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## MEMORANDUM TO THE EUROPEAN COMMISSION

# Violations of EU Law and Fundamental Rights by Bulgaria's Discriminatory Treatment of Roma in the Area of Housing<sup>1</sup>

February 2017

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<sup>1</sup> The legal arguments in the briefing were developed by the Open Society Justice Initiative and the Equal Opportunities Association.

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## I. EXECUTIVE SUMMARY

1. Open Society European Policy Institute, part of the Open Society Foundations and the Equal Opportunities Initiative Association ('EOIA'), a Bulgarian non-governmental organization, submits this memorandum to the European Commission. It sets out evidence that Bulgarian government bodies discriminate on grounds of Roma ethnicity in the area of housing rights and that Bulgaria has failed to transpose and implement the European Union's Race Equality Directive 2000/43/EC ('the Directive'). We request the Commission to begin infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union ('TFEU').

2. The memorandum shows the continuing discrimination against Roma families in Bulgaria in the area of housing. It provides new evidence that Bulgarian government bodies target Roma families for forced demolitions of their homes and forced evictions without any alternative accommodation being provided, even in respect of children and vulnerable adults. It shows that Bulgarian law fails to ensure that government bodies and courts give individual consideration of personal circumstances and proportionality before ordering eviction and demolition.

3. The memorandum:

- 1) shows the practice of Bulgarian government bodies to target Roma for eviction and demolition of their only homes;
- 2) shows evictions and demolitions that result from explicitly anti-Roma campaigns;
- 3) sets out the legal arguments that the Bulgarian government practice constitutes direct discrimination, violating the Directive;
- 4) shows that, even if the discrimination is indirect, such discrimination cannot be justified because, in particular, of the failure of Bulgarian legislation to ensure individual consideration by Government bodies and courts of the necessity for and proportionality of forced demolitions and evictions, thereby violating the Directive;
- 5) shows that the Bulgarian Government has failed to ensure that objections to eviction and demolition on grounds of racial and ethnic discrimination are admitted by courts, which is a failure to transpose Article 7 of the Directive.

4. In light of the new evidence set out in this memorandum and that of the other national and international monitoring bodies and the lack of adequate and effective response by the Bulgarian authorities, we consider that the time has come for the Commission to begin infringement proceedings against the Bulgarian Government.

## II. FACTS

### II.1. The housing situation of Roma in Bulgaria

5. Persons from the Roma ethnic group live in all areas of Bulgaria. According to the last national census (2011), Roma in Bulgaria constitute 4.9 percent of the population.<sup>2</sup> According to unofficial data, the percentage of Roma in Bulgaria exceeds 10% of the total population<sup>3</sup>. Roma are likely to be undercounted in national censuses as, due to the widespread discrimination<sup>4</sup> they face, many prefer not to identify themselves as such. Roma are the most disadvantaged minority group in Bulgaria in all areas of public life. They live in segregated, sub-standard and unsecured settlements, and are precluded from legally registering their housing.

6. The housing for predominantly Roma communities is of significantly poorer quality than housing in communities which are predominantly ethnic Bulgarians or other ethnic groups. This housing situation has led to serious social exclusion, and is connected to other problems including: poor infrastructure (or the absence of infrastructure); poor transport links; low levels of access to public services (electricity, water supply, sewerage, street lighting, refuse); absence of official plans and opportunities for legal construction. The living space per capita is significantly lower in Roma neighbourhoods than for the rest of the population. The neighbourhoods are dense in construction and occupation; large groups of family members are required to live together, despite the downward trend in birth rate within the Roma community. As a result, the average living space for a Roma family is approximately 10 square metres compared with almost 25 square metres for the ethnic Bulgarian population<sup>5</sup>.

7. These factors mean that Roma as an ethnic group have been systemically compelled (directly or indirectly) to reside in housing without legal basis, and therefore in a state of permanent high insecurity. The existing Bulgarian legal framework and the policies, including the National Roma Integration Strategy 2012-2020, and actions of central and local government fail to facilitate or aim to achieve an end to this situation. There are very limited possibilities to legalize housing, which remain unused by the proportion of Roma who might benefit. In most areas, local administrations do not seek to inform or assist Roma to use procedures for legalization of residential status, while Roma lack information on these procedures as well as confidence in law and state structures.

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<sup>2</sup> See Bulgarian National Census at <http://www.nsi.bg/census2011/indexen.php>

<sup>3</sup> European Commission at [http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national\\_en.htm](http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national_en.htm)

<sup>4</sup> EU MIDIS-II at [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf)

<sup>5</sup> See National Roma Integration Strategy of the Republic of Bulgaria 2012 – 2020, section II. Available in English at <http://www.nccedi.government.bg/page.php?category=125&id=1740> (accessed 18 November 2016).

8. Based on the legal nature of their housing situation, Roma in Bulgaria can be differentiated into six groups:

- 1) Roma families who are the owners of the land, hold the deed to the property, and their houses have been built with proper building permits.
- 2) Roma families who are the owners of the land, hold the deed to the property, but live in unlawful structures, i.e. structures which have been built without proper building permits.
- 3) Roma families who are the real owners of the land, but do not hold deeds.
- 4) Roma families who live on state-owned or municipal land and have built dwellings without acquiring building permits from the state/municipality. The owner of the land (the state or the municipality) also owns the structures built on the land.<sup>6</sup> Under this situation, the residents are faced with eviction without compensation.
- 5) Roma families who live on land for which private owners hold the deeds.
- 6) Roma families who have been long-term tenants in state or municipal buildings. With the passage of time, their families have grown and since there has been no other possibility for accommodation, they have expanded the initial housing structures at their own cost. Since in this case, the state or the municipality is the legitimate owner of both the land and the construction on it, the additional construction cannot be legalized and is vulnerable to mandatory demolition.

## II.2. The Bulgarian legal framework regarding housing

### *Legislation related to housing*

9. The Constitution states that the home shall be inviolable (Article 33(1)). However, the right to adequate housing is not guaranteed at statutory level. The Territorial Organisation Act,<sup>7</sup> ('the TOA'), the main legislation governing planning requires demolition of all illegally constructions and does not distinguish between residential houses and non-residential constructions.<sup>8</sup> The TOA does not contain any explicit prohibition on discrimination.

10. Article 6 of the Bulgarian Constitution provides "(1) All persons are born free and equal in dignity and rights. (2) All citizens shall be equal before the law. Neither abridgement of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property

<sup>6</sup> According to Article 92 of the Property Law.

<sup>7</sup> Published in State Gazette ('SG') No 1 of 2 January 2001, last amended: SG No 15 with effect from 23 February 2016. The ECtHR analysed parts of this law in *Ivanova & Cherkezov v Bulgaria*, ECtHR judgment of 21 April 2016, §25-29.

<sup>8</sup> This is inherited from previous legislation. See §4.2, of Equal Opportunities Initiative's report: "Analysis of the Legal Framework Concerning Demolition of Unlawful Buildings and the Practice of Imposing the Framework in Bulgaria with the Purposes of Identification of Compliance with the European Union Law concerning Protection against Discrimination based on Ethnic Origin" ("Analysis of Legal Framework Report").

status.” The Protection against Discrimination Act (‘PADA’) is intended to transpose the Directive into Bulgarian law. PADA explicitly prohibits discrimination on all protected grounds (including ethnic origin) in the spheres of education, employment access to and supply of goods and services. However, despite the requirements of the Directive (see section III.1. below), PADA does not explicitly refer to housing and has no provisions referring to eviction or demolition.

11. Which buildings are considered to be illegal is determined by law.<sup>9</sup> There are opportunities for legalization of illegal constructions, but this applies only to those built before 31 March 2001.<sup>10</sup> Any illegal construction built after 31 March 2001 cannot be legalised and is subject to demolition. This applies regardless of its use, so applies to residential accommodation. Bulgarian law allows for some illegal constructions built before 31 March 2001 to be legalised (accorded the status of ‘tolerable constructions’) but only by application of the individual concerned and not *ex officio* or automatically. However, legalisation is not available for constructions built before 31 March 2001 where there was any violation of the construction requirements, no matter how minor. For illegal buildings which cannot be legalised – including all those built after 31 March 2001 – the sanction is demolition. The penalty is not affected by the gravity of the violation, nor the use of the construction: national law requires demolition.

12. This legislative framework does not guarantee the principle of non-discrimination in the field of housing for Roma.

#### *Court practice in cases of illegal construction*

13. Judicial review in cases of forced demolitions is available at two key points in the demolition process: first, when an order is issued and later, if the order is executed. At both points, the administrative courts have jurisdiction. A first instance administrative court ruling about a demolition order can be reviewed by the Supreme Administrative Court (‘SAC’), but first instance court rulings on execution are final.<sup>11</sup>

14. As to demolition orders, over the last seven years the SAC has consistently interpreted Bulgarian laws requiring demolition of illegal constructions as conferring no discretion on administrative or judicial authorities not to issue a demolition order. The SAC has ruled that a demolition order must be issued for a construction built without a permit, even if it is not in breach

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<sup>9</sup> Article 225, para 2 of the TOA. See detailed description and analysis in Analysis of Legal Framework Report §4.4.

<sup>10</sup> § 184, para 1 the TOA.

<sup>11</sup> The law on execution of demolition orders was considered by the ECtHR in *Ivanova & Cherkhezov v Bulgaria*, judgment of 21 April 2016, §31-40.

of the local zoning plan or other legal requirements.<sup>12</sup> The SAC has ruled that administrative authorities have no discretion on issue of demolition orders of illegally constructed buildings, and that the only lawful course of action open to the court in such cases is to uphold the order.<sup>13</sup> These rulings preclude application of the Bulgarian law requiring administrative authorities to adhere to the principle of proportionality,<sup>14</sup> since this applies only where the authority has a discretion.<sup>15</sup> The SAC has ruled that the authorities are not obliged to consider and assess the harm caused to the persons affected by a demolition order.<sup>16</sup>

15. As to the execution of demolition orders for illegal constructions, the courts do not maintain consistent practice. First, there are limitations on the scope of judicial review as it does not apply to any action undertaken during the execution procedure of a demolition order.<sup>17</sup> Some judgments do not recognise the standing of those who are not addressees of the demolition order and whose property rights would not be affected by its execution.<sup>18</sup> As to the question of applicability of the principle of proportionality, some judges have found it to be non-applicable and limited judicial review to procedural issues.<sup>19</sup> Others examine the matter by reference to the principle of proportionality,<sup>20</sup> but even where the building is the applicants' sole residence, the claim is dismissed on the grounds that there are no other means of combatting illegal construction.<sup>21</sup>

16. In four cases brought in 2015 concerning the legality of execution proceedings,<sup>22</sup> a regional administrative court accepted the applicants' request for interim measures and suspended execution of the demolition orders.<sup>23</sup> The court did not respond to the applicants' claims on the

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<sup>12</sup> See Decision No 4726/9.04.2009, case No 14546/2008, SAC, II Division; Decision No 1930/23.02.2015, case No 75/2015, SAC, II Division.

<sup>13</sup> See, e.g., Decision No 13030/04.11.2009, case No 7857/2009, SAC, II Division; Decision No 942/27.01.2015, case No 7908/2014, SAC, II Division.

<sup>14</sup> As provided under Article 6 of the Administrative Procedure Code (2006).

<sup>15</sup> See Decision No 4035/22.03.2013, case No 632/2013, SAC, II Division; Decision No 15733/27.11.2013, case No 9665/2013 of SAC, II Division; and Decision No 1876/11.02.2014, case No 12967/2013, SAC, II Division. But see calls from the Ombudsman of the Bulgarian Republic for authorities to act proportionately, quoted by the ECtHR in *Ivanova & Cherkezov v Bulgaria*, judgment of 21 April 2016, §41-43.

<sup>16</sup> Decision No 13426/10.11.2014, case No 10090/2014, SAC, II Division.

<sup>17</sup> For example, an application for judicial review of a notice for voluntary execution is inadmissible: see Decision No 2433/02.03.2016, case No 2334/2016 SAC, I panel; Decision No 2165/25.02.2016, case No 1684/2016 SAC, II Division; Decision No 13664/15.12.2015, case No 1684/2016 SAC, II Division. Applicants also cannot challenge decisions on the extension of the period for removal of residential buildings: See Decision No 1099/03.02.2016, case No 14261/2015 SAC, II panel; Decision No 1004/01.02.2016, case No 14276/2015 SAC, II Division.

<sup>18</sup> See, e.g., Decision No 7946/16.06.2009, case No 3935/2009, SAC, II Division.

<sup>19</sup> See, e.g., Decision No 06.03.2015, case No 47/2015, Administrative court in Haskovo.

<sup>20</sup> As provided under Article 6 of the Administrative Procedure Code and Article 8 of the European Convention of Human Rights.

<sup>21</sup> See Decision No 5/06.01.2016, case No 112/2015, Administrative court in Lovech, and Decision No 7/13.01.2016, case No 156/2015, Administrative court in Lovech; Decision No 749/22.03.2013, case No 911/2013, Administrative court in Varna; Decision No 1782/04.07.2013, case No 1650/2013, Administrative court in Varna; Decision No 929/17.04.2014, case No 911/2013, Administrative court in Varna.

<sup>22</sup> The proceedings under Article 294 of the Administrative Procedure Code related to houses inhabited by a number of Roma families.

<sup>23</sup> The applicants raised the argument that the immediate enforcement of the orders for their demolition would render those families homeless.

issues of proportionality and discrimination.<sup>24</sup> The cases were finally decided in favour of the applicants on the basis of procedural matters, in particular those relating to the competence of the authority responsible for the execution proceedings.

17. There is no practice from the Commission for Protection against Discrimination (Bulgaria's national equality body) on house demolition cases as it is not considered competent to suspend or quash the execution of demolition orders.

### II.3. Recent research findings regarding demolition practices

18. In 2016, EOIA conducted a survey of the practice from 2010-2016 of Bulgarian administrative authorities in issuing and executing demolition orders against the residential homes of Roma ("the EOIA survey"). This survey gathered information from central and municipal authorities, from Roma communities affected and from other reliable sources. This report describes how the survey was conducted and sets out its findings.

19. Bulgarian law provides for two separate administrative frameworks as regards the removal of illegal constructions. As set out in the TOA, before November 2012, control of all illegal constructions was centralised in one body, namely the National Agency on Construction Control ('the NACC'). From November 2012, responsibility for residential constructions<sup>25</sup> was transferred to Bulgarian mayors. However, responsibility for unexecuted demolition orders issued under the old regime remains with the NACC, which also operates through the Regional Agency on Construction Control ('the RACC').

#### *Removal of illegal constructions by the NACC*

20. To promote transparency in respect of the NACC's actions to remove illegal constructions, on 10 December 2010, a public register of enforced orders was created. This register is maintained online and updated monthly.<sup>26</sup> In February 2016, the EOIA survey analysed all NACC decisions on illegal constructions in Bulgaria available on the public register. The public register contains information on the number of orders, the type of the construction, the location of the construction, actions taken to date regarding the implementation of the order and the date of demolition of the construction (insofar as demolition has taken place).

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<sup>24</sup> See Ruling No 995/15.09.2015, case No 705/2015, Administrative court in Pazardzhik; Ruling No 996/15.09.2015, case No 707/2015, Administrative court in Pazardzhik; Ruling No 997/15.09.2015, case No 708/2015, Administrative court in Pazardzhik; Ruling No 1002/15.09.2015, case No 706/2015, Administrative court in Pazardzhik.

<sup>25</sup> categories 4 to 6 under the TOA

<sup>26</sup> See <http://www.dnsk.mrrb.government.bg>

21. The EOIA survey showed that, as of February 2016, there were 6080 demolition orders of which 4530 had been executed.<sup>27</sup> 514 of these demolition orders had been issued against residential buildings, with Roma owned buildings constituting 500 (97%) of these. Of the orders against residential buildings, 201 had already been executed. In these cases the Roma – including children and vulnerable family members – were not provided with any alternative accommodation, and were left homeless as a result. The demolitions in the Roma settlements took place *en masse*. The Roma were not given notice of the exact date of execution of the orders and most of them were not able to remove their furniture and personal belongings. Some of them also lost identity and other personal documents.

#### *Removal of illegal constructions by mayors*

22. As noted above, as of November 2012, responsibility for demolition of illegal residential constructions passed to Bulgarian mayors. As part of the EOIA survey, in January - February 2016, EOIA made applications under Bulgaria's Access to Public Information Act ('the APIA') to the mayor of each of the 265 municipalities in Bulgaria. In these applications, EOIA asked for the numbers (if any) of demolition orders they had issued under article 224 of the TOA and of these orders, the number (if any) that concerned residential buildings. EOIA asked the mayors to provide copies of all demolition orders issued (with personal data redacted). By the completion of the survey, EOIA had received a response from 162 of the 265 municipalities, i.e. 61%.

23. An analysis of the information received from the mayors shows that many of the demolition orders were issued in response to complaints made by individuals. This practice of relying upon individual complaints, rather than a systematic and balanced approach, inevitably leads to disproportionate use of these powers against Roma owned houses because of the widespread prejudice and discriminatory treatment they face from the majority population.

24. The EOIA survey also showed that challenges in court to demolition orders are relatively infrequent challenged in court.

25. From the data received, EOIA identified the demolition orders that apply to buildings owned by Roma. We have identified Roma owned buildings either through the identification of the neighbourhood in which properties are located as a segregated Roma settlement or, where this was not possible, by carrying out checks in each individual case.

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<sup>27</sup> See <http://www.mrrb.government.bg/?controller=news&id=7227> (accessed 18 November 2016).

26. The EOIA survey received information from the municipalities that: between December 2012 to late March 2016, 162 municipalities issued a total of 2000 orders to remove illegal constructions, of which 444 related to residential buildings. Of the total 2000 orders, 399 related to Roma owned buildings, all of which were residential and the only home of the families concerned. Thus, of the 444 demolition orders for residential buildings, 399 – or 90% - related to the homes of Roma families. 203 of these 399 buildings had already been forcibly demolished. The execution of these demolition orders left the Roma families homeless, as the municipal authorities did not provide alternative accommodation even for children and vulnerable adults. In many of the cases, the buildings were demolished without prior notification of the exact date of the execution of the orders. As a result, the affected Roma families were not able to save their furniture and other personal belongings, including personal documentation.

## II.4. Mass demolitions of houses in Roma settlements - examples

### *The Gurmen case*

27. Kremikovtzi settlement is a Roma settlement in Marchevo village, Gurmen municipality, Blagoevgrad region. The settlement is built on agricultural land. Around 850 persons live in Kremikovtzi settlement, all of them ethnic Roma. Of these people, 350 are children aged under 18 years: 210 are enrolled in two local schools and 140 are younger than school age, some attending the local nursery school. The settlement contains 134 houses, all of them built by the Roma people. Most of the families have lived in the settlement for more than 20 years and many were born there.

28. In 2013 – 2014, the Gurmen municipal council decided to sell off some parcels of land in the settlement. The municipality promised the Roma that three calls for tenders would be organized. Some Roma inhabitants of Kremikovtzi settlement participated and were successful in the first tender. They now hold written contracts with the municipality for ownership of the land. Other Roma inhabitants prepared the documentation to bid in the further two tenders that had been promised, but these did not take place.

29. Between 14 December 2010 and 15 February 2012, the Gurmen municipality issued 114 certificates according to which the other Roma houses concerned have a ‘tolerated’ status under the TOA. This certificate means that the houses cannot be subject to demolition, can be exchanged under notarised contracts, and, in case of expropriation for municipal or state needs, the owners must be paid compensation. However, between 22 March 2011 and 23 November 2012, the the RACC derogated from 104 of the certificates. In 2011, the RACC carried out inspections and declared some 124 houses as unlawfully built. The RACC then issued demolition orders for these houses.

30. Some of the demolition orders were appealed (unsuccessfully) to the Administrative Court in Blagoevgrad. Currently all the demolition orders are final and pending execution, although between 2011 and 2015, no demolition action has yet taken place.

31. In May 2015, there was a violent disturbance between groups of Roma and Bulgarian people. After the incident, local ethnic Bulgarians formed an “Initiative Committee” which demanded that the municipality demolish the unlawfully built Roma houses and expel the Roma from the municipality<sup>28</sup>. There were daily anti-Roma demonstrations<sup>29</sup> outside the town hall.

32. In the light of upcoming local elections in October 2015, the RACC and municipality took action to meet the ethnic Bulgarian demands. On 30 June 2015, the RACC forcibly demolished four Roma houses, making the occupants, including at least 15 children, street homeless. The municipal authorities proposed accommodating them in an empty school building in the nearby village of Osikovo, however, the inhabitants of Osikovo objected and the plan was abandoned following a series of public anti-Roma protests and demonstrations to the Gurmen municipality.

33. The demolition of two more houses was planned for 13 July 2015. The two families affected were in a desperate situation. They were extremely poor and did not have alternative housing. Both families had children under the age of 18, two of whom had severe disabilities, and the mother of one of the families was 8 months pregnant. The 12 family members, represented by EOIA, filed a request with the European Court of Human Rights (‘ECtHR’) for interim measures under Article 39 of the Rules of the Court.<sup>30</sup> The ECtHR granted the Rule 39 indication, addressing a letter to the Bulgarian Government requiring the suspension of demolition proceedings and asking whether alternative accommodation had been secured for the vulnerable family members.

34. The Bulgarian Government responded to the ECtHR by suspending the demolition procedures. On 11 August 2015, the Bulgarian Ministry for Regional Development published a statement regarding the execution of the demolition orders for the Roma houses in the Kremikovtzi settlement. This said that the NACC had extended the term for the execution of the orders until 31 August 2015 because the local administration had not secured alternative accommodation for the affected persons.

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<sup>28</sup> Bulgaria tensions lead to Roma home demolitions, BBC: <http://www.bbc.com/news/world-europe-33597660>

<sup>29</sup> Bulgaria’s Garmen Braces for Massive anti-Roma Protest, Novinite: <http://www.novinite.com/articles/168825/Bulgaria's+Garmen+Braces+for+Massive+anti-Roma+Protest>

<sup>30</sup> Aydarov v Others v Bulgaria (App no. 33586/15). On 27 April 2016, the ECtHR communicated the case to the Bulgarian Government.

35. On 26 August 2015, Gurmen municipal officials visited the Kremikovtzi settlement and asked the Roma families to sign declarations of their willingness to accept alternative accommodation. However, the municipal authorities did not identify any proposed alternative accommodation in the document and the Roma refused to sign the declarations. The municipal officials immediately claimed that the Roma had refused proposals of alternative accommodation afterwards. The mayor of Gurmen publicly called on the inhabitants of Gurmen municipality to house the Roma themselves (without remuneration), stating that the municipality was unable to secure alternative accommodation. This request proved to be incendiary; resulting in violent anti-Roma protests outside the town hall and an outright refusal from Gurmen inhabitants to take Roma into their homes and declarations that “we do not want the Roma in the village”. In early September 2015, the authorities executed demolition orders against five more houses. The remaining Roma families in Gurmen still live in imminent threat of forcible eviction and demolition of their homes.

#### *The Bourgas case*

36. In 2009, the houses of 18 Roma families of the Gorno Ezerovo Roma settlement in Bourgas were forcibly demolished<sup>31</sup>. The Roma families, including children and vulnerable adults were left homeless. No alternative accommodation was proposed or secured. Another 17 Roma families of Gorno Ezerovo and 21 Roma families of the Meden Rudnik Roma settlement in Bourgas were served with demolition orders. Between 2009 and 2015, many of these Roma houses were demolished and their occupants left without alternative accommodation. The demolition orders in these cases had been issued by the NACC. Due to the change in the law set out above, from 2012, the Bourgas municipality became the authority responsible for dealing with unlawful constructions. According to the EOIA survey, between 2012 and March 2016, the Bourgas municipality issued 200 demolition orders, of which 111 concerned residential buildings. Of these 111 orders, 105 were issued against Roma homes, while the remaining six were against second homes owned by ethnic Bulgarians (but are second homes).

#### *The Varna case*

37. Maksuda's dere is a Roma settlement in Varna municipality, Mladost-sub-district. Around 1000 people live there on a permanent basis, known by the local authorities. Most residents were born there and many live in houses they have built themselves. Many houses were built more than 20 years ago on land abandoned by the owners or on municipal land. This is a close-knit community: neighbours who have known each other their whole lives live side-by-side, and the children go to the local school in Varna.

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<sup>31</sup> Forced evictions of Roma, [https://www.ecoi.net/file\\_upload/1930\\_1303998236\\_cohre-eoa-bulgaria100.pdf](https://www.ecoi.net/file_upload/1930_1303998236_cohre-eoa-bulgaria100.pdf)

38. For many years the community has lived with the uncertainty and fear caused by the, threat of evictions. For example, in 2008, Varna municipality demolished four houses of Roma families in Maksuda. The occupants were left street homeless as no alternative accommodation was provided.

39. In response to the EOIA survey, Varna municipality advised that, between 2012 and 2016, it issued 2018 demolition orders and that 92 of these were against residential homes. EOIA has established that all 92 demolition orders were against homes of Roma families.

40. In 2014, the mayor of Varna, Mladost sub-district, issued 61 of these demolition orders against houses in the Roma settlement of Maksuda. All of the families affected were born in Maksuda and had lived there all their lives. None of the demolition orders was appealed to a court.

41. On 5 August 2015, the Varna Municipal Council held its 42<sup>nd</sup> session, with acceptance of the 'Local Strategy for Roma Integration' on the agenda. Inhabitants of Varna strongly opposed the Council's adoption of the Strategy, and the mayor of Varna advised the members of the Council to remove the strategy from the agenda. Apparently to appease citizens who had attended the council meeting to protest against the strategy, the mayor of Varna stated that the municipality would start the execution of the 61 demolition orders the following week.

42. After this meeting, in August 2016, the municipality moved to execute the demolition orders. The Roma families whose homes were targeted were not even informed of the date of demolition. When the demolitions started, EOIA applied to the ECtHR for interim measures under rule 39 of the Rules of the Court. The ECtHR granted the rule 39 indication, addressing a letter to the Bulgarian Government requiring the suspension of execution of the demolition orders and requested information as to whether alternative accommodation had been secured for vulnerable persons. However, before the Court had given the indication under rule 39, the authorities had already demolished 46 houses. The Bulgarian Government responded by suspending demolition of the remaining houses. The Roma evicted from the demolished houses were left without alternative accommodation. Some days later, some of the families were provided with a shelter in a building owned by the municipality but this arrangement was temporary and the Roma were asked to leave.

43. The application on behalf of the evicted families in Varna remains pending before the ECtHR and has been communicated to the Bulgarian Government (*Dimitrova and others v Bulgaria*, 39084/2010). The settlement is very close to the town centre and so is prime development land. The mayor of Mladost sub-municipality has repeatedly told the Roma families that the municipality will execute the demolition orders and that the municipality has no capacity to provide alternative

accommodation, referring to a list of some 700 applicants (of Bulgarian origin) waiting for social housing. The mayor has told the media that he has no intention of accommodating the evicted Roma families.

#### *The Maglizh case*

44. Maglizh is a small municipality located in Stara Zagora region. Maglizh municipality refused to provide information in response to EOIA's request under the APIA. On 16 March 2016, EOIA interviewed the mayor of Maglizh who stated that, in 2012, the municipality issued 34 demolition orders against Roma families. The orders were immediately executed. No alternative accommodation was provided for the families, which included children and vulnerable persons. Currently they live in various shelters, and many of them lack personal identity documentation as a result of not being able to provide documents for legally owned place of housing.

#### *The Stara Zagora case*

45. Stara Zagora municipality responded to EOIA's survey advising that it had issued 110 demolition orders between 2012 and 2016. Of these orders, 55 concerned homes owned by Roma. All 55 had been executed and the persons affected have been left homeless, with no alternative accommodation provided even for children and vulnerable adults.

#### *The Sofia case*

46. Sofia municipality did not respond to EOIA's request for information under the APIA. However, EOIA's Legal Team is currently representing 13 Roma families in judicial appeals against demolition orders issued by the municipality. According to EOIA's records of demolition orders against Roma families, 19 such demolition orders were executed in 2013, 12 in 2014, 15 in 2015 and six in 2016.

### **III. APPLICABLE EUROPEAN UNION LAW AND RELEVANT INTERNATIONAL INSTRUMENTS**

#### **III.1. The Race Equality Directive**

47. Article 6 of the EU Treaty states: The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States ... The Union shall respect fundamental rights, as guaranteed by the [ECHR]... as general principles of Community law.

48. Article 19 of the Treaty on the Functioning of the European Union ('TFEU') (ex Article 13 of the EC Treaty) provides for legislation that prohibits discrimination on grounds including racial or ethnic origin.<sup>32</sup> The Directive was adopted under this power.

49. Article 1 of the Directive provides that: [t]he purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

50. Article 2 of the Directive provides:

*Concept of discrimination*

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

51. Article 3 sets out the scope of application of the Directive:

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(h) access to and supply of goods and services which are available to the public, including housing.

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<sup>32</sup> Article 19(1) provides: 'Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

52. Article 7 provides:
1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
53. Article 14 requires compliance by Member States:
- Member States shall take the necessary measures to ensure that:
- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.
54. Article 16 directs that ‘Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2003.’

### **III.2. Provisions relevant to interpretation and application of the Directive**

55. The Directive must be interpreted and applied so as to ‘respect the rights, observe the principles and promote the application’ of the Charter of Fundamental Rights of the European Union (‘the CFR’): Article 51 CFR.
56. The CFR provides (relevantly):
- Article 7 - Respect for private and family life
- Everyone has the right to respect for his or her private and family life, home and communications.
- Article 34 - Social security and social assistance
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

57. According to the Explanations to the CFR:

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR.

Paragraph 3 [of Article 34] draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union.

58. The Revised European Social Charter entered into force for Bulgaria on 1 August 2000, with no reservations. It provides:

Article 16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 30. Everyone has the right to protection against poverty and social exclusion.

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary.

Article 31. Everyone has the right to housing.

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Article E.

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

### III.3. Article 8 of the European Convention on Human Rights

59. Article 8 ECHR provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

60. Article 7 CFR must be interpreted consistently with Article 8 ECHR (*see* Article 52(3) CFR). In *Gillow v United Kingdom*, the ECtHR held that a house where people live for a number of years or, in certain circumstances, maintain sufficient continuous links,<sup>33</sup> amounts to ‘home’ within the meaning of Article 8 ECHR and therefore engages the right to respect for private and family life under Article 8(1).<sup>34</sup> Property is protected regardless of the condition of the dwellings, and ‘notwithstanding the fact that the building had been erected in breach of the law.’<sup>35</sup>

61. In the assessment of the necessity of the interference under Article 8(2), the procedural question of whether the decision-making process was sufficient to afford due respect to the interests protected under Article 8 ECHR is relevant in cases concerning the loss of a person’s home even for the promotion of a public interest. The loss of one’s home is an extreme form of

<sup>33</sup> *Gillow v the United Kingdom* (A/109), (1986) 11 EHRR 335, judgment of 24 November 1986, §46.

<sup>34</sup> See *Buckley v the United Kingdom* (20348/92), (1997) 23 EHRR 101, judgment of 25 September 1996, §54; *Prokopovich v Russia* (58255/00), (2006) 43 EHRR 10, judgment of 18 April 2004, §§36-39; *Gillow v the United Kingdom* (cited above), § 46; *McCann v the United Kingdom* (19009/04), (2008) 47 EHRR 40, judgment of 13 May 2008, §46; *Yordanova and Others v Bulgaria* (25446/06), judgment of 24 April 2012, §§102-03.

<sup>35</sup> *Öneryildiz v Turkey* (48939/99), (2005) 41 EHRR 20, judgment of 30 November 2004, §§ 119-129.

interference with the right to respect for private life and family life, and any person facing this should in principle be able to have the proportionality of the measure determined by an independent tribunal.<sup>36</sup>

62. There is a non-exhaustive list of factors identified in the practice of the ECtHR as relevant to the assessment of the proportionality of the interference. Among them are: whether or not the home was established unlawfully,<sup>37</sup> whether or not the persons concerned did so knowingly, the nature and degree of the illegality at issue, the precise nature of the public interest pursued by the demolition, and whether suitable alternative accommodation is available to the persons affected by the demolition.<sup>38</sup> Another important factor to be considered is whether there are less restrictive alternatives.

63. Persons affected should have the right to contest the proportionality of the interference on the basis of the arguments enumerated above, and the courts must examine them carefully and give adequate reasons for their findings. The interference cannot be regarded as justified simply because the case falls under a legal rule formulated in general and absolute terms. States enjoy a certain margin of appreciation,<sup>39</sup> but the mere possibility of obtaining judicial review does not amount to a guarantee under Article 8 ECHR if that decision cannot be challenged also on the ground that it is disproportionate in view of the particular circumstances of the case.<sup>40</sup>

64. In the *Ivanova & Cherkezev v Bulgaria* judgment given in April 2016, the ECtHR ruled that the position of Bulgarian administrative courts violates Article 8 ECHR, by treating demolition as mandatory regardless of the circumstances of the occupants.<sup>41</sup>

#### IV. BULGARIA'S VIOLATIONS OF THE RACE EQUALITY DIRECTIVE

65. Roma are historically a vulnerable group<sup>42</sup> and remain so, including in Bulgaria. They continue to suffer discrimination in Bulgaria in the area of housing. When transposing and implementing the Directive, the Bulgarian Government has a duty to give special attention to eliminating discrimination on grounds of Roma ethnicity. However, the Bulgarian Government has failed, and continues to fail, properly to transpose and implement the Directive. In particular,

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<sup>36</sup> See *McCann v United Kingdom* (cited above), §49.

<sup>37</sup> This question is independent from the question whether the buildings amount to home as evidenced by *McCann*, cited above, §46 and *Yordanova* (cited above), §103.

<sup>38</sup> See *Chapman v United Kingdom*, (27238/95), (2001) 33 EHRR 18, judgment of 18 January 2001, §§102-103 and other.

<sup>39</sup> See in particular, *Yordanova* (cited above), §118, I-V.

<sup>40</sup> See *McCann* (cited above), §§51-55.

<sup>41</sup> *Ivanova & Cherkezev v Bulgaria*, ECtHR judgment of 21 April 2016, §54-56.

<sup>42</sup> "The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority", *D.H. v Czech Republic*, ECtHR judgment of 13 November 2007, §182.

(1) Government bodies discriminate directly on grounds of Roma ethnicity when using powers to enforce laws relating to irregular building, in violation of Articles 1, 2 and 3 of the Directive. As EOIA's research shows (see Section II above), the NACC and the municipalities use these powers to target houses owned by Roma, responding to and working with local campaigns by private complainants who act out of personal prejudice against Roma (see Gurmen and Varna cases above). Government bodies act as tools of selective enforcement of the law based on racial prejudice, in violation of Articles 1, 2 and 3 of the Directive;

(2) Even if the Bulgarian Government were to prove an absence of direct discrimination in some cases, the evidence shows indirect discrimination. Government bodies have a consistent practice of using these powers with disproportionate impact on Roma people, without objective justification and/or appropriate and necessary means for achieving any legitimate aim that may be found to exist, in violation of 1 and 2 of the Directive, read in the light of Articles 7 and 34(3) CFR. National legislation fails explicitly to require administrative bodies or courts to consider the necessity and proportionality of forcible evictions from homes and the Government and courts routinely order eviction without such consideration.

(3) The Bulgarian Government has failed properly to transpose Article 7 of the Directive, read in the light of Article 47 CFR. National legislation governing remedies for eviction and demolition proceedings fails explicitly to provide that the occupant may raise a claim of racial discrimination.

(4) The Government has failed properly to transpose the Directive, in light of Article 3(1)(h). The PADA does not explicitly apply to housing, despite the clear violations of the Directive in this field in Bulgaria.

## **IV.1. Bulgarian government bodies discriminate directly on grounds of Roma ethnicity**

66. The research findings set out in Section II examined how the Bulgarian government bodies – the NACC and municipalities – use their powers to order eviction from, and demolition of, buildings occupied as sole homes, on grounds of irregular construction or lack of ownership of land. The study found that these powers are almost entirely directed at Roma people. While Roma

constitute at most 10% of the Bulgarian population, 90% of all such orders issued by NACC were directed at Roma people; and 90% of all such orders issued by the municipalities that responded were directed at Roma people.

67. This evidence alone shows a powerful case for inferring that the Roma ethnicity of the occupants was one of the reasons for the orders and their execution. This is supported by direct evidence that ethnicity was the reason: both NACC and municipalities acted on demands by anti-Roma campaigns in Gurmen and Varna, as set out above.

68. Under the caselaw of the Court of Justice, such evidence shifts the burden of proof to the state, which must then prove that this practice is not ‘in any way’ founded on the ethnicity of the occupants but ‘exclusively on objective factors unrelated to any discrimination on grounds of ethnic origin’, *CHEZ v Nikolova*.<sup>43</sup>

69. Unless the Bulgarian Government proves the complete absence of ethnic basis for the decisions, it must be concluded that the Bulgarian government bodies concerned are directly discriminating on grounds of Roma origin, contrary to Articles 1 and 2 and in breach of Bulgaria’s implementation obligation under Article 14 of the Directive. This conduct also constitutes harassment under Article 2(3) of the Directive, since it is unwanted conduct relating to ethnic origin, which takes place with the purpose or effect of violating the dignity of the occupants and of creating an intimidating, hostile, degrading, humiliating and offensive environment, which is also a breach of Bulgaria’s obligations under Article 14 of the Directive.

## **IV.2. Bulgarian government bodies discriminate indirectly on grounds of Roma ethnicity**

70. If the Bulgarian Government were to prove that, in some or all respects, there is not direct discrimination, the practices would constitute unlawful indirect discrimination. The evidence shows a practice which, even if ‘formulated in neutral terms, works to the disadvantage of far more persons possessing the protected characteristic than persons not possessing it’, *CHEZ v Nikolova*.<sup>44</sup>

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<sup>43</sup> *CHEZ v Nikolova* (C-83/14), CJEU judgment of 16 July 2015, § 85.

<sup>44</sup> *CHEZ v Nikolova* (cited above), §101.

71. Such a practice is unlawful unless it is objectively justified as a necessary and appropriate means of achieving a legitimate aim. We consider that the Bulgarian Government would contend that the legitimate aims are eliminating the existence of sub-standard housing constructed or extended in breach of planning requirements (see Article 34(3) CFR and Articles 30 and 31 European Social Charter) and respecting the property rights of land owners (Article 17 CFR).

72. These are legitimate aims, but may only be pursued through necessary and appropriate means. Means are only appropriate if: other appropriate and less restrictive measures would not achieve the aims in question; the disadvantages caused by the practice at issue are proportionate to the aims pursued; and the practice does not unduly prejudice the legitimate interests of the persons affected.<sup>45</sup>

73. The practices of Bulgarian government bodies clearly do not meet these requirements. This is for the following reasons.

74. First, these practices of evictions and demolitions are not in fact shown to achieve the legitimate aim of eliminating sub-standard housing. On the contrary, this practice increases the social exclusion and poverty that drives the continued existence of sub-standard housing. It also increases overcrowding as the evicted families are driven to seek temporary accommodation in the homes of relatives and friends. The approach taken by the Bulgarian Government to the housing of Roma people is incompatible with Articles 7 and 31(3) CFR and with Bulgaria's obligations under Articles 30, 31 and E of the European Social Charter: therefore it cannot constitute achievement of legitimate aims under the Directive.

75. Second, there are other appropriate and less restrictive measures to achieve the aims in question. In particular, the Bulgarian Government can and should adopt legislative, administrative and practical measures to facilitate the regularisation of irregular properties, through accessible schemes for acquiring ownership, and for adapting or rebuilding homes to meet planning standards. This approach would be compatible with Articles 7 and 31(3) CFR and with Bulgaria's obligations under Articles 30, 31 and E of the European Social Charter.

76. Third, the disadvantages caused by the practice at issue are disproportionate to the aims pursued and unduly prejudice the legitimate interests of the persons concerned. These legitimate interests include the fundamental rights recognized in the Directive and in the CFR, in particular, the right to access to housing (Article 3), the right to a home (Article 7) and the right to housing

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<sup>45</sup> *CHEZ v Nikolova* (cited above), §120, 123.

assistance so as to ensure a decent existence for all those who lack sufficient resources (Article 34(3)).

77. Fourth, even in cases where the Directive does or may apply, Bulgarian law has been determined to preclude administrative or judicial authorities from considering the proportionality or necessity of demolition orders. The evictions and demolitions undoubtedly constitute a grave interference with the right to respect for the home under Article 7 CFR. As set out above (in relation to Article 8 ECHR), irregular occupation of property does not itself mean occupation is not as a 'home' within the meaning of Article 7 CFR and the right to access to housing of Article 3 of the Directive. Article 7 CFR must also be interpreted compatibly with Article 8 ECtHR as regarded procedural guarantees from eviction or demolition (see above). It follows that, within the purposes of EU law, Article 7 CFR precludes any Government body from ordering eviction or demolition of property occupied as a home, other than after careful consideration of the effects of such an order upon the occupants. However, Bulgarian law makes no clear provision for administrative or judicial authorities to consider the proportionality of demolition orders or to take into account the personal circumstances of the families to be evicted or the consequences for them of eviction and demolition. The responsible Bulgarian Government bodies and Bulgarian courts routinely refuse to take into account such matters when deciding whether to make an eviction order. This means that no proper consideration is given to the effects of the order on the Roma occupants' right to respect for their home and to their right to social and housing assistance. It follows that the Bulgarian Government cannot objectively justify any such indirect discrimination.

### **IV.3. Bulgarian Government failed to transpose Art 7 requirement for procedures for enforcement for effective remedies**

78. The Bulgarian Government is required to transpose Article 7 to 'ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged'. Article 7 must be interpreted in the light of Article 47 CFR, which requiring that these procedures constitute an 'effective remedy' for a violation of the rights which the Directive requires to be guaranteed. However, Bulgarian legislation governing remedies for eviction and demolition proceedings does not explicitly provide that the occupant may raise a claim of racial discrimination. Courts routinely refuse to admit arguments of discrimination on grounds of ethnicity, while Bulgarian government bodies contest the power of courts hearing such proceedings to admit such arguments. Since the Bulgarian courts consider that objections to eviction and demolition can only be raised in proceedings concerning demolition

orders and execution of them, the existence of the right to bring separate proceedings under PADA is not effective (remedy) for ethnic discrimination arguments against eviction or demolition.

#### **IV.4. Bulgarian Government has failed to transpose Directive as regards housing**

79. PADA does not explicitly apply to the provision of housing, despite Article 3(1)(h) of the Directive.

80. EOIA accepts that the Bulgarian Government has, in principle, the choice of the means of transposition and implementation of the Directive. However, EU law requires that the means chosen must give full effect to the Directive in the national legal and administrative order.

81. This report shows the consistent practice of Bulgarian government bodies and courts to violate the prohibition on discrimination on ethnic grounds in respect of the provision of housing. In light of this, the failure of the Bulgarian Government to make explicit provision in national law applying the principle of equal treatment to housing is a failure properly to transpose the Directive.

#### **V. DECISION OF THE EUROPEAN COMMITTEE ON SOCIAL RIGHTS AGAINST BULGARIA**

82. The questions related to forced evictions and demolition of homes as connected with Roma owned housing in Bulgaria have already been considered by the European Committee on Social Rights (the Committee) and their decision strongly supports the factual arguments we make. In 2006, the Committee gave a decision on the merits under complaint No 31/2005, *European Roma Rights Center v Bulgaria*.<sup>46</sup> The Committee ruled that Article 16 of the European Social Charter guarantees adequate housing for the family, which means a dwelling which is structurally secure; possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; is of a suitable size considering the composition of the family in residence; and with secure tenure supported by law.<sup>47</sup> It underlined that the temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period.

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<sup>46</sup> Decision of European Committee on Social Rights, 18 October 2006 on Complaint No 31/2005.

<sup>47</sup> See also *ERRC v Greece*, Complaint No 15/2003, decision on the merits of 8 December 2004, §24.

83. According to the Committee the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources.

84. The Committee concluded that the situation concerning the inadequate housing of Roma families and the lack of proper amenities constitutes a violation of Article 16 taken together with Article E on non-discrimination.

85. As to lack of legal security of tenure and the forced eviction of Roma families from sites or dwellings unlawfully occupied by them, the Committee concluded that it constitutes a violation of Article 16 of the Revised Charter taken together with Article E.

86. In 2007, in response to this decision, the Bulgarian Government did not announce any plans to secure effective judicial protection, but it stated that it would introduce legislation “to make it easier to legalise existing buildings”.<sup>48</sup> As shown above, this did not take place.

87. In 2011, the Committee reviewed these documents in the context of Bulgaria’s periodic report under Article 16 of the Charter, concluding that “as no relevant information appears in these documents, in order to assess whether the situation is in full conformity with Article 16 of the Charter as regards adequate housing of Roma families and proper amenities, as well as legal security of tenure and conditions accompanying eviction of Roma families, the Committee asks the next report to provide full information on the implementation of the relevant legislation and housing aid programmes at local and at national level or other relevant measures. In the meantime, it considers that the situation is still not in conformity with the Charter on this point.”<sup>49</sup>

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<sup>48</sup> Appendix to Resolution CM/ResChS(2007)2 on Collective Complaint No. 31/2005 *European Roma Rights Centre v Bulgaria*  
<http://hudoc.esc.coe.int/eng?i=reschs-2007-2-en>

<sup>49</sup> European Committee on Social Rights, *Conclusions 2011 - Bulgaria - Article 16*, 2011  
<http://hudoc.esc.coe.int/eng?i=2011/def/BGR/16//EN>

## VI. CONCLUSIONS AND RECOMMENDATIONS

88. The Bulgarian Government has failed properly to transpose and implement the Directive as it is required to be interpreted and applied under the CFR, in respect of the law on eviction from and demolition of homes which are irregular constructions.

89. **We respectfully request the European Commission to initiate infringement proceedings against the Bulgarian Government under Article 258 of the Treaty of the Functioning of the European Union for failure properly to transpose and implement the Race Equality Directive.**

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