total, 60 to 70% of the needs are claimed to be covered today.

Furthermore, “where the site is intended to accommodate mobile dwellings occupied by Travellers”, Wallonia can pay not only “the cost of servicing with roads, sewers, public lighting, water supply network, and common approaches”, but also the costs of “laying out” such amenities³. Let it be clear, however: the regional authority only provides the funding – i.e., it does not do any of the works itself – that is down to the “local authority” helped (financially speaking) by regional government. As a result, the Walloon Region still has only one official public (transit) site outside Bastogne.

And what about the Brussels region? Unfortunately the rule-books contain no mention of any such aid to developing Travellers’ sites. This is not to say that there are no sites at all, but they are thin on the ground: only the city centre borough of “Bruxelles Ville” has an official site; the city’s other boroughs provide stopping places for itinerants when and where they can.

Last but not least, a very old Order of the French Community Executive of 1 July 1982, still in force, provides funding to the provinces, boroughs, metropolitan areas, federations and local authority associations (as well as other subordinate authorities) for the acquisition, development and extension of campsites for “nomads” (not further defined). This subsidy can be combined - for certain expenses - with the previously-mentioned Walloon funding, and can cover up to 60% of the total cost, but there are qualifying criteria. The subsidy for purchase requires that the site should be located in a “hygienic place” which is “near to public

transport provision giving access to schools, shops and other social contacts”. Then, to qualify for the site development subsidy, the works must include both the creation of “easy” access for vehicles, connection to the water and electricity supplies, fitting a septic tank, surfacing work, refuse collection, and even planting greenery, among other things. Sadly, “the Order seems to have remained largely a dead letter.” Despite a specific budget line having been implemented in 2001, very few boroughs [have] put in applications (Bastogne, Namur, Mons/Ghlin, Verviers).

4. Travellers and urban planning legislation

Travellers are often prevented from pursuing their traditional lifestyle by urban planning regulations. The occasional or habitual use of caravans or motorhomes is often a vexed issue. Even parking a caravan or motorhome on land purchased by Travellers can run into regulatory issues.

This is because town planning legislation merely pays lip service to the different lifestyle of Travellers. While urban planning codes do contain some provisions on mobile dwellings, the traveller lifestyle “is not readily slotted into standard legal pigeonholes”⁴. The fact is that urban planning rules have often been enacted with scant regard for the specific situation of Travellers, and failed to assess the needs of this population group. When amended, therefore, they have generally added to the controls and restrictions, which is at odds with the flexibility pressed for by Traveller communities. The ways the urban planning provisions are applied reflect the different kinds of stigma suffered by these groups and have all the hallmarks of “internal colonialism”, i.e., mechanisms for absorbing a minority group within the wider society.

Caravans and motorhomes are travelling facilities which for travellers are their main dwelling, not recreational facilities or second homes. Nor do they fall within the category of working tools like building site huts or utility vehicles which for technical reasons do not require planning permission.

Planning permission is required for a caravan or motorhome habitually used as a dwelling, and any fixed placing of caravans or motorhomes. No permission is required for

2 Article 5 of the Flemish Government Order of 12 May 2000.

3 Article 44, § 2, Walloon Housing Code

4 Ph. VERSAILLES, “Logement et mobilité : la vie en habitat mobile”, *Le logement dans sa multidimensionnalité : une grande cause régionale*, N. Bernard & Ch. Mertens (eds), Namur, Ministry of the Walloon Region, collection Études et documents, 2005, p. 85 ff.

an occasional use of caravans and motorhomes that is compliant with development plans. Requisite planning permissions can be granted only if the use or fixed placing of the caravan complies with area development plans and the overall wholeness of town and country planning. Sad to say, the application of these principles by local authorities often ends in a refusal of permission, because the lack of decision-making criteria that take cultural diversity and the traditional way of life of a minority group into account mean that travellers' concerns cannot be incorporated in urban planning decisions.

Ultimately, it falls to the local authority responsible for planning decisions to initiate a reception policy for travellers in its area, as the regional authorities have no duties for this. But where local authorities do not proactively accommodate these groups, their discretionary powers merely stand in the way of pursuing traditional traveller lifestyles and producing urban planning rules relevant to traveller living environments. Generally, then, urban planning legislation is ill-suited to the reality of traveller housing because its basic principles do not allow planning permission decisions to look at considerations related to cultural identity and cultural diversity.

5. A registered address for travellers

Having an official registered address for administrative purposes and obtaining planning permission is a Catch-22 situation for Travellers because in practice, public authorities tend to make planning permission dependent on having a registered fixed address and vice versa. And the exercise of many human rights depends in practice on having a registered address⁵.

And yet at first glance, the legislation appears to accommodate the situation of Travellers, with specific provisions for itinerants providing that persons who reside on land and those who "occupy a mobile dwelling and take up fixed residence there for least six months a year" can appoint it as their registered address. The same law also provides that "persons who occupy a mobile dwelling who do not take up fixed residence for six months of the year in that local authority area may appoint a registered address in a

local authority area by registering it as a contact address"⁶. Also, Section 1.2 of the Act of 19 July 1991 was amended by the Act of 15 December 2005 to allow itinerant people with no fixed address to register a contact address with "a legal entity whose Articles of Association includes the object of defending the interests of such groups." A departmental instruction specifies that "only non-profit associations, foundations and social purpose companies with legal personality of at least five years' standing, provided their object specifically includes administering or defending the interests of one or more itinerant population groups, can act as a legal entity with which an individual can have a contact address"⁷.

Once again, the problem lies with putting these principles into practice. Local councils too often only agree to register Travellers temporarily, usually citing "public hygiene, urban planning, safety and area development planning grounds"⁸. This repeatedly condemned illegal practice is still apt to be found in the Walloon Region despite the best efforts of the Travellers Mediation Centre.

Conclusions

It is true that objectively, mobile dwellings may be seen as a disamenity for local residents. But truth be told, the difficulties only really come where *no provision is made* to accommodate Travellers. In other words, it is official neglect that inevitably causes these upsets which they can then easily advance to justify their reluctance to promote accommodation for itinerants. Therefore, the main reason Travellers are forced to park illegally on private land is the lack of official sites, and this can only lead to conflict, hostility, and ultimately, eviction. And when itinerants are provided with a more or less official site, it may lack services or amenities, quickly making the situation untenable (for local residents in particular), thereby further reinforcing the stereotyping of travellers, and perpetuating the cycle

On the other side of the equation, the evidence is that a site organized and structured by the local authority works wonders by soothing local fears, so that the itinerants' stay passes without incident. In the final analysis, local distrust often merely reflects official misgivings.

5 N. BERNARD, Ph. VERSAILLES *et al.*, «La domiciliation administrative», *Droits quotidiens*, No. 94, May 2005, p. 4 ff; N. BERNARD, «La problématique des campings permanents en Wallonie. Zones de non droit ou lieux d'expérimentation sociale?», *Les coopératives d'habitants. Méthodes pratiques et formes d'un autre habitat populaire*, Y. Maury (ed.), Brussels, Bruxlant, 2009, p. 345 ff.

6 Article 16.2, Royal Decree (regulations) of 16 July 1992 on population registers and registers of foreign nationals, *Belgian Official Gazette* of 15 August 1992

7 Departmental instruction on extending the possibilities of using contact addresses for itinerant population groups, May 2006, *Belgian Official Gazette* of 6 July 2006.

8 Article 16.2, Royal Decree (regulations) of 16 July 1992 on population registers and registers of foreign nationals, *Belgian Official Gazette* of 15 August 1992

The Right to Housing of EU citizens of Roma Origin in France

By NORIA DERDEK, FAPIL and ADELINE FIRMIN, ALPIL, France

*"Gypsies remain the worst-treated minority in many European countries"*¹. It might well be thought that these words had been uttered just today ...

Last summer's offensive against the most visible section of Roma - those living in shanty settlements because they are unable to access employment and housing – developed out of the crackdown on illegal immigration². People's right to housing and the right of residence remain ineluctably overlapping issues. The ministerial instruction issued on 24 June 2010 spells out both the conditions of deportation and the conditions of eviction from unlawfully occupied land. It was followed on 5 August by a further ministerial instruction dealing specifically with Roma and another on 9 August specifying that "*police action to clear an illegal camp is an opportunity to check the identities of those in it*". On 13 September, it was reported that 441 illegal settlements had been cleared. Roma are no longer specifically targeted, but "*any illegal settlement, regardless of the occupants.*" But because the discrimination cannot be denied since it comes from the highest level of the state, the unfit living conditions of Roma have been thrown into unprecedented sharp focus.

Citizens of the Union, be they Roma or not, have the right to move freely, to equal treatment and to reside without discrimination. These principles derive from the Treaty on European Union³ which in France "*shall prevail over Acts of Parliament*"⁴. The transitional measures for Romania and Bulgaria⁵ are limited to the labour market and do not affect the free movement of Europeans. Nor are citizens who are Roma any more subject to special treatment where the right to housing is concerned.

Yet, the United Nations High Commissioner for Human Rights long since called attention to the living conditions of Roma in France⁶. The European Court of Human Rights has issued several rulings on their vulnerability⁷. The European Committee of Social Rights (ECSR) has put their poor housing conditions and the overriding need to rehouse evictees on record⁸. The French National Consultative Commission on Human Rights (CNCDH) has called for shanty settlements to be got rid of⁹. HALDE, France's discrimination and equality watchdog, notes that "*although, where social protection is concerned, Bulgarians and Romanians enjoy equal treatment accorded to all EU nationals, the restrictive application of their right of residence prevents them from accessing to the full extent their social rights in practice*"¹⁰.

Even with all the existing instruments to fight discrimination, the EU's Roma community have serious difficulty living decently in France. And where they cannot show proof of employment or sufficient resources, French law restricts the possible solutions to the minimum standard of humanity.

I. Access to housing

A citizen of the European Union does not need a residence permit to apply for housing. The general rule is that whether German, Spanish, Romanian or Bulgarian, they are legally resident and an identity card is enough. However, the rule requires citizens subject to a transitional period who wish to work in France to apply for a work permit¹¹ muddies the waters because it is not unknown for landlords (often social housing providers) and government agencies to require one, which prevents them from accessing housing.

1 Office of the United Nations High Commissioner for Human Rights, August 1977

2 Speech by Nicolas Sarkozy, Grenoble, 30 July 2010

3 Articles 2 and 3

4 Article 55 of the Constitution

5 The transitional period has been extended until 2012

6 Alvaro Gil-Robles on a visit to France in 2005; Thomas Hammarberg's visit in 2008

7 ECHR 27 May 2004, Connors v. United Kingdom, and 18 January 2001, Beard v. UK, etc.

8 Resolution of the Committee of Ministers, 30 June 2010 (Complaint No. 51/2008, European Roma Rights Centre (ERRC) v. France). See also, Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010 registered on 15 November

9 *Etude et propositions sur la situation des Roms et des Gens du voyage en France*, 7 February 2008. It recommends carrying out social and health diagnoses of identified occupations with an individual review of situations and to come up with responses appropriate to each case.

10 Decision No. 2009-372 of 26 October 2009

11 Article L. 121-2 of the Immigration and Asylum Code (CESEDA)

1. Private housing

Under section 1 of the Act of 6 July 1989, a public policy statute regulating most types of tenancy, the right to housing is a fundamental right and any form of housing discrimination a criminal offence¹². It makes no residence requirement: a private owner can rent his property to any EU citizen on the same terms as a French person with sufficient resources to pay a freely agreed rent. There is nothing to prevent him from requesting the residence permit of a prospective tenant who is a foreign national¹³. However, this could be *prima facie* evidence of discrimination where the tenancy is to be refused¹⁴. This unconditionality is qualified by the offence of facilitating unauthorised residence¹⁵. Intended to crack down on traffickers in human beings, its extension to any individual or legal entity has been widely and rightly criticized¹⁶.

2. Social housing

Access to public housing is chiefly means-tested (70% of the population qualify).

Foreign nationals must also fulfil the requirements of lawful permanent residence in France as prescribed by Order¹⁷: Europeans must prove their right of residence as required by Article L. 121-1 CESEDA. A person without employment must have health insurance cover and sufficient resources not to become an unreasonable burden on France. Article R. 121-4 CESEDA provides that whether resources, capped at the fixed RSA (earned income supplement) or ASPA (old age low income benefit) thresholds, are sufficient is to be assessed taking into account the individual's personal

circumstances¹⁸. All income from all sources is taken into consideration¹⁹. The ECJ has added that citizens can rely on the resources of an accompanying family member²⁰, and to ask for proof of resources over a period of a year is contrary to Community law²¹. The mere fact of being in receipt of public assistance does not mean losing the right of residence²², but evidence of an unreasonable burden may be shown before the social assistance system accepts a claim²³. The *prima facie* evidence used is usually lack of resources (or an allowance below minimum income) and/or homelessness²⁴. But the European Parliament is still concerned that an unclear definition of what constitutes an unreasonable burden could lead to discrimination²⁵, particularly so as the near-structural shortage of affordable housing which precludes a growing share of the population from adequate housing is a breeding ground for discrimination, with foreigners bearing the brunt.

EU nationals who have a right of residence but whose applications for social housing are unsuccessful can go first to conciliation then to the courts under the so-called "DALO" procedure which places a performance requirement on the state²⁶. Other solutions are possible for those who cannot get housed in normal conditions.

3. Alternative housing solutions

Subletting of social housing is allowed as an exception to house the under-30s, elderly people, disabled persons, seasonal workers and persons in economic and social difficulties²⁷ subject to the same terms of lawful permanent residence as for the main tenant²⁸. The temporary hous-

12 Article 225-1 et seq. Penal Code

13 Article 22-2 of the Act of 6 July 1989 listing the documents a landlord cannot require

14 HALDE Opinion No. 2007-190 of 2 July 2007: requiring a French proof of identity from a European is discrimination on the grounds of nationality

15 Article L. 622-1 et seq. CESEDA

16 *Les frontières incertaines du droit au logement et à l'hébergement des étrangers*, A. Firmin & S. Slama, AJDI, 2010

17 Article R. 441-1 of the Building and Housing Code (CCH) and the Order of 15 March 2010 made under it. The Order of 14 June 2010 requires proof of lawful residence from all adults residing in the dwelling. This provision is arguably wrongful.

18 Article R. 121-4 CESEDA

19 Douai Administrative Appeals Court, 20 May 2008, Versailles Administrative Appeals Court, 28 September 2010, No. 09VE00932; ECJ 23 March 2006 Commission of the European Communities v. Kingdom of Belgium

20 ECJ 19 October 2004, Case C-200/02

21 ECJ 10 April 2008, Commission v Netherlands

22 ECJ 20 September 2001, Grzelczyk

23 French Council of State Opinion of 26 November 2008, No. 315,441, Silidor

24 Versailles Administrative Appeals Court, 8 June 2006, 4th Division, No. 09VE00942; Lyons Administrative Appeals Court, 4 November 2009, No. 09LY01984; Lyons Administrative Appeals Court, 8 October 2009, Iancovici

25 Resolution of 2 April 2009 on the application of Directive 2004/38/EC; and Resolution of 2 May 2009 (2008/2234) in which it refers to the inclusion of Roma as being a shared responsibility of States.

26 R. 300-1 CHC

27 L. 442-8-2 CHC

28 See paragraph on access to social housing

ing assistance scheme also allows associations to sublet housing to people who do not qualify for housing benefit (overcrowding, rent arrears, loss of the right of residence) or social assistance²⁹. Foreign nationals must have lawful residence which meets the same requirements as for housing assistance, whose failings temporary housing assistance is meant to address³⁰. Citizens of the European Union are not referred to but that does not preclude them from qualifying for the measure.

4. Sedentary Roma do not qualify to use Travellers' sites

The Act of 5 July 2000³¹ lays down a specific legal regime for Travellers whose traditional housing consists of mobile homes and who have had no fixed abode or residence of more than six months in length in an EU Member State. The distinction is based on a different type of housing rather than the origin of the person³². Traveller reception sites are not therefore designed to accommodate Roma people who do not follow an itinerant lifestyle either in France or their country of origin, but are "designed for temporary stays, not the settlement, of Travellers"³³. However, both political and legal misconceptions persist³⁴.

II. Unconditional social assistance for temporary accommodation

Foreign nationals who are legally present have been able to claim social assistance since 1993. The Constitutional Council has made exceptions only for child welfare benefits, admission to accommodation and resettlement centres, and medical assistance³⁵.

The principle of protection of human dignity requires that anyone in difficulties should be able to access supported housing³⁶. Any homeless person in a situation of medical, psychological and social distress can at any time access emergency accommodation provision³⁷ and must be able to remain there³⁸ until a better solution is offered, and receive social support³⁹. Foreign nationals whose administrative situation is not straightforward tend to be referred to emergency provision, which is unsuited for family life. Economically inactive Europeans may as a matter of fact be judged to be an unreasonable burden without consideration of their particular circumstances⁴⁰ and taken in for a few nights only. The shortage of places, however, directly frustrates this minimum intake requirement, even though the performance obligation under the "DALO" appeal procedure also applies to applicants for short-term accommodation with no requirement of lawful residence⁴¹.

Using social assistance to restrict freedom of movement

An immigration bill⁴² still going through parliament proposed:

- that repeated and prolonged claiming of social assistance, including emergency accommodation, should be a criterion for determining whether a Community national constituted an unreasonable burden;
- introducing an offence of abuse of the right of residence with the primary aim of benefiting from the social assistance system, including emergency accommodation provision.

29 Ministerial Instruction No. 2003-72 of 5 December 2003 on programming assistance for organizations providing temporary accommodation for disadvantaged people

30 L. 851-1 and R. 851-4 of the Social Security Code

31 Travellers (Reception and Housing) Act No. 2000-614

32 French Constitutional Council Decision No. 2010-13 on Priority Question of Constitutionality (QPC) of 9 July 2010

33 Aix-en-Provence Court of Appeal, 4 June 2009, No. 08/17146

34 Painstaking work with local stakeholders and Saint-Denis local council was destroyed by an eviction decision, Bobigny Administrative Tribunal, 13 September 2010.

35 Decision No. 93-325 DC of 13 August 1993

36 L. 345-1 CASF (French Code of Social Action and Families)

37 L. 345-2-2 CASF

38 Lyons Administrative Tribunal, 1 May 2010 – See: www.jurislogement.org

39 L. 345-2-3 CASF

40 Verbal replies from the 115 hotline. On failed asylum seekers, *Des sans-papiers privés d'hébergement d'urgence*, Libération newspaper, 29 November 2010

41 Lyons Administrative Tribunal, 6 April 2010

42 Bill No. 27, tabled in the Senate on 12 October 2010, ss. 17 A and 25

While the reference to “emergency accommodation” was subsequently dropped, the term “public social services”, which had been exemplified by emergency accommodation, has been kept. Having failed in its use of law and order to justify expelling selected citizens of the Union from France⁴³, therefore, the government has settled on introducing an undefined concept of “unreasonable burden”. With the concept of abuse of rights also being qualified, the state will be at pains to prove an intention to reside with the primary aim of benefiting from the social assistance system in order to render the provisions of Community law nugatory⁴⁴. But the intention of the parliamentary majority is clear: *“Europe cannot be a kind of free market in social protection [...] France, which prides itself on having a particularly developed system of social protection [...], would be the main casualty ...”*⁴⁵.

Relegation to slums and squats

This brings the issue back to last summer’s much-maligned occupations. As the guarantor of the balance between the right to property and the right to housing, and taking individual circumstances into account, the ordinary courts can suspend evictions by granting time to the occupants of makeshift dwellings⁴⁶ whose homes and property are protected by Article 8 and Article 1 of Protocol No. 1 of the ECHR⁴⁷. Where the land or building is owned by the state

or a subnational tier of government and is not used, the court is more minded to grant extensions of time, if not rule against eviction⁴⁸. But, the courts are powerless to deal with a persistent problem and call on the authorities to take responsibility for ensuring that the grace periods are used to come up with rehousing solutions⁴⁹.

The government’s response has been to try and oust the jurisdiction of the ordinary courts which are the guardians of individual liberties and, as it did with regard to travellers, empower Prefects to evict occupants from its land by their own decision without a court order⁵⁰. Last summer’s public pronouncements⁵¹, parliamentary debates and ministerial instructions leave no doubt that what is sought is a quick and easy way of expelling the Roma.

Homelessness among foreign nationals is considered exclusively in terms of law and order. The occupants of substandard housing, which expressly includes makeshift shelters and unlawful settlements, are only occasionally protected. Where such protection is contemplated, it mostly fudges issues of the right to housing: slum and squatter settlement occupants have no right to be rehoused other than through the “DALO procedure”, and even then, they must still prove a right of residence. But the requirements of hygiene, safety, security and law and order are not intended to thwart fundamental rights.

43 Illegal occupation of land is not by itself a sufficiently serious threat to a fundamental interest of society; it is not a threat to law and order such as to justify deportation, Lille Administrative Tribunal, 27 August 2010, No. 1005249

44 ECJ, 19 October 2004, Zhu and Chen

45 Immigration Minister Eric Besson speaking in the debate

46 L. 613-1 and L. -2 613 CHC

47 ECtHR, Öneriyildiz v.Turkey, 30 November 2004

48 In the matter of O., 16 November 2009, interlocutory decision of the Lyons Regional Court

49 The judge singled out the *“the State’s failure to get fully to grips with addressing the extreme insecurity of the Roma community, which is forever being shunted about from pillar to post with no comprehensive solution being considered at the highest level in consultation with the European authorities”*, In the matter of O., 19 August 2010, interlocutory decision of the Nantes Administrative Tribunal. *“The institutional parties have preferred not to intervene directly on issues of jurisdiction and [...] the lack of consultation and commitment, and the lack of spare temporary accommodation capacity in the city have done nothing to promote significant progress in the situation”*, Lyons Court of Appeal, 7 September 2010

50 LOPSSI Bill, 2nd version, No. 2780, Section 32b A

51 Grenoble speech

Violations of Roma Housing Rights in Romania: General Overview and Cases

By VASILE GALBEA, Romani CRISS, Romania

Housing plays a significant role in developing a society and it is crucial for economic, social and cultural progress. Experience shows that public housing policy and intervention at the housing market is needed for the proper satisfaction of the housing needs of the society in all European states.

Every country or every city has its own reasons to make or implement housing policies, but beyond this, there is a series of general valid arguments for involving administration – local or central – in housing. Access to adequate housing for each individual and the safety of the place of living are one of the most basic needs of human beings and one of everyone's fundamental rights. It also influences greatly their performance in society.

Two important aspects of successful housing policy are the protection of tenants and the support for disadvantaged groups of people. These groups are protected by special laws and both aspects are the target of a large variety of measures on housing. Social housing aims at ensuring access to a decent living place for the members of the community that cannot afford the prices of the free market.

The Romanian housing legislation was defined for a long period of time by the Law 5/1973 concerning the administration of location fund and the relations between tenants and owners.

Once the political regime changed, the abolition of the above mentioned Law and the modernisation of the housing legislation became a necessity. This was accomplished by adopting the Law 114 in 1996.

Unfortunately, the Law 114/1996 was not adapted, even though there have been several changes at the national and international level as well. That is why in Romania in 2010 the Law of Housing is exceeded and its content was the responsible for abuse from the local authorities.

The Government had, until now, an instrument to "correct" the decisions adopted by the local councils concerning the demolition of peripheral houses of Roma or evictions of Roma from their neighborhoods.

Thus, in the practice of local authorities, we find the following human rights abuses and discrimination: residential segregation, violation of right to private property, illegal forced evictions, precarious living conditions, racism, limitation of access to social housing, and the refusal of legalizing the Roma dwellings.

The lack of public housing policies, the new legislation on decentralisation and the lack of a methodology that regulates housing in conditions of extreme poverty, as well as the lack of a stable domicile also led to violations of Roma housing rights.

The legalization of Roma dwellings remains the main cause of abuses by local authorities against the Roma communities. Many of the Roma families do not have property documents upon the land and the house they live in, as often they were bought based on receipt by private signature which does not count in terms of property transfer.

Although Romanian Civil Procedure Code clearly stipulates that forced eviction cannot be carried out without an irrevocable and definitive court order in force, the cases monitored by Romani CRISS revealed that this provision in the law was not respected.

1. Harghita – Miercurea Ciuc case

In 2004, the Local Council of the Miercurea Ciuc city decided to forcefully evict over one hundred persons of Roma ethnicity from the centre of the city to its outskirts, next to the used water sewage plant. They were offered 6 metallic barracks as dwellings, with access to a single tap of water, placed at the entrance of the community, which "shared" the same fence with the sewage station. The fences of the water filtering station (including the joint fence where Roma live) had signs on them which warn against toxic danger.

Romani CRISS submitted complaints to the NCCD and, subsequently, a criminal complaint against the vice-mayor (who considers the situation as positive discrimination of the Roma) alleging abuse on duty, by limitation of rights, as per art.247, Criminal Code.

In decision no.366 of 23rd of August 2005, the NCCD ascertained the deed of discrimination and showed that the action of Miercurea Ciuc city hall to move the Roma families from the city near the waste water filtering plant is a violation of the right to private life and, implicitly, the right to a healthy environment. The NCCD sanctioned the Miercurea Ciuc city hall with contravention fine in amount of 4000 RON (approx. 1000 Euro) for violation of art.2, para 1, 2 and 3 and art.17, para 1 of O.G. 137/2000, on banning and sanctioning all forms of discrimination. Due to the fact that the legal deadline was exceeded, the fine was not applied.

In the case of the criminal complaint, in the appeal stage, the Tribunal of Harghita rejected it, as unsubstantiated.

After 5 years the Roma people today are in the same situation, living in inhuman conditions, as it is extremely difficult to bear the fetor of the water filtering station, especially during summer, as well as the precarious living conditions during winter. Despite the fact that all their actions failed, the Roma people continue to fight for their relocation.

Complaints lodged by Romani CRISS to various relevant authorities received the following answers:

"The Harghita Public Health Directorate, following a visit in the community, ascertained that, although minimum conditions for personal hygiene exist, the location and current state of the location is not appropriate. The location is within the 300 m limit of the water filtering station, which violates the Ministry of Health's Order no.536/1997. However, the huge problem that exists is related to the social problems and the education of the Roma".

The Ministry of Environment and Waters answered that the Miercurea Ciuc city hall had not asked the Harghita Environmental Agency for an environmental approval for the metallic barracks to be placed there, nor for the seven wooden houses built subsequently by the Roma. The location is within the sanitary protection limits of the water filtering station, as per art 11 of Ministry of Health's Order no.536/1997 and with a temporary ban to erect buildings until the specialised study according to the Urban Plan Miercurea Ciuc is elaborated.

However, the public analysis on the water they consume registered 1.9 times more ammonia azote than the Maximum concentration approved, and nine times more biodegradable synthetic detergents than the normal value. Also the soil analysis revealed exceeding polluting indicators.

The Roma have heavily accused the environmental living conditions stating that they were a great danger to their health and that it caused the death of two infants, because of the toxic air.

The National Authority for the Protection of Child's Rights and the Social Assistance and Child's Protection General Service declared they were not competent to solve the reported case.

Romani CRISS has submitted a complaint at the European Court of Human Rights on this matter, after exhausting all domestic means.

2. Piatra Neamt Case

Since 2001, the local authorities in Piatra Neamt initiated a continuous policy of evicting the Roma and moving them at the margins of the city. Other local authorities in different cities in Romania followed the same practice.

The Roma who rented apartments in the buildings owned by the Piatra Neamt city hall in various neighborhoods of the city were evicted. Most of the Roma were moved in a location 5 km outside the city in former chicken farms and the rest in another location on Muncii street in the outskirts.

The farms were compartmented by the City Hall in rooms of maximum 10 square meters. These rooms were assigned as social housing and each family got one room irrespective of how many members were in the family.

Unfortunately, "social housing" does not require the minimal standards foreseen by the current domestic and international legislation on appropriate housing. There are approximately 500 people living in these rooms, including children. The closest bus station for children to get to school in the city is 3 km away and the rate of school drop-out among these children is high.

The second location is Muncii street where Roma were moved. It is situated on the former garbage dump of the city, as close as 200 meters to the sewage plant. The "houses" consist of one room of 15 square meters for each family, without sewage system and drinking water. They have to heat the rooms with fire woods. The roof is made of asbestos cement, a material forbidden in the EU due to its damage to human health.

The public sanitation facilities are outside for the entire community. They have 13 showers and 4 sinks located on one side of the community and 13 toilets on the other side. This means that there is a toilet and a shower for every 4 families, which is approximately 20 persons, including children. Drinking water is available at the sinks near the showers. For the garbage there are two containers allocated for the community.

Although Romani CRISS made numerous complaints and sent letters to report the residential segregation resulted from the City Hall actions, the local authorities did nothing to change the situation.

3. Salaj – Case of C3-C4 homes in Zalau

On 10 September 2004, Hostel I.A.I.F.O. in Zalau was put up for sale by auction, and it was bought by S.C. Mediserv S.R.L. The new owner of the building, along with the Zalau municipality and the County Prefect's Office decided not to evict those living in the hostel until spring on the condition that they pay their rent and other administrative costs.

On 21 September 2004, the Deputy Mayor Onorica Abrudan stated that some of the people living in the hostel would be moved to the building nearby, which had only 60 rooms without electricity, water, sewerage or any other facility. On 25 February 2005, around 5 p.m., over 250 persons were forcibly evicted from Hostel I.A.I.F.O. Building A by representatives of the Zalau municipality, along with gendarmes and public guards. The evicted persons moved to Buildings B and C of Hostel I.A.I.F.O. They preferred to move here and live in extreme conditions than to live on the streets.

On 4 March 2005, around 11 a.m., in the presence of gendarmes, public guards and representatives of the Zalau municipality, the inhabitants of former Hostel I.A.I.F.O. (Buildings B and C) were evicted again. The evicted persons with domicile in Zalau were moved in Building B of Middle School "Vasile Goldis" in hostel C4. The ones not residing in Zalau were sent back to the location mentioned in their identity cards. The Deputy Mayor Onorica Abrudan declared that this situation was provisory until a durable solution is found.

An internal commission of the City Hall decided that 20 families (approximately 80 people) received social housing, 10 families (approximately 60 people) were moved in former technical rooms which do not have public sanitary facilities and another 11 families (approximately 50 people) were moved in the industrial area of the city, near the sewage plant in 7 barracks without any public sanitary facilities.

Although the living conditions in both former technical rooms and the barracks do not meet the standards of adequate housing, the local authorities to date have not taken any action to change the situation and the Roma are still living there in the same conditions.

Discrimination, Housing Rights and the Roma Population in Spain

By GUILLEM FERNÀNDEZ EVANGELISTA, Associació ProHabitatge, Spain

According to a report by the Fundación Secretariado Gitano¹, the Roma population in Spain is a community with a high degree of residential integration. The Roma population living in "standardized" housing rose from 68% in 1991 to 88% in 2007. Moreover, it has reduced the most severe situations of residential exclusion in this community, which accounted for 31% of the cases in 1991 and declined to 12% by 2007. According to a study by the CIS, 49% of the Roma families who had a house in 2006 owned their homes, while 34% rented and 16% were living under a free-lease system. Of those who owned their homes, 38% had yet to repay their mortgages, and a third of them corresponded to officially protected housing. Meanwhile, 80% of those who rented paid rent below market prices owing to the fact that they had longstanding leases under the former law or were living in officially protected rental housing.² In addition, their places of residence are mostly in urban locations (88%), with only about 6% living in segregated settlements³. As a result, Spain is viewed in Europe as one of the most inclusive models at the residential level with respect to the Roma minority⁴. In spite of these major achievements, precarious residential situations like sub-standard housing conditions, overcrowding, creation of slums or factors like residential discrimination that affect the development of housing rights continue to exist among the Roma community in Spain. 11.7% of the Roma population participating in the FSG survey lived in sub-standard housing. This category includes homes in ruinous condition (6.8%), shacks and caves (3.9%), pre-fabricated or temporary housing (0.5%), mobile accommodations (0.3%), and accommodations that were not designed for residential purposes (0.2%). According to the CIS report, 33.6% of the

Roma people surveyed had experienced a situation of discrimination in accessing rental housing, and 22% faced discrimination when buying homes. Therefore, many of the achievements, limits and reversals experienced by the Roma population in modern-day Spain are conditioned by the historical process they have lived⁵, the degree to which the discrimination they traditionally suffer has been overcome, as well as laws and policies developed and applied over the years⁶.

Equality and Housing in the Spanish Constitution

Article 1.1 of the Spanish Constitution (SC) constitutes a Social State that promotes Equality as a higher value of its legal system, and Article 14 proclaims that all Spaniards are equal before the law *and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance*. Thus the legal discrimination that has historically existed in Spain against the Roma population disappears⁷, but social discrimination continues to exist⁸, and it falls to the public authorities to *foster the conditions for freedom and equality of individuals and groups in which they are integrated to become real and effective, and to remove the obstacles impeding or hindering them; facilitating the participation of all citizens in political, economic, cultural and social life* (Article 9.2SC). Therefore, the constitutional text does not explicitly recognize ethnic minorities, although the Preamble does recognize and protect *all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages*

1 Fundación Secretariado Gitano. Map on Housing and the Roma Community in Spain. 2007. Other reports can be seen, including *Caritas Diocesana Tui Vigo: Población cigana y trasmontana de Vigo.2002*

2 Study no. 2264. Centro Investigaciones Sociológicas, Sociological Survey of Roma Population Households. 2006

3 Fundación Secretariado Gitano. Map on Housing and the Roma Community in Spain. 2007.

4 For good practices, see Improving Roma housing and eliminating slums, Spain FRA. October 2009

5 The sedentarization of the Roma population took place over different stages throughout the more than 300 Pragmatic Sanctions (anti-Roma laws) and the country-to-city migration process between 1960 and 1970. This would explain the different residential situations in which the Roma community now live in Spain, and the virtual disappearance of their itinerant and nomadic lifestyle. However, this phenomenon has been growing in recent years due to the arrival of Roma communities from other countries and immigrants in irregular administrative situations.

6 Diversidad Residencial de la Comunidad gitana en España. Report on Housing and the Roma Community. 2007

7 Moreover, given the history of persecution, Article 19SC referring to the freedom of movement and of choosing one's place of residence in the Spanish territory was also important for the Roma community.

8 See National Analytical Study on Housing. Raxen Focal Point for Spain. 2003

and institutions, and the Roma population could be counted among them. According to Alejandro Martínez⁹ Spanish case law has defined that the principle of equality of all citizens before the law translates into the need for all to receive the same treatment in identical situations¹⁰, that is, equality encompasses the prohibition to discriminate¹¹. In this light, the principle of equality would grant citizens a subjective right consisting of being treated equally to other citizens in *de facto* identical situations¹², forbidding any differences in treatment that are not justified and finding a limit in the principle of legality¹³. In addition, the prohibition of discrimination enshrined in Article 14SC includes not only direct but also indirect discrimination¹⁴.

In the Spanish State, 6 out of every 10 people acknowledge that they do not know their rights in case they suffer from discrimination¹⁵, which is a crime under Organic Law 10/1995, dated 23 November, of the Spanish Criminal Code, in its articles 22.4 (as an aggravating factor in criminal liability), 314 (severe discrimination in the workplace), 510 (those provoking discrimination), 511 (refusal of service by public officials by reason of discrimination) and 512 (discrimination in private professional activities). It should be noted that Spain signed the 1965 Convention on the Elimination of All Forms of Racial Discrimination, and at the European level, is subject to Directive 2000/43/EC relative to the application of the principle of equal treatment of persons regardless of their racial or ethnic origin. Spain has signed and ratified several international treaties relating to the fundamental rights that pursuant to articles 10.2SC and 93SC have become part of the internal legal system. Therefore, it transposes all the international mechanisms in place containing housing provisions¹⁶, as well as provisions on equality and non-discrimination. The transposition of the European anti-discrimination directive

to the state law system gave birth to Law 62/2003, dated 30 December, on tax, administrative and social measures that link discrimination and housing in Article 29 by establishing measures to ensure the principle of equal treatment and non-discrimination by reason of racial or ethnic origin of a person is real and effective in education, health care, social entitlements and services, housing, and in general, the supply of, and access to, any goods and services.

Among these measures, Article 30 contemplates positive action in relation to racial or ethnic origin to ensure full equality in practice, without preventing specific measures to be maintained or adopted in favor of specific groups aimed at preventing or compensating for any disadvantages affecting them by reason of their racial or ethnic origin. In fact, rulings handed down by the Constitutional Court (nos. 216/1991, dated 14 November, and 269/1994, dated 3 October), have accepted affirmative action under Article 9.2SC, as mentioned earlier, specifically in situations stemming from gender and disability. Therefore, positive action in relation to vulnerable groups in terms of housing are not only possible, but it may also be a constitutional requirement to ensure equal rights¹⁷ and other related rights, like the right to housing (Article 47SC), which must be abided by, protected, promoted and guaranteed by the public authorities¹⁸. Thus, if public housing policies are not carried out, are insignificant or hamper one's ability to exercise one's right to housing and end up denying a realistic opportunity¹⁹ to exercise them, one can resort to jurisdiction for effective judicial protection connecting Articles 14SC on equality and 53.2SC, which among other alternatives, provides for appeals for legal protection by the Constitutional Court.

9 Martínez, A. *La condición social y jurídica de los gitanos en la legislación histórica española*. Doctoral Thesis 2007. Faculty of Law, University of Granada

10 Spanish Supreme Court Ruling (STS) 31.05.1994 and Constitutional Court Ruling (STC) 10.07.1981

11 STS 30.11.1993

12 STS 13.05.1994

13 STS 24.02.1994

14 STC 13/2001 29 January and 253/2004 22 December

15 <http://www.reflejosocial.com/discriminacion/casi-6-de-cada-10-espanoles-afirma-no-conocer-sus-derechos-en-caso-de-sufrir-discriminacion/> (Revision 26.11.2010)

16 Like Article 25.1 of the UN Universal Declaration, Article 11.1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (arts.13 and 14.2), the Convention on the Rights of the Child (Art. 27.3) or the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5.e). In the Council of Europe, Spain has also ratified various instruments like the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ratified in 1979) and the European Social Charter of 1961. However, it must be said that the successive national governments failed to ratify the Revised European Social Charter in 1996, nor did they sign and ratify the Additional Protocol of 1995 establishing a class-action system making it possible to take before a court any State that has not made enough of an effort to scrupulously comply with Article 31 of the Revised Charter, which refers to housing rights.

17 Ponce, J. (2005): Urbanisme, habitatge i cohesió social (City Planning, Housing and Social Cohesion). Barcelona Metropolitan Strategic Plan. Collection: strategy N°4

18 Ponce, J & Sibina, D (2008): El Derecho de la vivienda en el siglo XXI. Marcial Pons.

19 Ponce uses the concept of "realistic opportunity" based on the American ruling in the Mont Laurel case and State Supreme Court decision handed down in March of 1975

In this regard, Royal Decree 2066/2008, dated 12 December, which regulates the 2009-2012 State Housing and Rehabilitation Plan (SHRP), does not specifically cite the Roma community as beneficiaries of the Plan's aid. However, people affected by slum eradication operations and other groups subjected to social exclusion or at risk thereof are deemed (among others) to have preferential protection rights, contemplating measures like the Slum Eradication Aid Program (Art. 54-56) and the Protected Housing Program for Specially Vulnerable Groups and Other Groups (Art. 35-37). Specifically, the Housing Plan's goals in relation to eradicating slum-dwelling call for 4,000 specific actions over the four years. In Spain the Roma community lives in different residential situations, which also means that some Roma people may have access to other measures contemplated by the Plan like the program providing aid to tenants or the aid program for the integral restoration of historic areas, city centers, deteriorated neighborhoods and rural townships. The 2010-2012 Action Plan for the development of the Roma population has an area targeting housing whose goals are to maintain an information system on housing and the Roma community, promote access to standard quality housing for the Roma population, address measures aimed at eradicating slum-dwelling, and lead a housing policy that focuses on integration of the Roma community. In this regard it should be noted that article 4.b of Royal Decree 2/2008 concerning the land law, establishes that all citizens are entitled to decent, adequate, and available housing and to not suffer from any discrimination concerning the use of public and collective facilities. As Juli Ponce²⁰ notes, one of the fundamental building blocks of the integration housing policy is for Spanish municipalities to develop appropriate administrative behavior not just to avoid unnecessary restrictions to affordable housing but to promote it actively. In this sense, planning procedures play a key role in guiding local discretions towards meeting the needs of poor people, assessing their needs and providing sufficient land. Here we can find an important link between urban planning and housing rights. This establishes reservations for protected housing on consolidated urban land, both for new developments and for major renovations to existing buildings, totally or partially

allocated for protected housing. The legislator can provide policy direction for this discretion directly, to favor social mix and social cohesion. A good example of this can be found in Art. 10.1 A of the 2002 act, Urban Planning in Andalusia, which outlines the need to ensure "a balanced distribution of this type of affordable housing" in local planning, and Art. 80.4 of the 2006 Basque act, which sets out to "guarantee a balanced distribution of land reserves to avoid the risks of sociospatial segregation".

The most important decision by Supreme Court in relation to the housing situation of Roma ruled against the City Council of Madrid, which had opened a ditch measuring about three meters wide and one deep, in addition to a parapet that isolated some 400 housing units – inhabited by some 3,000 Roma – from their immediate surroundings, allegedly for crime prevention reasons. The Supreme Court argued that a number of interventions (police control, etc.) that had violated the principle of equality recognized by the SC, since they had subjected all the inhabitants in the area to such discrimination, enclosure and control that no other neighborhood has ever experienced, and that these interventions had been guided solely by prejudice against the Roma.²¹

The Roma in Spain are for the most part settled communities, and are distributed unevenly throughout the entire Spanish territory. There are different state, regional and municipal plans aimed at guiding policies in relation with the Roma community, like the Integral Plan for Cohabitation and Social Development of Galicia, the Integral Plan for the Roma Community in Andalusia, the Basque Plan for the Integral Promotion and Social Participation of the Roma People. In this regard we will specifically address the Catalan case.

The Catalan experience

Organic Law 6/2006 reforming the Statute of Autonomy of Catalonia²² (SAC), requires the Autonomous Government of Catalonia to *guarantee the recognition of the Roma people's culture to safeguard the historic reality of this people* as reflected in Article 42.7 SAC. Another very important event for the Roma community was the Cata-

20 Ponce, J. "Housing discrimination and minorities in European cities: The Catalan Right to Housing Act 2007. International Journal of Law in the Built Environment Vol 2, n°2. 2010

21 STS 78/1988 (17.01.1988). Spain. RAXEN National Focal Point. Thematic Study. Housing Conditions of Roma and Travellers. March 2009

22 Article 147.1 CE contemplates that the State will recognize the Statutes of Autonomy and protect them as an integral part of its legal system.

Ionian Parliament's declaration in 2007 recognizing the persecution and genocide of the Roma people²³. In relation to the residential situation of the Roma community in Catalonia, a 2006 study concluded that 64.7% of housing owned by the Roma population were protected housing, and 42% assured they had problems trying to buy a house in the open market.²⁴ The SAC also recognizes the right to housing as a guiding principle of economic and social policy, and in the area of rights and duties (Articles 26 and 47SAC²⁵). Catalonia approved the Right to Housing Law 18/2007 (CRHL), the first law in this area that specifies that *all people should have access to housing and be able to occupy it, provided that the legal and contractual requirements applicable to any legal relationship, without suffering discrimination, whether direct or indirect, or harassment.*²⁶ Therefore, considering housing harassment, for instance, as discrimination allows housing to be connected to human dignity, the right to equal treatment and the right to physical and moral integrity. As for the "reasonable adjustments" to ensure housing rights, Article 46CRHL establishes protective measures on the part of the Government that are based on positive action measures and other measures aimed at addressing the unique needs of specific persons to facilitate their social inclusion and their right to enjoy housing in equal conditions to other persons. Article 47CRHL recognizes the burden of proof, where the accused party must be required to provide an objective and reasonable justification sufficiently proving that the right to equality has not been violated as a result of its action or inaction. Finally, the Catalan housing law specifi-

cally categorizes discrimination and housing harassment, by act or omission, as a very serious administrative violation (Article 123.2.aCRHL) with fines that can reach 900,000 euros (Article 118.1CRHL). With regard to the Criminal Code, of note is Ruling 428/2008 handed down by Criminal Court 13 of Barcelona, which sentenced property owners who had cut water and electric power supply and even tried, on three separate occasions, to rip out the facility's utility wiring, to 1 year in prison²⁷.

The CRHL contains different technical-legal contributions that are of great interest in developing a social housing policy that benefits the Roma community. The CRHL²⁸ has opened the door to the so-called "*Social Housing Programs*", of which we highlight Insertion Housing, which is housing run by the various levels of government or by not-for-profit organizations, and are aimed at attending to people requiring special attention (Art.3i CRHL), and it has included new instruments targeting vulnerable groups like Urban Solidarity and the Special Contingencies Reserve as a means of fostering social cohesion. Urban Solidarity (Art. 73CRHL) requires municipalities with over 5,000 inhabitants to implement a minimum-sized social-policy housing pool equaling 15% of the total existing primary housing within a period of 20 years. The Special Reserve Contingencies in public-initiative developments cannot be lower than 10% of the total housing within the development, as stipulated by Art. 99.4 CRHL. This article defines people with reduced mobility, people at risk of social exclusion and women victims of gender violence as priority groups

23 Where the Parliament declares and recognizes that Roma that live in Spain, and specifically in Catalonia, have been the victim of historical and continued genocide, deplores the racist and anti-Roma laws that Catalan institutions have passed and backed and all the situations that have produced ill-treatment, discrimination and the vulnerability of the Roma community throughout history, commits to work for the application of inclusive, effective and determined policies with the objective of achieving equality of opportunities for the members of the Roma community in Catalonia and the recognition and maintenance of their signs of culture and identity.

24 Workshop on the Social Function of Housing. Final report. Autonomous Government of Catalonia 2006,

25 Article 26. Rights in the field of housing. Those individuals who lack sufficient resources have the right to a decent housing, and public authorities shall, therefore, establish by law a system of measures to guarantee this right, within the terms determined by law.

Article 47. Housing. The public authorities shall facilitate access to housing by means of the provision of land and the promotion of public and subsidized housing, with special attention to young people and groups with the greatest needs.

26 - Direct discrimination, which occurs when a person receives, in any aspect relating to housing, treatment that is different from that received by another person in an analogous situation, provided that such difference in treatment does not have legitimate ends that objectively and reasonably justify it, and the means used to achieve such ends are adequate and necessary.

- Indirect discrimination, which occurs when a regulation, covenant or contract clause, individual agreement, unilateral decision, criterion or apparently neutral practices cause a particular disadvantage to a person with regard to others in exercising that person's housing rights. Indirect discrimination does not exist when the action has legitimate ends that objectively and reasonably justify it, and the means used to achieve such ends are adequate and necessary.

- Housing harassment, understood as any action or omission involving abuse of the law that seeks to disrupt the harassed person's right to the peaceful use of a dwelling and create a hostile environment for that person, either in material, personal or social aspects, with the ultimate goal of forcing the person to make an unwanted decision on his or her right to occupy the dwelling. Under the present Law, housing harassment constitutes discrimination. Any unjustified refusal by the owners of the dwelling to accept payment of rent is a sign of housing harassment.

27 Fernández, G. (2010): Igualdad en el acceso y la ocupación de la vivienda. Guía práctica. (Equality in Housing Access and Occupation. A Practical Guide.) Colección Transformaciones. Conoce tus derechos. University of Barcelona Publications and Editions

28 considers the supply of housing for social policy purposes as a "general-interest service" (Art. 4 CRHL) and facilitates the creation of an affordable housing pool.

for the Special Reserve Contingencies. In this regard, we can see how the Catalan Law of the Right to Housing does not specifically cite the Roma community but in Catalonia there is an Integrated Plan for the Roma People since 2005 which includes Housing and Town Planning. The main actions regarding housing are: to give priority to rehousing in rehabilitated neighbourhoods, avoiding over-concentration; quotas of occupation (In the urbanism and construction sectors, in the neighbourhoods where the Roma population lives); to promote actuations for the right to housing among Roma young people and understand that the transformation should be subject to the initiative for the eradication of ghettoized neighbourhoods and the potential participation of all of those involved, including Roma people, in both the design and the construction.

Another interesting instrument that could have implications for the Roma community in Catalonia is that of housing aimed at enforcing the right to relocation developed in Decree 80/2009 of 19 May, which, pursuant to Article 78.12

of the CRHL, establishes the basic conditions for access to relocation housing for people who, merely by living in a dwelling that is affected by town or city planning action, are required to abandon the affected building after meeting the applicable legal requirements. In this way, the goal is for people affected by town and city planning projects, unlike what happened until now, will no longer have to add or collect any extra amount of money to obtain equivalent housing to that which he/she in effect had. Some three hundred neighbors of La Mina (a neighborhood in Barcelona with a strong presence of the Roma community) who own officially protected housing are currently suffering from this problem. Their houses will be torn down to complete the transformation plan of La Mina, and they are being asked to pay between 30,000 and 40,000 euros to be relocated to other flats with the same characteristics. The neighbors want the new Decree 80/2009 for people affected by town and city planning operations to be applied to their case.

Limits and New Challenges

Housing exclusion in the Spanish Roma community is manifested not only through the persistence of slum-dwelling and sub-standard housing, but also in the difficulties the youngest Roma families face in gaining access to housing in the sale or rental market, in housing discrimination situations, in overcrowding housing, in residential segregation and in the physical as well as economic difficulties of maintaining housing, which in some cases affect officially protected housing, both for sale and for rent. At times, attempts have been made to resolve the difficulties of families in a highly precarious situation by facilitating public economic aid or the simple access to owned or rented housing, as if this were a formula for ensuring social integration, without taking into account the necessary social accompaniment. This has demonstrated that in many cases it is not enough to focus on fostering aid for buying houses, land, or subsidizing rent and developing officially protected housing and rehabilitation; rather, it requires social accompaniment in order to develop the rights and duties involved in living in standard housing, and in this respect it is necessary to approach the problem in a way that overcomes administrative compartmentalization and goes beyond access to, and occupation of, a dwelling. This is a chance, at European level, to give real substance to the Housing Assistance concept of Article 34.3 of the Charter of Fundamental Rights of the European Union and give it a broader content that goes beyond just economic aid. Although clearly the challenges that lie ahead include finding new solutions for undocumented people and travelling communities. For example, breaking the Spanish tradition, the Programa Caminante, run by the Vitoria-Gasteiz City Council, which mainly (but not exclusively) targets the Romanian Roma living in mobile homes in Vitoria-Gasteiz.²⁹

29 Spain. RAXEN National Focal Point. Thematic Study. Housing Conditions of Roma and Travellers. March 2009



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