



EUROPEAN ROMA RIGHTS CENTRE

1386 Budapest 62, P.O. Box 906/93, Hungary
Phone: (36-1) 413-2200; Fax: (36-1) 413-2201
E-mail: office@errc.org
<http://errc.org>

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Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
F-67075 Strasbourg CEDEX
France

Collective Complaint European Roma Rights Centre v. Bulgaria

Table of Contents

I. Admissibility

- I.1. State Party**
- I.2. Articles Concerned**
- I.3. Standing of the European Roma Rights Centre**

II. Subject Matter of the Complaint

- II.1. Article 16, Article E, and the Right to Adequate Housing**
- II.2. The Factual Profile of Bulgaria's Violation of Article 16 Independent of and/or in Conjunction with the Article E Ban on Discrimination**
 - II.2.A. Failure to Recognise the Right to Adequate Housing under Bulgarian Domestic Law**
 - II.2.B. Aggravated Residential Conditions of Romani Neighborhoods**
 - II.2.C. Factual Denial on a Massive Scale of Legal Recognition of Romani Housing**
 - II.2.D. Systemic Threats of and/or Actual Implementation of Forced Evictions. Planned and Realised Wholesale Destruction of Romani Neighbourhoods**
 - II.2.E. Government Housing Policy**

III. Conclusions

I. Admissibility

I.1. State Party

I.1.01. Bulgaria: High Contracting Party to the Revised European Social Charter (hereafter “RESC”) since August 1, 2000; and accepted supervision under the collective complaints procedure provided for in Part IV, Article D, paragraph 2 of the Charter in accordance with the Additional Protocol to the ESC providing for a system of collective complaints from 9 November 1995.

I.2. Articles Concerned

I.2.01. Article 16: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal, and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

I.2.02. Read independently and/or in conjunction with:

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.”

I.3. Standing of the European Roma Rights Centre

I.3.01. The European Roma Rights Centre (hereinafter “ERRC”) is an international non-governmental organisation, which has consultative status with the Council of Europe and is among organisations entitled to lodge collective complaints under the ESC/RESC mechanism. Under Part IV, Article D, referring to the provisions of the second additional protocol, Parties recognise the right of international non-governmental organisations which have consultative status with the Council of Europe and are listed as having standing before the ESC/RESC mechanism to submit collective complaints to the European Committee of Social Rights, irrespective of whether the organisations concerned come under the jurisdiction of any of the State Parties to the ESC/RESC. The ERRC has had standing with the ESC/RESC collective complaint mechanism since June 2002.¹

I.3.02. In addition, under Article 3 of the Second Additional Protocol to ESC, the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence. The ERRC is a Budapest-based international public interest law organisation which monitors the human rights situation of Roma in Europe and provides legal defence in cases of abuse. Since its establishment in 1996, the ERRC has undertaken first-hand field research in more than a dozen countries, including Bulgaria, and has disseminated numerous publications, from book-length studies to advocacy letters and public statements. In 1997, the ERRC published a country report on Bulgaria entitled *Profession: Prisoner. Roma in Detention in Bulgaria* and ERRC monitors currently stationed in Bulgaria reports regularly on human rights developments concerning Roma.² The ERRC has undertaken extensive litigation activities in

¹ See letter from the Secretariat General of the Council of Europe to Mr Claude Cahn, European Roma Rights Center, 14 June 2002.

² The ERRC monitors the human rights situation of Roma in Bulgaria in partnership with an independent field researcher and also has two legal monitors placed at the Sofia-based non-governmental organisations Human Rights Project (hereafter “HRP”) and the Bulgarian Helsinki Committee (hereafter “BHC”), respectively. The

Bulgaria, including into matters related to the concerns raised in this Collective Complaint, and during the period 2004-2005 it has been involved in a targeted anti-discrimination litigation project in Bulgaria in cooperation with the Sofia-based Romani non-governmental organisation Romani Baht and the Sofia-based Bulgarian Helsinki Committee, with funding support from the Foreign and Commonwealth Office of the Government of the United Kingdom. ERRC publications on Bulgaria and other countries, as well as additional information about the organisation, are available on the Internet at: <http://www.errc.org>.

II. Subject Matter of the Complaint

II.0.01. At issue in this Collective Complaint are residential segregation, substandard housing conditions, lack of legal security of tenure and forced evictions, and other systemic violations of the right to adequate housing falling disproportionately against Roma and other persons regarded as "Gypsies" in Bulgaria, as banned under international law provisions to which Bulgaria is a party, including but not limited to Article 16 of the Revised Charter, independent of and/or in conjunction with its Article E non-discrimination provisions.

II.1. Article 16, Article E, and the Right to Adequate Housing

II.1.01. The present Collective Complaint alleges violations by the Bulgarian state of the right of the family to social, legal and economic protection as stipulated by Article 16 of the Charter and related international standards. In order to ensure the necessary conditions for the full development of the family, which is a fundamental unit of society, Bulgaria has undertaken under Article 16 of the RESC "to promote the economic, legal and social protection of family life by means such as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and by other appropriate means."

II.1.02. The "full development of family life" requires the full recognition and realisation of the right to adequate housing. Housing is fundamental for the development of family life and the right to adequate housing is encompassed by Article 16 of the Charter. The European Committee of Social Rights (ECSR), responsible for the oversight of the European Social Charter, has acknowledged the central role ensuring that the right to adequate housing is fully secured for all in assessing states' compliance with Article 16. In its Conclusions XII-1 the Committee "stressed the need to consider family welfare in terms of the right to receive adequate housing and essential services (such as heating and electricity), these being necessary for the welfare and stability of families".³ More recently, relying on previous case law, the Committee reiterated its view that "in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). [...] Furthermore the obligation to promote and provide housing extends to security from unlawful eviction."⁴ The Committee has also observed that "the principle of equality and non-discrimination form an integral part of Article

ERRC is also grateful to the Sofia-based Romani organisation Romani Baht for providing advice and information in the process of drafting the present complaint.

³ Quoted in Lenia Samuel, *Fundamental Social Rights: Case Law of the European Social Charter*, Council of Europe, 1997, at p.352.

⁴ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 24. Strasbourg, February 7, 2005.

16 as a result of the Preamble."⁵ Further, recalling previous case law the Committee had noted, "that the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter. When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings."⁶ Finally, the Committee has emphasised that "[...] ultimate responsibility for implementation of official policy lies with the [...] state."⁷

II.1.03. The present Collective Complaint alleges that, in particular where Roma are concerned, the aforementioned commitments are not upheld at present in Bulgaria, because the Bulgarian government has adopted and/or tolerated a range of policies and practices that strike at the fundamental basis of family existence, namely the need for security, privacy and shelter, and freedom from racial and other discrimination constituting the foundation not only for family stability but also for the successful realisation of other fundamental human rights, including but not limited to the right to adequate housing.

II.1.04. At the core of this complaint are Roma dwelling in substandard slum settlements, in the most frequent case residing absent adequate legal security of tenure and therefore under permanent threat of forced eviction, in contravention of a number of international legal commitments to which Bulgaria is a party. Detailed in this complaint are a corpus of unsettling facts, the sum of which indicate that despite ample evidence indicating the dimensions of a human rights crisis in the area of housing for Roma, successive Bulgarian governments have wantonly disregarded their obligation to secure the right to adequate housing for all without discrimination on any basis. As detailed in this Collective Complaint these facts include:

- That very large numbers of Roma -- in particular those Romani individuals residing in informal slum settlements -- are precluded from legally registering their housing; Roma as an ethnic group have been systemically compelled to reside or left in situations in which, as a group, they face no reasonable alternate options other than residing in housing lacking a legal basis, and therefore in a state of permanent high insecurity;
- That this housing is in the main of significantly poorer quality than housing in other areas and inhabited by ethnic Bulgarians or other ethnic groups; Romani settlements frequently lack access to one or more services and key infrastructure, and in some cases are deprived of a range of services crucial for the realisation of a number of other fundamental rights and freedoms;
- That in practice Bulgarian authorities have on numerous occasions forcibly evicted Roma from housing without providing adequate alternate accommodation or sufficient compensation or adequate redress for destroyed housing, and thus rendering many Romani families homeless or vulnerable to other human rights abuses;
- That a number of major Romani settlements are today under permanent threat of wholesale or partial destruction as a result of urban plans, and that inhabitants have in the main been excluded from decisions about their housing fates and left uninformed for significant periods of time as to plans for their future housing arrangements;

⁵ *Ibid.*, paragraph 26.

⁶ See European Committee of Social Rights. Complaint No 13/2002, *Autism – Europe v. France*. Decision on the Merits, paragraph 53, available at: <http://hudoc.esc.coe.int/esc/search/default.asp>.

⁷ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 29. Strasbourg, February 7, 2005.

- That despite adopting policy commitments to improve Romani housing, Bulgarian law-and policy-makers have not acted sufficiently to see these commitments realised;
- That despite the clear emergence and of a recognised right to adequate housing under international law as well as increasingly clear guidance as to its contours, Bulgarian lawmakers have yet to adopt domestic law guarantees recognising a right to adequate housing, and have therefore failed to secure adequately the right to adequate housing under Bulgaria's domestic legal order.

II.1.05. The present Collective Complaint alleges that in addition to the aforementioned facts and practices which, taken together with their large-scale character, result in systemic violations of the rights ensured in Article 16, Bulgaria's housing policies and practices are infected by racial discrimination and as such violate the equal treatment guarantees included in Article E of the Revised Charter and other provisions of international law. This Collective Complaint also alleges that Bulgarian policies and practices in the field of housing for Romani families constitute racial segregation, as banned under international law.

II.1.06. Prior to entering into the substance of Bulgaria's systematic infringement of the right to adequate housing where Roma are concerned, a discussion of the content of three key elements upon which the rationale of the complaint is based, follows below:

- (i) The content and contours of the right to adequate housing under international law;
- (ii) The ban on discrimination -- including racial discrimination -- in access to housing;
- (iii) The ban on racial segregation.

The Right to Adequate Housing

II.1.07. The European Committee of Social Rights has stated that “‘adequate housing’ means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.”⁸ Further, the Committee has stated that adequate housing means that:

A dwelling is safe from a sanitary and health point of view if it possesses all basic amenities [...]

Security of tenure means protection from forced eviction and other threats [...].⁹

II.1.08. The Committee has also recognised that housing is an area of such key significance for the successful implementation of the Charter as a whole that it implicates rights above and beyond those included in Article 31. Other Charter rights concerned include but are not necessarily limited to Article 30 and Article 16, the latter being the explicit subject of the present Collective Complaint. For example, in its 2003 conclusions under Article 30, the Committee noted:

More particularly as regards housing, the Committee refers to its conclusion under Article 31 of the Revised Charter. In the Committee's view housing is a critical policy area in fighting poverty and it is particularly interested to know what measures have been taken to ensure an appropriate location of (social) housing so as to avoid 'ghettoising' poverty and social exclusion.”¹⁰

⁸ European Social Charter (Revised), Conclusions 2003, Volume 1, European Committee of Social Rights, p. 363.

⁹ European Social Charter (Revised), Conclusions 2003, Volume 1, European Committee of Social Rights, p. 363.

¹⁰ European Social Charter (Revised), Conclusions 2003 Volume 1, European Committee of Social Rights, France, Article 30; also Conclusions 2003 – Italy , Article 30; Conclusions 2003 – Sweden, Article 30.

II.1.09. Ruling in the Collective Complaint *European Roma Rights Centre v. Greece*, the Committee noted that "in order to satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). [...] Furthermore the obligation to promote and provide housing extends to security from unlawful eviction."¹¹

II.1.10. Additionally, Article 16 of RESC should be read in light of Part 1, which requires Contracting Parties to pursue by *all appropriate means* the attainment of the provisions of the RESC. The phrase "all appropriate means" encompasses at minimum an understanding that the Party must refrain from practices that are in contravention of the RESC; that the Party review legislation and policy to ensure that no laws or other regulations or practices contravene its commitments under the RESC or provide a framework for violations of such commitments; and that the Party must ensure that the law is enforced against its agents or against third parties engaging in practices that are in contravention of the RESC. Additionally, "all appropriate means" includes the adoption of legislative measures in order to promote the right of the family to appropriate social, legal and economic protection to ensure its full development, including measures to secure the right to adequate housing.

II.1.11. Standards on the right to adequate housing have been elaborated by a number of international bodies including the ECSR in recent years, such that content of the right to adequate housing is now clearly defined.

II.1.12. Bulgaria is bound by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states, at Article 11(1), "The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent."¹² The United Nations Committee on Economic, Social and Cultural Rights, the body charged with overseeing the ICESCR, has derived the right to adequate housing from the "right to an adequate standard of living, including adequate food, clothing and housing".¹³ As such, Bulgaria's apparent reluctance to accept being bound by the Article 31 provisions of the Revised Charter is unclear, insofar as Bulgaria already appears substantively bound by international law provisions guaranteeing the content of Revised Charter Article 31 in full. In light of Bulgaria's commitments under the International Covenant on Economic, Social and Cultural Rights, we understand Bulgaria's hesitation to date in accepting in full the commitments included in Article 31 as matters related to particular details of Article 31 as they may differ slightly from the Article 11 guarantees of the ICESCR. The Bulgarian government's clarification of this tension, in the context of the present Collective Complaint, will be welcome. Pending such clarification and in light of existing jurisprudence, it is understood that the full content of the ICESCR Article 11 right has been imported into Bulgaria's European commitments via the portal of RESC Article 16.

¹¹ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 24. Strasbourg, February 7, 2005.

¹² Bulgaria ratified the CESCR on January 3, 1976.

¹³ See Committee on Economic, Social and Cultural Rights (CESCR). General Comment 4: The right to adequate housing (Art. 11.1 of the Covenant). December 13, 1991, paragraph 1. Further, the African Commission on Human and Peoples' Rights concluded that the right to adequate housing was implicitly recognised in rights to protection of family life and property: see *SERAC & CESR v Nigeria*, African Commission on Human Rights, Case No. 155/96, 30th Session at paragraphs 59 and 65.

II.1.13. Furthermore, as a member state on the Convention on the Rights of the Child, Bulgaria has taken the responsibility under Article 27 to provide material assistance, including housing, to children and assist their parents in implementing this right.

II.1.14. Bulgaria has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and so has undertaken "to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone ... to equality before the law, notably in the enjoyment of the ... the right to housing".¹⁴

II.1.15. In its General Comment 4 on the right to adequate housing, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) elaborated an approach whereby adequate housing was to be understood in terms of seven key elements. These are:

- "(a) Legal security of tenure. [...];
- "(b) Availability of services, materials, facilities and infrastructure. [...];
- "(c) Affordability. [...];
- "(d) Habitability. [...];
- "(e) Accessibility. [...];
- "(f) Location. [...];
- "(g) Cultural adequacy. [...]"¹⁵

II.1.16. Evaluating further in its General Comment 7 the relationship between the right to adequate housing (including, as noted above, the element of legal security of tenure) and the issue of forced evictions, the Committee held that "forced evictions are prima facie incompatible with the requirements of the Covenant."¹⁶ General Comment 7 defines, at Paragraph 3, forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." Finally, at Paragraph 16 of General Comment 7, the Committee stated: "Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

II.1.17. In addition, the CESCR has emphasised that special attention should be accorded to vulnerable individuals or groups, *inter alia*, ethnic and other minorities, since often these individuals and groups suffer disproportionately from the practice of forced evictions.¹⁷

II.1.18. The CESCR has recommended a number of procedural protections in relation to forced evictions. These include, "(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, should be made available in reasonable time to all

¹⁴ See Article 5(e)(iii).

¹⁵ United Nations Committee on Economic, Social and Cultural Rights, General Comment 4, paras. 6-7. Sixth Session, 1991.

¹⁶ "General Comment No. 7 (1997), The Right to Adequate Housing (Art 11(1) of the Covenant): Forced Evictions", adopted by the UN Committee on Economic, Social and Cultural Rights on 20 May 1997, contained in U.N. document E/1998/22, annex IV.

¹⁷ CESCR. General Comment 7, paragraph 11.

those affected; (d) especially where groups of people are involved, government officials or their representatives should be present during an eviction; (e) all persons carrying out the eviction should be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) the provision of legal remedies; and (h) the provision, where possible, of legal aid to persons who require it in order to seek redress from the courts.”¹⁸

II.1.19. The UN Commission on Human Rights has affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to housing.¹⁹ Furthermore, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities has reaffirmed, “the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment [...]”²⁰

II.1.20. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and the UN Commission on Human Rights have through adopted resolutions recommended that governments undertake policy and legislative action with the purpose of circumscribing practices of forced eviction, including conferring legal security of tenure on those currently under the imminent threat of forced eviction. In the light of an increased awareness of the necessity of security of tenure as a pre-emptive method to fight forced evictions, the UN Commission on Human Rights in its 1993 Resolution urged Governments “to confer legal security of tenure on all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced eviction, based upon effective participation, consultation and negotiation”.²¹

II.1.21. In addition, a number of provisions of the European Convention on Human Rights provide protections against forced evictions and other core elements of the right to adequate housing. Article 8(1) of the European Convention on Human Rights sets forth the following guarantees: “Everyone has the right to respect for his private and family life, his home and his correspondence.” Article 8’s protection encompasses *inter alia* the following rights: the right of access²², the right of occupation²³, and the right not to be expelled or evicted, and is thus intimately intertwined with the principle of legal security of tenure.²⁴ Further, the European

¹⁸ CESCR. General Comment 7, paragraph 15.

¹⁹ UN Commission on Human Rights. Resolution 1993/77, paragraph 1.

²⁰ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Forced Evictions: Sub-Commission resolution 1998/9 (E/CN.4/SUB.2/RES/1998/9). August 20, 1998, paragraph 1. Furthermore, international bodies have ruled that, in certain instances, forced evictions and the destruction of property amount to cruel and inhuman or degrading treatment. For example, in the case of *Selçuk and Asker v. Turkey*, the European Court of Human Rights ruled that the destruction of houses and the eviction of those living in them constituted a form of ill-treatment in violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Judgement of 24 April 1998, Appls Nos 00023184/94 and 00023185/94). Similarly, the UN Committee against Torture (CAT) has ruled that, under certain circumstances, destruction of property may amount to cruel and inhuman or degrading treatment in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture. Communication No 161/2000: Yugoslavia. 02/12/2002. CAT/C/29/D/161/2000 (Jurisprudence)). The case is particularly noteworthy for the purposes of this Collective Complaint insofar as the victims were Romani.

²¹ UN Commission on Human Rights. Resolution 1993/77 (E/CN.4/RES/1993/77). March 10, 1993, paragraph 3.

²² *Wiggins v. United Kingdom*, No. 7456/76, 13 D & R 40 (1978).

²³ *Ibid.*

²⁴ *Cyprus v. Turkey*, 4 EHRR 482 (1976).

Court has developed extensively under its Article 8 jurisprudence the concept of "positive obligations", under which a Contracting State must not only restrict its own interferences to what is compatible with Article 8, but may also be required to protect the enjoyment of those rights and secure the respect for those rights in its domestic law.²⁵ Ruling recently in the case of *Connors v. The United Kingdom*, the European Court of Human Rights found a violation of the European Convention's Article 8 requirements in a case involving the failure to provide adequate legal security of tenure to a family of English Gypsies.²⁶ In addition, protections available under Article 1 of Protocol 1 to the European Convention -- guaranteeing the peaceful enjoyment of one's possessions -- have been interpreted to include the protection of housing rights.²⁷ In some circumstances, forced evictions may rise to the level of cruel and degrading treatment or punishment, as banned under Article 3 of the Convention.²⁸

II.1.22. Forced evictions have implications well beyond the act itself, and frequently result in a range of consequences triggering violations of civil and political rights, as well as other economic and social rights, *inter alia*, the right to life, the right to security of the person, the right to non-interference with privacy, family and home, and the right to peaceful enjoyment of possessions, the right to an adequate standard of living, the right to security of the home, the right to security of tenure. It is imperative that legal protection is afforded individuals against unjust evictions from their homes and/or land and that legal redress be made available for victims of illegal forced evictions. When forced evictions are unavoidable, state authorities must ensure that suitable alternative housing solutions are provided. In cases of justifiable evictions, it is incumbent upon state authorities that said evictions be carried out in a manner

²⁵ E.g. *Costello-Roberts v. United Kingdom*, March 25, 1993, Series A, No. 247-C; 19 E.H.R.R. 112, para.26.

²⁶ See *Connors v. The United Kingdom*, (Application no. 66746/01), Judgment on Merits, 27 May 2004. In the decision in that case, the Court ruled: "[...] The Court has also stated that in spheres such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow v. the United Kingdom*, cited above, § 55; *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (*Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123)." (Connors Judgment on Merits, para. 82).

²⁷ In *Öneryildiz v. Turkey*, a case involving the destruction of slum dwellers' homes following an explosion at a rubbish tip, the European Court of Human Rights, while finding a violation by the Turkish government of Article 1 of Protocol 1 ruled, *inter alia*, "The Court reiterates that the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision ... the Court considers that neither the lack of recognition by the domestic laws of a private interest such as a 'right' nor the fact that these laws do not regard such interest as a 'right of property', does not necessarily prevent the interest in question, in some circumstances, from being regarded as a 'possession' within the meaning of Article 1 of Protocol No. 1 ... It must be accepted ... that notwithstanding that breach of the planning rules and the lack of any valid title, the applicant was nonetheless to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it. Since 1988 he had been living in that dwelling without ever having been bothered by the authorities (see paragraphs 28, 80 and 86 above), which meant he had been able to lodge his relatives there without, *inter alia*, paying any rent. He had established a social and family environment there and, until the accident of 28 April 1993, there had been nothing to stop him from expecting the situation to remain the same for himself and his family. ... In short, the Court considers that the dwelling built by the applicant and his residence there with his family represented a substantial economic interest. That interest, which the authorities allowed to subsist over a long period of time, amounts to a 'possession' within the meaning of the rule laid down in the first sentence of Article 1 § 1 of Protocol No. 1..."

²⁸ See *Mentes and Others v. Turkey*, 58/1996/677/867 and *Selcuk and Asker v. Turkey*, 12/1997/796/998-999.

according to relevant law and that legal remedies and recourses be made available to those affected. Prior to carrying out forced evictions, all possible alternatives must be discussed with the affected persons in order to prevent the use of force.

II.1.23. Concerning the eviction of illegal occupants of dwellings or land, in the matter of *European Roma Rights Centre v. Greece*, the European Committee of Social Rights stated: "The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned."²⁹

The Ban on Discrimination -- Including Racial Discrimination -- In Access to Housing

II.1.24. Article E of the RESC states: "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." Commenting on the relationship between Article 16 of the original European Social Charter and the preambulatory non-discrimination provisions of that document, the European Committee of Social Rights has stated that "the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble".³⁰

II.1.25. In addition to the Article E provision of the Revised European Social Charter, a number of other Council of Europe standards ban racial discrimination, and this area of law has recently been in a state of dramatic expansion. In 1994, the Council of Europe adopted the Framework Convention for the Protection of National Minorities. This document provides an extensive series of anti-discrimination guarantees, including:

- At Article 3(1): "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."
- At Article 4(1): "The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."
- At Article 4(2): "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities."

²⁹ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 51. Strasbourg, February 7, 2005.

³⁰ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 26. Strasbourg, February 7, 2005. Other international human rights instruments place similar requirements on Bulgaria in regards to discrimination and housing. In particular, the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") at Article 5(e)(iii) prohibits racial discrimination in the enjoyment of the right to housing. Bulgaria ratified the ICERD on 4 January 1969.

- At Article 6(2): "The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity."³¹

II.1.26. In addition, in 2000, the Council of Europe opened for signature Protocol 12 to the European Convention on Human Rights. Once in effect, Protocol 12 will provide a freestanding ban on discrimination in the realisation of any right secured by law. Even prior to the entry into effect of Protocol 12, the European Court of Human Rights has undertaken to significantly strengthen the ban on racial discrimination under the Convention's existing Article 14 provisions. Ruling in a case concerning Roma in Bulgaria in early 2004, the Court for the first time found a violation of Article 14 in a case concerning racial discrimination, and in so doing altered its "beyond a reasonable doubt" standard of proof for such cases.³²

II.1.27. Of perhaps even greater relevance for the purposes of the matters addressed in the present Collective Complaint is the principle expressed in the Court's 2000 ruling in the matter of *Thlimmenos v. Greece*:

The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification [...]. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.³³

II.1.28. Other international law provisions banning racial discrimination in the exercise of fundamental rights including the right to adequate housing have been noted above.

II.1.29. Also, pursuant to the revised Article 13 of the Treaty Establishing the European Community (TEC) after its Treaty of Amsterdam amendments, the European Union has adopted several Directives on the scope and dimensions of anti-discrimination laws in the European Union.³⁴ The Race Directive in particular includes at Article 3(1)(h) a ban on discrimination "in access to and supply of goods and services which are available to the public, including housing."

³¹ Bulgaria ratified the Framework Convention for the Protection of National Minorities on 18 February 1999.

³² See *Nachova and Others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, Judgment on Merits, 26 February 2004.

³³ European Court of Human Rights, Judgment, *Thlimmenos v. Greece*, (Application no. 34369/97), 6 April 2000.

³⁴ Beginning in 2000, and in particular under expanded powers provided by an amended Article 13 of the Treaty Establishing the European Community, the European Union adopted a number of legal measures which have significantly expanded the scope of anti-discrimination law in Europe. Particularly relevant for the purposes of this Collective Complaint is Directive 2000/43/EC "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" ("The Race Directive"). Directives are binding on EU member states and their provisions must be transposed into the domestic legal order. As a Candidate Country for European Union membership, Bulgaria has been required to incorporate the provisions of the Race Directive into its domestic law.

Racial Segregation

II.1.30. Finally, Bulgaria is bound by Article 3 of the ICERD, which states: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." Insofar as the ICERD also includes a ban at Article 3(1)(h) on racial discrimination "in access to and supply of goods and services which are available to the public, including housing", noted above, the inclusion of Article 3 ban on racial segregation indicates that, under international law, a particular harm is ascribed to policies aiming at the forcible separation of persons and groups, based solely on their ethnic origin. Because racial segregation is documented most often in the fields of education, housing and health, the RESC guarantee of adequate housing should be understood as incorporating the ban on racial segregation included at Article 3 of the ICERD.

II.1.31. The United Nations Committee on the Elimination of Racial Discrimination (CERD), the body established to monitor States Parties compliance with ICERD has established, in its General Recommendation 19, that racial segregation can arise without any initiative or direct involvement by public authorities and that State parties should monitor all trends, which can give rise to racial segregation and calls on State parties to combat by all means possible such developments.³⁵

II.2. The Factual Profile of Bulgaria's Violation of Article 16 Independent of and/or in Conjunction with the Article E Ban on Discrimination

II.2.01. On basis of first hand field research, documentation, and on-going monitoring in Bulgaria, and as presented in detail below, the ERRC contends that where Roma are concerned, Bulgaria fails to meet its housing rights obligations under the RESC and related relevant international law. The number of Roma living in extremely excluded conditions is extremely high and, in a number of instances, has been reinforced by the placement of physical barriers by Bulgarian local authorities around such communities. Roma living in extremely excluded conditions lack legal security of tenure and live in highly substandard conditions with inadequate infrastructure and blocked or otherwise obstructed access to public services. Additionally, Roma living without legal security of tenure are subjected to forced evictions, which ERRC research revealed are, in many cases, the result of governmental infrastructure programmes. At the same time, in very few instances are the forcibly evicted Roma provided with alternative accommodation, and in the one case of which the ERRC is aware in which evicted Roma were provided with alternative housing, this alternate housing was highly substandard. Roma whose fundamental housing rights are violated frequently do not have access in practice to effective legal remedies for their redress.³⁶ Documentation by the ERRC

³⁵ UN Committee on the Elimination of Racial Discrimination (CERD). General Recommendation 19: Racial Segregation and Apartheid (Art. 3). August 18, 1995, para. 4.

³⁶ Special Rapporteur Mr M. Cherif Bassiouni, in his final report to the United Nations Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms", found, "15. Adequate, effective and prompt reparation shall be intended to promote justice by redressing violations of international human rights or humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. 16. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms. 17. In cases where the violation is not attributable to the State, the party responsible for the violation should provide reparation to the victim or to the State if the State has already provided reparation to the victim. [...] 21. In accordance with their domestic law and international obligations, and taking account of individual circumstances, States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition. 22. Restitution should, whenever possible, restore the victim to the original situation before the violations of international human rights or

and Bulgarian non-governmental organisations working in partnership with the ERRC as to the housing conditions in which a significant portion of the Romani community find themselves point to the fact that the housing policies of the Bulgarian government are to a great degree infected with racial animus.

II.2.02. These conditions of residential segregation, substandard housing conditions, lack of legal security of tenure and forced evictions, and other systemic violations of the right to adequate housing affecting disproportionately the Roma in Bulgaria, indicating a violation or violations of Bulgaria's obligations under Article 16 of the Revised European Social Charter independently and/or in conjunction with the Charter's Article E non-discrimination provisions. Specific aspects of violations of Article 16, independently and/or in conjunction with the Charter's Article E non-discrimination provisions, follow below.

II.2.A. Failure to Recognise the Right to Adequate Housing under Bulgarian Domestic Law

II.2.03. Bulgarian legislation does not guarantee the right to adequate housing. The Bulgarian Constitution declares, at Article 33(1), "The home shall be inviolable" but otherwise lacks provisions on the right to housing and on the right to an adequate standard of living.³⁷ The Constitution proclaims that the family unit is protected by the state and society but does not relate this protection to provision of adequate standard of living and/or housing.

II.2.04. Bulgarian domestic law fails to provide a legal definition of the aforementioned rights. Nor does legislation protect citizens against forced evictions and/or homelessness. Administrative eviction of private individuals in cases of unwarranted use or occupation of state or municipal property is allowed under the Municipal Property Law and the State Property Law.³⁸ However, contrary to international law requirements, these laws do not stipulate protections in case the persons affected by the evictions are made homeless by the action. Thus, the Municipal Property Law provides that municipality-owned flats shall accommodate persons who are in need of housing. However, upon termination of lease relations, the authorities are obliged to offer another housing opportunities only in cases when new construction, reconstruction or renovation in the real estate is planned, and not in other cases of termination of the tenancy, without considering the fact whether the tenants are left homeless or not after the eviction.

II.2.05. Although the legislation recognises the existence of certain groups of socially vulnerable people in need of housing, the lawmaker has not stipulated protection of the fundamental human right of adequate housing and the correlative obligation of the state, but has instead emphasised state powers of granting housing. Moreover, the requirements of the provisions of the Bulgarian legislation regulating the provision of social housing impose undue burdens on people in need. Thus, according to Article 5(1) of the Regulations for the Enforcement of Municipal Property Act, individuals who apply for municipal housing have to meet the following conditions simultaneously: i) such persons must not own a dwelling which is suitable for long-term habitation; ii) they must not own land for the purposes of building a

humanitarian law occurred. Restitution includes: restoration of liberty, legal rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.

³⁷ Constitution of the Republic of Bulgaria. Adopted on July 12, 1991. Available on the Internet at: <http://www.bild.net/constitut.htm>. (Unofficial translation by the ERRC.) All references to Bulgarian law in this document are translated into English by the ERRC unless otherwise indicated.

³⁸ Article 65, Law on Municipal Property, available in Bulgarian at: <http://www.bcnl.org/doc.php?DID=69> and Article 80, Law on State Property, available in Bulgarian at: <http://www.bcnl.org/doc.php?DID=15>.

dwelling; iii) they may not have transferred ownership after 1990 except for the purposes of a donation to the state, municipality or a non-profit organisation; iv) they do not possess bank savings, shares, motor vehicles, agricultural land, real estate property, or enterprises the total value of which exceeds two-thirds of the cost of a dwelling for habitation as defined under the law; v) one-fourth of their family annual income cannot cover the cost of the market price of a dwelling adequate to their needs as defined by law; vi) they have a registered address for more than five years in the respective municipality; vii) they have not illegally occupied municipal housing and their contract for municipal housing has not been terminated for failure to pay rent unless two years have passed since they have vacated the municipal housing.³⁹

II.2.06. A number of the foregoing provisions are arbitrary. For example, it is not clear what reasons flowing from the rights enshrined in Article 16 would require an individual to be in possession of a registered address in a given municipality before they might be eligible for social housing. Other conditions listed above seem deliberately calculated to frustrate the rights protected under Article 16. For example, insofar as the poor would be more likely to have illegally occupied municipal housing or defaulted on rent payments for municipal housing than a person who might not need to avail herself of social housing, the requirement that persons not have undertaken such acts if they are to be eligible for social housing would appear at best questionable and at worst a perverse effort to preclude those most in need of social housing from having access to it. As the European Committee of Social Rights has recently noted, "[...] if it is possible to subject the receipt of social rights to the fulfillment of a certain number of conditions, the conditions must not be such so that it is impossible in the majority of cases to satisfy them, with the effect that the realisation of the rights is impeded."⁴⁰

II.2.07. These provisions of the social housing legislation may moreover have a disparate impact on Roma. Roma are likely to be disproportionately affected by the provisions of Article 5(7) of the Regulations for the Implementation of the Bulgarian Municipal Property Law due to the fact that they are prone to frequently fall among persons most in need of state assistance with regard to adequate housing on the one hand, and are often unable to meet their contractual obligations for the usage of municipal housing on the other, due to the fact that a major segment of the Romani community in Bulgaria is poor or extremely poor, and that Roma are over-represented among the poor overall in Bulgaria.⁴¹

II.2.B. Aggravated Residential Conditions of Romani Neighborhoods

II.2.08. A large number of Roma in Bulgaria today live separated from non-Roma and frequently walled off entirely from them, in settlements which constitute de facto "no services" areas, almost completely removed from the mainstream of Bulgarian social and economic life. Romani neighbourhoods are usually found on the outskirts of cities, towns and villages. As the

³⁹ Article 5(7), Regulations for the Implementation of the Bulgarian Municipal Property Law.

⁴⁰ European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 22. Strasbourg, February 7, 2005.

⁴¹ According to a World Bank survey, "the highest level of absolute poverty among Roma households lies in Bulgaria, followed closely by Romania. Even at the lower \$2.15 line, 41 percent of all Roma households in Bulgaria and 38 percent in Romania are found to be poor—a strikingly high proportion. At the higher line of \$4.30 PPP per capita, 80 percent of Roma households in Bulgaria and almost 70 percent of those in Romania are poor." For comparison, poverty among non-Roma households at the \$4.30 line in Bulgaria is 36.8 percent and 29.5 percent in Romania. Further the World Bank survey notes that "relative poverty among non-Roma households oscillates around 4 percent, while among Roma households, it is close to [...] 37 percent in Bulgaria." (See Dena Ringold, Mitchell A. Orenstein, Erika Wilkens. "Roma in an Expanding Europe. Breaking the Poverty Cycle". World Bank, 2003, pp. 28-29).

Bulgarian Government, in its Framework Program for Equal Integration of Roma in Bulgarian Society, adopted in 1999, recognises, Roma live in separated neighborhoods, "most of which are not in the respective city plans and do not have adequate infrastructure".⁴² This situation is identified in the Program as among the most serious problems of the society.

II.2.09. In some instances, the segregation of Roma from the rest of the community has been enforced in urban and/or rural settings by the construction of even physical barriers, such as metal or concrete fences, around their neighbourhoods. Two-meter high fences constructed at the expense of the respective municipalities surround the Sheker Romani urban slum settlement in the central Bulgarian city of Plovdiv, as well as Romani neighbourhoods in Kazanlak and Kiustendil.

II.2.10. Regardless of whether they exist in an urban or a rural setting, separated Romani neighbourhoods are overcrowded and have markedly substandard conditions. The increase of family members in households as a rule involves enlargements of existing houses or construction of new ones. This results in random and chaotic building, which might be detrimental for the security of neighbourhood residents in terms of potential fire hazards since unsystematic illegal constructions brings dwellings closer to each other and narrows already inadequately small mud tracks which frequently constitute the only access roads or paths in a given slum. This makes many buildings virtually inaccessible to fire-fighters and ambulance personnel.

II.2.11. Many homes in such neighbourhoods consist of makeshift shacks made of cardboard, metal scraps and mud bricks and are frequently devoid of windows, doors and walls. In many of the neighborhoods there is a lack of technical, underground or above-ground infrastructure and whatever infrastructure exists is frequently outdated, partial, in need of repair or renovation, and greatly insufficient to meet the needs of the population. Homes in the outer areas of informal settlements often lack electricity and running water. Public services such as trash collection or public transportation are limited in such areas.

II.2.12. Residents of such neighbourhoods also have limited or obstructed access to social benefits, employment or quality education. The recent Council of Europe Commission Against Racism and Intolerance Third Report on Bulgaria, commenting on problems encountered by Roma in Bulgaria, notes in particular the poorer education that Romani children receive by attending segregated schools located in the Romani districts.⁴³

II.2.13. Despite scarcity of statistical data based on ethnicity, independent studies reveal dramatic disparities in housing conditions between Romani and non-Romani Bulgarians. For example, according to a 1999 report by the Bulgarian government to the CESC, the average Romani household consists of 6.9 persons, while the nation-wide average amounts to 2.6 persons per household. Living space per capita for Roma is 7.1 square metres while the figure for the country as a whole is 16.9 square metres.⁴⁴ In rural areas, studies indicate that Roma have the most crowded living conditions in Bulgaria, with figures as low as 5.2 square metres

⁴² Framework Program for Equal Integration of Roma in Bulgarian Society. Available on Internet: <http://www.ncedi.government.bg/en/RPRIRBGO-English.htm>.

⁴³ See European Commission against Racism and Intolerance. Third report on Bulgaria. Adopted on 27 June 2003. CRI (2004) 2, paragraphs 96-99, available at: http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Bulgaria/Bulgaria_CBC_3.asp#P460_52024.

⁴⁴ CESC. Reply to the List of Issues: Bulgaria. July 9, 1999, para. 4(1). Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d3ca19895b9f9922802567ac004ecbd6?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d3ca19895b9f9922802567ac004ecbd6?Opendocument). Last visited on September 8, 2003.

per person.⁴⁵ According to a 2001 World Bank survey, 17% of the 200 respondents in the Fakulteta neighbourhood of Sofia lived in highly substandard housing, defined as “primitive houses (cardboard houses, hovels)” by the study and another 59% lived in “flimsy structures (wooden sheds, adobe houses, tumbledown houses, etc.).”⁴⁶

II.2.14. The appalling material conditions in which many Roma in Bulgaria live are further aggravated by, in many cases, the non-existence of public services such as running water, hot water, central heating and sufficient and adequate sewage removal systems. The non-provision of services to Romani communities has endangered the lives of many Roma. In one case in particular of which the ERRC is aware, a 10-year-old Romani girl suffered serious burns to her body when her clothes caught on fire from a wood stove that was being used for heating in the absence of electricity. The girl's injuries were aggravated by the fact that, because there had been no running water in the settlement for eight months, there was no available water to put the fire out immediately. According to ERRC research, the girl suffered 3rd degree burns to her body.⁴⁷

II.2.15. In the recent period, conditions prevailing in major Romani settlements have become significantly worse, often as a direct result of government actions. In 2002 and 2003, Romani neighbourhoods have been systematically cut off from electricity supply due to unpaid electricity bills.⁴⁸ Hundreds of Romani families were thus left without access to electricity including in the winter period. A number of protests of Romani residents of the Stolipinovo ghetto as well as the ghettos in Shumen, Sliven, Silistra were carried out as a result of the electricity cuts.⁴⁹ In many places, whole neighbourhoods were disconnected from the electrical grid, regardless of the fact that not all of the families owed debt arrears to the state-owned and run electricity company. Thus, Romani families have been subjected to collective punishment for the failure of some of the consumers to pay their electricity bills. In January 2004, about 100 Romani families from the Fakulteta neighbourhood in Sofia had their power supply discontinued due to a breakdown in the power grid. The provider refused to repair the network contending that many of the affected consumers had unpaid debts to the company. Along with the debtors, however, more than 30 Romani households with no outstanding debts were also been denied restoration of their power supply.⁵⁰ These actions by state officials call seriously

⁴⁵ Zoon, Ina. *On the Margins: Roma and Public Services in Romania, Bulgaria and Macedonia*. Mark Norman Templeton, ed. New York: Open Society Institute. 2001, p.142. The Committee has repeatedly reaffirmed that "adequate housing refers not only to a dwelling which must not be substandard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence". (See most recently European Committee of Social Rights, Report to the Council of Europe Committee of Ministers on the Collective Complaint *European Roma Rights Centre v. Greece*. See Collective Complaint No. 15/2003, paragraph 24. Strasbourg, February 7, 2005).

⁴⁶ See World Bank. *Sociological and Beneficiary Assessment of Potential Low-Income Housing Micro-Projects*. Sofia, May-June 2001, p. 24 and p. 29, at: [http://wbln0018.worldbank.org/ECA/ECSHD.nsf/0/8b9c8e35f0a008d885256b75005fdf36/\\$FILE/rep_main.pdf](http://wbln0018.worldbank.org/ECA/ECSHD.nsf/0/8b9c8e35f0a008d885256b75005fdf36/$FILE/rep_main.pdf).

⁴⁷ See "Snapshots from Around Europe". In *Roma Rights* 1-2/2003, *Anti-Discrimination Law*, at: <http://www.errc.org/cikk.php?cikk=1420>.

⁴⁸ More information is available at: http://errc.org/rr_nr1-2_2003/snap5.shtml.

⁴⁹ See for example, *Roma Rights* publications at: http://errc.org/rr_nr3_2003/snap10.shtml; http://errc.org/rr_nr1_2002/snap23.shtml.

⁵⁰ On 19 August 2004, the Sofia District Court rendered a decision in the lawsuit against the Sofia state-owned electric company concerning the discriminatory denial of electricity to bill-paying Romani consumers from the Fakulteta Romani neighbourhood of Sofia. For more information see, "Strategic Litigation Undertaken by the ERRC and Local Partners Prompt Bulgarian Courts to Sanction Racial Discrimination against Roma". In *Roma Rights* 3-4/2004, at: <http://www.errc.org/cikk.php?cikk=2070>.

into question Bulgaria's compliance with international law requirements to progressively fulfil economic and social rights, as specified at Article 2(1) of the ICESCR, and raise additional concerns that many Bulgarian officials may not even be aware of these requirements.

II.2.16. According to the World Bank, 32.4 percent of Romani households in Bulgaria do not have access to cold running water, 90.6 percent do not have access to hot running water, 47.7 percent do not have canalisation or sewers, 76.5 percent do not have bathrooms or showers in their homes, 85 percent do not have indoor toilets and 36.7 percent sleep on earthen floors in their homes. The respective figures for non-Romani households are: 3.2 percent, 60.9 percent, 9.7 percent, 17.5 percent, 34.8 percent, and 7.4 percent.⁵¹

II.2.17. Further examples pertaining to particular Romani communities follow below. This list is by no means exhaustive.

- The Maksuda Romani neighbourhood in the northern Bulgarian city Varna on the coast of the Black Sea is home to more than twenty thousand Roma, according to ERRC research.⁵² A mere twenty houses in the neighbourhood had running water as of September 2003. The entire neighbourhood lacked a sewage-removal system, and inhabitants were forced to dig self-built outdoor toilets. Roads in the neighbourhood consist of narrow mud tracks and streetlights are conspicuous by their absence.
- The around thirty thousand Romani residents of the Iztok Romani neighbourhood in Pazardzhik live almost entirely without basic infrastructure.⁵³ At the time of ERRC research in September 2003 in the settlement, only two streets were paved. Only half of the homes had access to water and only about seventy homes had rudimentary canalisation. Further, the municipality did not collect trash from the settlement.⁵⁴ Many of the homes had access to electricity, but, as is common in Romani settlements in Bulgaria, electric meters had been placed on poles approximately five metres from the ground, meaning that Roma are unable to check the validity of the bills they receive, leading many Roma to contest the amounts of their electricity bills.⁵⁵ Common metres count electrical usage in many Romani communities in Bulgaria, meaning that individual Romani residents cannot tell how much power they have consumed and therefore do not know how much money they owe.

⁵¹ See Ringold, Orenstein, Mitchell, and Wilkens. "Roma in an Expanding Europe: Breaking the Poverty Cycle", p. 37.

⁵² ERRC field research in Varna. September 2003.

⁵³ ERRC interviews with Mr Minko Minkov and Mr Mitko Assenov of the *Napredak* and *Badeshte* foundations, respectively. September 2003. Pazardzhik.

⁵⁴ ERRC interviews with Mr Minko Minkov and Mr Mitko Assenov of the *Napredak* and *Badeshte* foundations, respectively. September 2003. Pazardzhik.

⁵⁵ For example, on 12 July 2004, the Sofia District Court adopted a decision in the matter of Mr. Rumen Grigorov v. the Sofia state-owned electric company. The case concerned a Romani plaintiff who had not been allowed to connect his house to the electricity network as he refused to sign an additional agreement which would permit the company to put his electrical metre on a pole 9 metres high. Having considered the facts of the case, and in particular the fact that a practice of this sort was arbitrary and employed by the respondent in Romani neighbourhoods only, the Sofia District Court ruled that the plaintiff had suffered discrimination, and ordered the respondent company to provide the plaintiff adequate access to and control of the electricity metre as well as to cease with such practices in the future. On 6 August 2004, in a separate case concerning an almost identical situation, the Sofia District Court ruled in favor of Mr. Kocho Kochev and five other Romani plaintiffs, all residents of "Filipovtsi", a segregated Romani settlement in Sofia, and in so doing found that the respondent state-owned electric company had committed an act of discrimination. For more details see, "Strategic Litigation Undertaken by the ERRC and Local Partners Prompt Bulgarian Courts to Sanction Racial Discrimination against Roma" in *Roma Rights 3-4/2004, Access to Health Care*, at: <http://www.errc.org/cikk.php?cikk=2070>.

- The Stolipinovo Romani neighbourhood in Plovdiv is home to approximately forty thousand Roma.⁵⁶ A Romani activist from the neighbourhood informed the ERRC that during the 1970s, the Bulgarian government built several blocks of flats in the neighbourhood which stand today in terrible condition as the government does not maintain the buildings. Due to pressure problems, water does not reach residents living on the top floors of the buildings. Despite complaints filed with the Water Company, no actions have reportedly been taken to restore water in the flats. While there are some standard houses in the settlement, a large number of makeshift shacks exist and several families inhabit each house. Residents in the neighbourhood often live without electricity due to debts to the National Electric Company. Electricity cut-offs also usually affect the four segregated schools in the settlement, rendering education difficult or impossible.⁵⁷ The substandard conditions of living in the Stolipinovo ghetto in Plovdiv gave rise to protests on the part of the few ethnic Bulgarian families in 2002. The families demanded that the municipality of Plovdiv accommodate them outside the ghetto. After heavy protests, the municipality of Plovdiv decided to relocate the Bulgarian families in 60 apartments. In the same year there were also protests of Roma from Stolipinovo who also demanded that the municipality should relocate them outside the ghetto. Their demands, however, were reportedly not satisfied.⁵⁸

II.2.18. The substandard conditions in which many Romani families live have been noted by the Council of Europe Commission against Racism and Intolerance (ECRI). ECRI has described the housing situation of Roma as follows: "The main problems stem from the fact that the Roma districts are turning into ghettos. Far from declining, this problem has apparently worsened in some respects. Most Roma neighbourhoods consist of slums, precariously built without planning permission on land that often belongs to the municipalities, as in the case of the Faculteta district in Sofia. As the Bulgarian authorities have not taken steps to address the situation, the people living in these districts have no access to basic public services, whether health care, public transport, waste collection or sanitation. The inhabitants of these areas are often in a deplorable state of health and cannot afford medical treatment, as there are no facilities on the spot and, in any case, medical care is too expensive for them, despite social welfare. ECRI is particularly concerned about reports that the electricity supply is sometimes cut off in an entire Roma district as certain inhabitants do not pay their bills. This problem has apparently worsened since the electricity company started to operate in a market economy."⁵⁹

II.2.19. In addition, in its Concluding Observations on Bulgaria's compliance with the International Convention on the Elimination of Racial Discrimination, the Committee on the Elimination of Racial Discrimination recommended that "the State party prevent any de facto segregation of minorities" and in this context the Committee "draws the attention of the State party to general recommendation XIX on article 3 of the Convention."⁶⁰

⁵⁶ ERRC interview with Mr Anton Karagoyzov, Head of the Roma Foundation. September 2003. Plovdiv.

⁵⁷ ERRC interview with Mr Anton Karagoyzov, Head of the Roma Foundation. September 2003. Plovdiv.

⁵⁸ See Bulgarian Helsinki Committee. *Human Rights in Bulgaria in 2002. Annual report of the Bulgarian Helsinki Committee*, pp. 23-24, at: <http://www.bghelsinki.org/frames-reports.htm>.

⁵⁹ See European Commission against Racism and Intolerance. *Third Report on Bulgaria*. Adopted on 27 June 2003, made public on 27 January 2004, paragraph 89, at: http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Bulgaria/Bulgaria_CBC_3.asp#P427_47610.

⁶⁰ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Bulgaria.23/04/97.C/304/Add.29. (Concluding Observations/Comments), paragraph 17, at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/e9dd895b41e7eace802564670052d14c?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/e9dd895b41e7eace802564670052d14c?Opendocument).

II.2.C. Factual Denial on a Massive Scale of Legal Recognition of Romani Housing

II.2.20. As noted above, a key element of ensuring legal and social protection of family life, recognised as a fundamental unit of society, is to legalise housing tenure for those who lack such legal recognition. The Secretary General of the UN Commission on Human Rights has noted the importance of conferring security of tenure upon people within the framework of the overarching definition of housing rights by stating, "governments are often not required to do more than refrain from forced evictions in order to respect the right to adequate housing, as long as a commitment to provide support to the self-help housing efforts of the poor exists-through technical, legal and financial assistance. In this situation, one of the most far-reaching measures is the provision of security of tenure."⁶¹

II.2.21. The legalisation of illegally built houses has to date been plagued by an array of administrative delays, obstacles and unwarranted complications. Although the Government's Framework Program for Equal Integration of Roma in Bulgarian Society envisaged that the 2001 Territorial Planning Law would abolish the sophisticated bureaucratic procedure of house legalisation, the procedure is today still very complicated and time- and resource-consuming. The law requires a full set of building documentation to be submitted (title of ownership, construction design prepared by a certified specialist, decision upon the environmental impact of the construction, etc.), the procurement of which is frequently difficult and may succeed only after an expensive procedure. Fines imposed because of the illegal construction must first be paid by the persons applying for legalization before legalization can proceed.

II.2.22. If the building cannot be legalised, then the law stipulates the demolition of illegal constructions, prohibition of access to illegal construction, and prohibition of supply of electricity, water, gas, etc. to the illegal construction. Decisions about the enforcement of these measures are made by an administrative organ – the Directorate for National Constructions Control (DNCC). Filing a judicial appeal against some categories of decisions by this body does not automatically suspend their execution. None of the provisions envisage alternative housing in cases of homelessness of persons affected by the demolition.⁶² In addition, the demolition of illegal constructions is undertaken at the expense of the individuals who erected the structures in the first place, and no compensation is envisaged for the demolition costs.

II.2.23. The majority of persons lacking legal protection for their homes in Bulgaria are Roma. As the predominant inhabitants of illegal settlements, Roma are therefore disproportionately exposed to the profound uncertainty that flows from a lack of security of tenure. The legal limbo caused by the lack of security of tenure exposes many Roma living in illegal settlements to forced evictions by authorities and to the hazards of homelessness. Those Roma not actually forcibly evicted from housing frequently live under more-or-less permanent threat of forced eviction from housing and therefore in a permanent state of existential insecurity. Without security of tenure, the realisation of other elements of the right to adequate housing becomes nearly impossible. Housing conditions are generally more substandard in illegal settlements owing to refusal by the responsible authorities to provide illegal settlements with proper infrastructure and necessary public services.

⁶¹ UN Commission on Human Rights. Forced Evictions: Analytical report compiled by the Secretary General pursuant to Commission resolution 1993/77 (E/CN.4/1994/20). December 7, 1993, paragraph 160.

⁶² Such for example are Article 195 stipulating the demolition of housing which poses threats from hygienic point of view; Article 222 allowing the DNCC to order the demolition of illegal construction, to prohibit access to construction which does not meet construction standards, to prohibit the supply of electricity, water gas to illegal construction, etc. Territorial Planning Law, last amendments Official Gazette 36/2004, available in Bulgarian at: <http://www.paragraf22.com/pravo/zakoni/zakoni-d/zak-pr/74310p5.html>.

II.2.24. The precarious situation of Roma who live in illegal housing is further aggravated by the fact that Roma are very often not eligible for municipal housing due to a frequent lack of address registration. According to the Regulations for the Enforcement of the Municipal Property Act, social housing provided by the municipality is available to persons who meet certain conditions of eligibility, including among others, "address registration in the respective municipality which is not less than 5 years".⁶³

II.2.25. A majority of Romani dwellings in Bulgaria lack legal recognition, i.e. they are built either outside zoning districts or without proper authorisation documents. The provisions in the Territorial Planning Law require the illegal buildings, in order to be legalised, to be permissible according to the zoning map in force. This renders almost impossible the legalisation of irregular Romani houses, since frequently the whole area on which they are built is not envisaged at all for building purposes in the zoning maps.

II.2.26. In recent cases, Bulgarian authorities have reportedly arbitrarily denied legalisation of title in cases where Roma are at issue. For example, according to information provided to the ERRC by partner organisation the Bulgarian Helsinki Committee, Ms. Elena Tsvetkova, a Romani woman living in the "Christo Botev" residential area in Sofia in a house on a plot of land, in which she has acquired title by prescription in accordance with domestic law, was denied recognition of that title in a series of decisions apparently infected by racial animus. In March 2004, Ms. Tsvetkova sought to have her title in her land and house legally recognized by a notary public. Following the procedure established for this purpose under domestic law, she first applied with the local government for a official certificate as to the current legal status of the property concerned. In July 2004, an official with the local government issued a certificate to the effect that Ms. Tsvetkova's property constituted public state property. Under domestic law, public state property may not be acquired by prescription. The reason stated under the certificate for the finding that Ms. Tsvetkova's property was public state property was that this property was in the immediate vicinity of a railroad. While, indeed, Ms. Tsvetkova's property is next to a railway, the same is equally true of the property of her nextdoor non-Romani neighbour, which stands at the same distance off the railway. However, in 1999, Ms. Tsvetkova's neighbour obtained legal recognition of his title in his property, similarly acquired by prescription. In December 2004, Ms. Tsvetkova reapplied with the local government for the necessary certificate, making express reference to the fact that her neighbour, whose property was in the same situation as hers, had been allowed to have his title recognized despite of the railway, which accordingly, could not be a valid reason for her to be denied such recognition. In January 2005, the very same local government official again issued a certificate barring the recognition of Ms. Tsvetkova's title. This time the certificate stated that her property constituted municipal public property. Like state public property, municipal public property may not be acquired by prescription under the law. The reason stated in the certificate for this finding was that Ms. Tsvetkova's property lay on a street and green area. In reality, no street or green area exist on Ms. Tsvetkova's property. Arguably, if they existed, in reality or on paper, or municipal plans, they would affect the status of the property of Ms. Tsvetkova's neighbour, as well as hers. The fact that Ms. Tsvetkova's neighbour's title was recognized exposes this reason, indeed, this finding, to be pretextual. This is confirmed by the fact that another, quite different legal finding based on a quite different factual reason had been reached before by the very same official. The issuance of the two contradicting certificates barring Ms. Tsvetkova's access to legal recognition of her title in effect constitute a denial of such recognition. The difference of Ms. Tsvetkova's treatment in this respect as compared to her non-Romani neighbour whose situation is not materially different from hers, together with the difference in their ethnicity, makes for a prima facie case of race discrimination. This is confirmed by implicitly racist comments addressed to Ms. Tsvetkova by both the official

⁶³ See Article 5(1) of the Regulations for the Enforcement of the Municipal Property Act.

concerned and the mayor. Furthermore, the contradiction in the two certificates renders the denial arbitrary as a separate grounds for its illegality.⁶⁴

II.2.27. Moreover, many of the dwellings in Romani neighborhoods do not comply with the construction standards under Bulgarian law and thus might not qualify for formal legalisation. According to a survey conducted in 2000 by the Bulgarian Helsinki Committee (BHC), based on information from district and municipal government offices, 70 percent of the houses in Romani neighbourhoods in Bulgaria are built “illegally” -- outside residential zoning districts and/or without proper authorisation documents.⁶⁵ In some Romani neighbourhoods, according to ERRC research, the proportion reaches much closer to 100 percent of the houses, many of which are seriously substandard. For instance, in Plovdiv’s Stolipinovo Romani neighbourhood, home to approximately forty thousand Roma, approximately 95 percent of the residents of the neighbourhood live without legal security of tenure.⁶⁶ Only around 10 percent of the homes in the Iztok Romani neighbourhood in Pazardzhik are legally registered.⁶⁷ The Maksuda and Hristo Botev Romani neighbourhoods in Varna lack zoning maps and hence all or nearly all buildings are illegally constructed.⁶⁸ As most of the Romani settlements are not covered by zoning maps, they do not benefit from public services such as garbage collection, public transport and electricity at all, or alternatively at a substantially lesser level than other areas.⁶⁹ As mentioned above, illegal buildings which cannot be legalised are to be demolished by the Directorate for National Construction Control. In some instances, such illegal buildings constitute easy targets for demolition, especially when lucrative interests arise for municipalities and private corporations.

II.2.28. The idealised scenarios described below frequently arise in Bulgaria. The cumulative impact of tens of thousands of such scenarios of denial of security of tenure gives rise to key aspects of the grounds for the present collective complaint, creating as they do the basis for systemic violations of the right to adequate housing where Roma are concerned:

- Roma are the owners of the land, hold the deed to the property and live in unlawful structures, i.e. structures which have been built without proper building permits. If the structures conform to the existing construction standards and norms, they can be legalised. In many cases, however, Romani housing does not conform to the construction standards, cannot be legalised and is to be demolished in accordance with the legislation in force.
- Roma are the real owners of the land but do not hold legitimate deeds. Due to the lack of proper documents for land ownership, legalisation of any erected structures is not possible. The taxes which should be paid for obtaining land ownership documents are not affordable for many Roma.
- Roma live on state-owned or municipal land and have built dwellings without acquiring building permits from the state/municipality. In such cases, according to the Article 92 of the Property Law, the legitimate owner of the land (the state or the municipality) also owns the structures built on the land. Under this situation, the residents are faced with eviction

⁶⁴ Information provided to the ERRC by the Bulgarian Helsinki Committee, communication, 19 April 2005.

⁶⁵ Bulgarian Helsinki Committee. “Human Rights in Bulgaria in 2000”. In *Objektiv*. March 2001. Available at: <http://www.bghelsinki.org>.

⁶⁶ ERRC interview with Mr Anton Karagyozov, Head of the *Roma* foundation. September 2003, Plovdiv.

⁶⁷ ERRC interviews with Mr Minko Minkov and Mr Mitko Assenov of the *Napredak* and *Badeshte* foundations, respectively. September 2003, Pazardzhik.

⁶⁸ ERRC interview with Mr Rivdan Sali, Head of the Romani *Obnovlenie* foundation. September 2003, Varna.

⁶⁹ See also Zoon, pp. 138-143.

and they are not entitled to compensation. Indeed, the residents can be required to pay compensation to the owner of the land.

- Roma live on privately owned land which has been restituted. In such situations the Roma are usually forcibly evicted from the property, which they refuse to leave voluntarily because they have no alternative. In such cases the authorities are required to offer municipal dwelling to these people. However, municipalities frequently in practice do not do so or provide extremely substandard housing.
- Roma have been long-term tenants in state or municipal buildings. With the passage of time, the families of the tenants have grown, and since there has been no other possibility for accommodation, the tenants expanded the initial housing structures at their own cost. Since in this case, the legitimate owner of both the land and the construction on it is the state or the municipality, the additional construction usually cannot be legalised and is to be demolished.

II.2.D. Systemic Threats of and/or Actual Implementation of Forced Evictions. Planned and Realised Wholesale Destruction of Romani Neighbourhoods

II.2.29. Forced eviction is frequently a direct consequence of the lack of legal security of tenure. The right to adequate housing includes the right to legal protections from and redress for forced eviction. Bulgarian law does not meet, however, the standards for protection against forced evictions established by international human rights instruments. For example, the administrative eviction of individuals, envisaged in Municipal Property Law and the State Property Law, is carried out on an order of the mayor or the head of the county administration and is implemented directly by municipal or police authorities, without any participation by a court official. Moreover, the filing a judicial appeal by the citizen against the eviction procedure does not have an automatic suspensive effect, and thus the eviction can be carried out arbitrarily by the administrative bodies, without the careful examination on the part of the court of all the circumstances of the case.⁷⁰

II.2.30. The administrative eviction procedure, as stipulated in the laws, does not meet the necessary requirements of due process in accordance with the international standards and, in particular, there are no provisions on the opportunity for consultations with the evictees, no disclosure of information on the eviction, no prohibition of eviction in unsuitable weather conditions, no provision of remedies and redress or inadequate provision of remedy and/or redress, and a lack of other safeguards.

II.2.31. Several cases of arbitrary forced evictions of Roma from extremely separated settlements in Bulgaria testify to the lack of judicial recourse to have the decision considered by an appropriate legal body. The cases of forced eviction of Roma of which the ERRC is aware also illustrate the frequent denial of alternative housing to Roma by municipal authorities. In many cases, forcibly evicted Romani families are rendered homeless or provided with substandard alternative housing. The alternative housing provided by the authorities is often inferior to the previous housing conditions and the living conditions of many forcibly evicted Roma who are provided with alternative accommodation deteriorate. Municipal authorities in Bulgaria often attempt to justify the denial of alternative housing by the fact that the illegal construction of the initial house on municipally or privately owned land. The examples that follow below do not purport to be a comprehensive survey, but are provided as illustration of the general threat of forced eviction facing very high numbers of Roma in Bulgaria.

⁷⁰ See Article 80, Law on State Property and Article 65, Law on Municipal Property.

II.2.32. On March 30, 2004, the municipal council of Burgas, a city in south-east Bulgaria, adopted a decision according to which, within one month, the mayor of Burgas should prepare protocols establishing illegal construction in the city's largest neighbourhood Meden Rudnik, and undertake "all legal measures to stop illegal settlement and destroy the illegal constructions in the Meden Rudnik neighbourhood of Burgas". The decision did not include provision of alternative housing for those who were threatened with homelessness. The decision of the municipality targeted the illegal construction of Romani dwellings in the neighbourhood, housing more than 200 Roma. Meden Rudnik has both non-Romani and Romani residents. Many of the Romani dwellings were built 4-5 years previously on the periphery of the neighbourhood. According to ERRC research in April 2004, the shacks had neither electricity nor potable water. Water was provided by one pump located among the shacks. Some of the Roma, mostly those who have moved to Meden Rudnik from neighbouring villages and towns in the previous several years, did not have identity cards, and were not registered in any municipality. Consequently, they were not entitled to the provision of municipal housing. In May 2004, the municipality presented the Roma with eviction protocols according to which the Roma were obliged to demolish the illegal construction at their own expense within 14 days. As of July 7, 2004, according to ERRC information, about at least 25 makeshift dwellings, housing about 90 Roma were destroyed. The people reportedly moved to live with relatives and friends in neighbouring houses.⁷¹

II.2.33. In April 2001, the Assanova urban slum settlement, a Romani neighbourhood in Sofia which had existed for about 40 years, was demolished. About 240 Roma were forcibly evicted by municipal authorities following the selling of the land to the owner of the Billa supermarket chain. Roma who had ownership documents for the land were reportedly compensated by the owners of Billa. Part of the group, twenty-six families comprising one hundred and fifteen people, were accommodated in vans located in the Luilin municipality as a temporary solution. As of September 2004, however, the families were still living in the vans in very substandard conditions -- some families did not have toilets and bathrooms.⁷² The families remained in the vans for more than three years regardless of the fact that the Regulations for the Enforcement of the Municipal Property Act considers individuals "who have lived in non-inhabitable premises such as shacks, cellars, attics, etc. for not less than one year" as the second category most in need of social housing, and therefore it could have been expected that the municipality of Sofia should have acted more expeditiously to provide the Romani families with adequate housing.⁷³

II.2.34. Most of the Romani families from Assanova urban slum settlement are not eligible for municipal housing for people in urgent need because they do not have address registration and have not spent at least five years in Sofia as required by the Municipal Property Act.⁷⁴ In September 2004, the Ministry of Defense donated part of its former barracks, located on the periphery of the city, to the Sofia municipality for housing the Roma from the Luilin municipality as well as other Roma from different parts of Sofia who were not eligible for municipal housing. News of this allocation of housing was met with protests from non-Roma in Chelopechene, which is part of the Sofia municipality, who threatened with civil

⁷¹ ERRC interview with Romani activist Rumens Cholakov, July 5, 2004, Meden Rudnik, Burgas.

⁷² Information provided to the ERRC by Romani Baht, 23 September 2004.

⁷³ Article 7(1) of the Regulations for the Enforcement of the Municipal Property Act.

⁷⁴ Article 5(1) of the Regulations for the Enforcement of the Municipal Property Act, specifies that municipal housing is available to persons who meet certain conditions of eligibility, including among others, "address registration in the respective municipality which is not less than 5 years".

disobedience if the Roma were placed in their municipality.⁷⁵ Following protests by the residents of Chelopechene, Sofia authorities reportedly decided against the relocation. As of February 2005, some of the Roma who were to be relocated were living in makeshift shacks by a highway, while others have moved in with family.⁷⁶

II.2.35. The northeastern Bulgarian town of Shumen has two large Romani settlements -- Byalata prast and Vitosha. The number of Roma living in each settlement is estimated to be between 3,500 to 4,000 in approximately 250 to 300 houses, respectively. Both settlements are built on municipal land but are not covered by zoning maps. One Romani man with whom the ERRC spoke, Mr Aleko Angelov, reported that he tried to legalise the home in which he lives with his wife and two young children but was told by a municipal employee that "they could not issue an ownership document because the land is municipal property." Mr Angelov stated that the municipal employee further informed him that, in any case, his neighbourhood might be demolished in the near future.⁷⁷

II.2.36. According to ERRC research, in 1989 and 1990, municipal authorities in Shumen constructed a new road that currently covers what was previously a part of the Vitosha Romani neighbourhood. Roma whose homes were demolished by municipal authorities did not receive financial compensation for homes which had been built without legal permission. Instead, the municipality relocated the displaced Roma to nearby municipally owned apartment blocks where they were then required to pay rental fees. According to ERRC research, in 2002 and 2003 the municipality increased the rent rendering between thirty and forty Romani families unable to pay their rent and utility costs.⁷⁸ Most of the families were subsequently evicted by the municipality and not offered alternate accommodation. Others, such as 46-year-old Niazi Hassan, his wife Fikrie and their four children, moved out of their flat after local authorities threatened to take legal action if they did not immediately pay the rent they owed.⁷⁹ The majority of the evicted Romani families were, at the time of ERRC research, residing with relatives in the Vitosha Romani neighbourhood or in illegally erected shacks and shanties within the settlement without electricity or potable water.⁸⁰ At the same time that the recently evicted Romani residents of municipal flats are building illegal shacks in the Vitosha neighbourhood, long term residents of the neighbourhood have had their homes destroyed. In 2002, Ms Zlatka Raykova Marinova, a 41-year-old widowed Romani woman, and her four children, were evicted without prior notice or an eviction order from the brick home she had built without permission several years earlier.⁸¹ According to Ms Marinova, police officers,

⁷⁵ Information provided to the ERRC by partner organisation Romani Baht, as well as as reported in Bulgarian media 23 September 2004.

⁷⁶ Information provided to the ERRC by Romani Baht, 25 February 2005.

⁷⁷ ERRC interview with Mr Aleko Angleov. August 2003, Byalata Prast Romani neighbourhood, Shumen.

⁷⁸ ERRC field research in Shumen, August 2003.

⁷⁹ ERRC interview with Mr Niazi Hassan, a 46-year-old Romani man. August 2003, Shumen.

⁸⁰ For instance, Mr Zhivko Mitkov Alekov informed the ERRC that he, his wife Valya Alekova and their 6-year-old and 2-month-old children were living in a one-room shack without electricity and running water since their eviction. Mr Alekov stated that both he and his wife were unemployed and Ms Alekova had been denied child allowance for their newborn because she had not submitted the required documents on time due to a lack of funds with which to obtain them.

At the time of ERRC research in August 2003, Mr Sergey Assenov Milkov, his wife and their nine children, including a 4-year-old handicapped child, were living in appalling conditions in an abandoned building in the centre of town because, according to Mr Milkov, municipal authorities did not provide the family with alternate accommodation after evicting them from their municipal flat in September 2002. Mr Milkov testified that the family was evicted because they could not afford to pay their increased rental costs.

who simply arrived at her home and told her to leave, were verbally abusive during the eviction. As local authorities failed to provide her with alternative accommodation, Ms Marinova moved in with her sister's family and applied repeatedly for social housing, only to be refused by the Municipal Administration Office. In April 2003, she decided to erect a 3.5 square metre shack made of nylon, timber and old materials on municipal land on the periphery of the Vitosha settlement. The shack, which housed Ms Marinova and her four children, lacked electricity and running water. Since Ms Marinova still lacked legal security of tenure for her house, the imminent threat of eviction was continuously present. The Shumen-based Romani organisation *Neve Droma* entered negotiations on behalf of Ms Marinova with the municipality and, reportedly in connection with local elections, the municipality donated cement and various building materials to Ms Marinova which might enable her to construct a solid house consisting of two rooms.

II.2.37. Similar conditions prevail in Varna's illegally constructed Maksuda and the Hristo Botev Romani neighbourhoods and, at the time of an ERRC visit in September 2003, a legal case for the repossession of land had been filed by pre-Communist era landowners. Since the Roma are not legal owners of their homes, they are not entitled to compensation in case of eviction and destruction of their homes. Tens of thousands of Roma are therefore faced with the threat of homelessness.⁸²

II.2.38. On August 8, 2004, the house of 60-year-old Anelia Yordanova, located on 23 Maritsa St., in the town of in Kazanlak, central Bulgaria, was demolished by authorities, following a decision of the municipality. The house was located in a neighbourhood with approximately 30-40 houses accommodating Romani families. Several blocks of apartments inhabited mainly by ethnic Bulgarians were located in close proximity to the Romani houses. Anelia Yordanova had been living in the house, the property of the Kazanlak municipality, for about 19 years and had reportedly regularly paid all rent due. Prior to the demolition, the house, which had 2 rooms and a kitchen, accommodated Anelia, her son and daughter-in-law with their two children and Anelia's daughter. The alleged reason for the demolition of the house, as stated in the municipal order, was that the house had been in danger of falling apart. Kostadinka Georgieva, Anelia's daughter, however, told the ERRC that shortly before the house was demolished, the Romani family had spent around 500 BGN (approximately Euro 206) to repair the house. According to the testimony of Kostadinka Georgieva to the ERRC, Mr Stoiko Dimov, senior expert on municipal housing, who reportedly knew about the refurbishment, had told Kostadinka: "The house was not given to you, you can live and die on the street!" Ethnic Bulgarians living in the buildings next to the Romani houses told the ERRC that according to unofficial information from the municipality, all Romani houses would be demolished and a giant supermarket would be built in their place.

II.2.39. After the demolition of the house, Anelia Yordanova and her family moved to live in a makeshift shack which they constructed next to the spot where the old house used to be. After approximately two weeks, the municipality offered them a new house which was reportedly in even worse condition and inadequate to accommodate the family – it had one room and a toilet. The Roma refused to move into this house. Then they were offered an apartment without electricity and water and without a bathroom. They rejected this option as well. After around 25 days following the demolition of the house, during which Anelia and her family lived in the shack they made for themselves, the Roma moved into another municipal house. ERRC researchers who talked to the family in their "new house", observed that the house was extremely substandard -- it had one room to accommodate all members of the family, and

⁸¹ ERRC interview with Ms Zlatka Raykova Marinova. August 2003, Shumen. Municipal authorities are required by the Municipal Property Law to issue an order containing the reasons for the eviction and the deadline for the leave of the premises.

⁸² ERRC field research in Varna. September 2003.

another room in which the former inhabitants used to breed animals. There were holes in the ceiling and in the roof, the bricks were crumbling. The Romani family, however, had to accept the house because the school year was approaching and they had to start preparing the children for school.⁸³

II.2.40. Lack of zoning maps in a number of neighbourhoods inhabited by Roma in Sofia, exposes numerous Romani families to eviction without compensation for the destruction of their homes. Such, for example, is the Philipovci neighbourhood, home to about 2000 Roma. Some of the Roma living there occupy municipal land without formal permission and their homes are also property of the municipality. Another part of the houses are built on land which has been returned to its pre-Communist period owners. The eviction of the Romani families who have houses built on this land is pending. On the other hand, according to a statement of the municipal mayor, Mr Mario Petrov, the Sofia municipality does not have enough municipal housing to address the needs of the Roma who are to be evicted, despite the fact that the Municipal Property Law requires from the municipal authorities to offer municipal dwelling to these people.⁸⁴

II.2.41. On June 24, 2004, the chair of the municipal council of the Sofia municipality addressed the council with an inquiry about the demolition of illegal Romani houses in the area of Konstantin Velichkov Boulevard in Sofia. The houses slated for demolition have been home to several successive generations of Roma. The houses have to be demolished because they do not conform to the construction requirements under Bulgarian law as well as because of general reconstruction and renovation of the area. The destruction of the Romani houses is also pushed for by local ethnic Bulgarians who refuse to have Roma as neighbours.⁸⁵

II.2.42. Batalova Vodenitsa, home to about 500 Roma is another ghetto-like Romani neighbourhood in Sofia. The Roma live in shacks built on municipal property. The shacks are slated for demolition and since the Roma are not legal owners, they are not entitled to compensation. The Roma are not eligible for social housing either because they do not have actual address and have not been registered in the municipality for the required five years.⁸⁶

II.2.43. A large number of Roma from Sofia's largest Romani neighbourhood -- Fakulteta -- are also threatened with eviction. The zoning map, which covers parts of the Fakulteta Romani neighbourhood, partially in force since 2000, envisages the construction of a highway, which goes through large parts of the Romani neighbourhood. The construction of the highway involves the demolition of reportedly about 500 houses of Roma. Most of the houses are illegally built and therefore the Roma living in them are not entitled to compensation under Bulgarian law. The few owners of land and constructions on it are reportedly to be compensated, but since in one house there are often two or three families – of 2-3 generations - - only the ones stated in the deeds will receive compensation.⁸⁷ According to ERRC research, several Romani residents of the Fakulteta Romani neighbourhood in Sofia have applied for ownership documents at the municipal administration office, followed more frequently than not by rejections. The rejections are based on the Romani settlement constituting municipal property and that it is not covered by a zoning map though, according to the Territorial

⁸³ ERRC interview with Anelia Yordanova and Kostadinka Georgieva, September 10, 2004, Kazanlak.

⁸⁴ See Sega Daily, May 30, 2004, at: <http://www.segabg.com/31052004/p0060001.asp>.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ ERRC interview with Mr Mihail Georgiev, Chair of the *Romani Baht Foundation*. August 2003, Sofia.

Planning Law, in the absence of zoning maps, the use of the land is to be determined on the basis of the actual usage of the land so long as this is not in contravention of the law.⁸⁸

II.2.E. Government Housing Policy

II.2.44. Government policy responses addressing the serious concerns described above have not been adequate. On the one hand, it is clear that the government is aware -- and indeed has been aware for some time -- that the situation of Roma in the field of housing is deeply worrying. On the other hand, the few meagre measures adopted in this area have not been implemented well to date, and indeed are extremely inadequate to meet the level of need at present. Combined with the erosion of legal standards undertaken by the government in the past decade, the balance sheet actually indicates government policies which in effect erode possibilities for Roma to realise effectively the right to adequate housing.

II.2.45. Long-term and comprehensive policy to address the housing situation of Roma has not been developed by the Bulgarian state to date. There have been some initiatives at local level as well as projects funded by international donors which address Romani slums in one or several towns. These isolated initiatives, however, do not amount to a state strategy to address the problem adequately.

II.2.46. On paper, the Bulgarian Government has developed elaborate strategies for improving the housing situation of Roma. These strategies, however, have not been secured with adequate funding from the state budget and remained by and large unimplemented. Government action on Romani housing issues has been fragmentary, characterised by isolated projects, most often funded by the EU and other international donors. In 1998 the Government, together with Romani NGOs, developed the Framework Programme for Equal Integration of Roma in Bulgarian Society, which was adopted by the Council of Ministers on 22 April 1999. In the area of housing, the Framework Programme envisages legalisation of Romani housing through, among other actions, amendments to the relevant legislation which would loosen the regime for housing legalisation. Subsequent amendments to legislation did not provide for legalisation of Romani housing. On the contrary, the Territorial Planning Law toughened the regime for the legalisation of housing thus rendering impossible the legalisation of the prevailing part of Romani houses. The Framework Program in its entirety as well as specifically in the parts dealing with housing issues has not been implemented by the government. An action plan for the implementation of the Framework Program – elaborating the tasks of the Program and allocating funds for their implementation, was developed only more than 4 years after the adoption of the Program itself, at the end of 2003. On May 13-14, 2004, one hundred and forty-two Romani experts on ethnic and demographic issues working in municipal and county administrations addressed a letter of concern to the Bulgarian Prime Minister, concluding that the Framework Program for the Equal Integration of Roma was not being implemented.⁸⁹

II.2.47. The draft National Action Plan for the Decade of Roma Inclusion developed by the Government in late 2004 reproduced the measures envisaged by the Framework Program and elaborated many of them. These measures, however, are not provided with adequate financial support and are for this and other reasons likely to remain on paper. The total amount of the funds envisaged for the implementation of the Action Plan for 10 years is less than Euro 40,000,000. This amount covers education, health care, employment and housing. Most of the

⁸⁸ Territorial Planning Law. Article 9(4).

⁸⁹ A copy of the letter is on file with the ERRC. See also Human Rights Project press release “Roma Public Officials in Bulgaria Criticize the Policy of the Government in Open Letter to the Prime Minister” dated June 4, 2004.

funds committed in the Action Plan were already committed by the government prior to the adoption of the Action Plan and provided through PHARE and UN programs.⁹⁰

II.2.48. Not only has government action in the field of housing been piecemeal, but also in some instances the results of this action have been controversial with respect to the declared goals. For example, in 2003, with a loan from the Council of Europe Bank for Development and Reconstruction, the Ministry of Regional Development and the municipality of Plovdiv constructed apartments for about 30 Romani families from the Sheker mahala Romani neighbourhood of Plovdiv. Romani families were moved from their illegally constructed homes to project housing for which they must pay rent, though they have not been financially compensated for their homes which were demolished.⁹¹ The new Romani flats have drawn media attention for their luxurious -- for the average standard of Bulgarian homes -- conditions, and the dramatic contrast between these flats and the rest of the dwellings in the area belonging to ethnic Bulgarians. According to local Romani organisations, the construction of the luxurious flats has incensed local ethnic Bulgarians and the tensions between Roma and non-Roma have seriously increased. Furthermore, local Roma have not been included in project planning activities and it has been clear from the start that the rent for the apartments would be unaffordable for many of them.

II.2.49. Less than a year after their accommodation, as of the end of 2004, the Romani families have accumulated huge debts to the municipality. Despite the low rent, many families have found themselves unable to pay. In the beginning of December 2004, the municipality of Plovdiv has reportedly filed at least 10 lawsuits against Romani debtors. The property belonging to the Roma would be confiscated by the court and sold on an action as a punitive measure for the failure to pay their debts to the municipality.⁹²

III. Conclusions

III.0.01. It is the contention of the ERRC that the corpus of concerns raised above -- comprising a disparate package of conditions, acts of commission by government, and acts of neglect by government -- rises to the level of and amounts in practice and effect to systemic racial segregation of Roma in the field of housing, amounting to very serious breaches of international law, including but not limited to Article 16 or the Revised European Social Charter, read in conjunction with and/or independently of the Article E non-discrimination provisions of the Revised Charter.

III.0.02. Overall review of the situation in the Romani neighbourhoods in Bulgaria points strongly at various and systemic violations of the right to adequate housing where Roma are concerned, and thus threatens seriously the existence and full development of Romani families. These violations are a result of various factors and practices outlined in detail above: the failure of the domestic law to recognise the right to adequate housing and the erosion of legal protection of individuals against forced eviction; the extremely separated Roma neighbourhoods with substandard and deteriorated residential conditions; the refusal of

⁹⁰ See Republika Bulgaria. Nacionalen plan za deistvie. Dekada na romskoto vkluchvane 2005-2015 (proekt). Document on file with the ERRC.

⁹¹ ERRC interview with Mr Anton Karagyozov, Head of the *Roma* foundation. September 2003. Plovdiv.

⁹² See News.Dir.Bg Bulgarian news agency, December 2, 2004, at: http://64.233.183.104/search?q=cache:oYeckFf3LTAJ:novini.dir.bg/LISTS/gonews.php%3Fid%3D484188%26listid%3D1001+%D0%BC%D0%B5%D0%B7%D0%BE%D0%BD%D0%B5%D1%82%D0%B8%D1%82%D0%B5+%D0%B2+%D1%88%D0%B5%D0%BA%D0%B5%D1%80+%D0%BC%D0%B0%D1%85%D0%B0%D0%BB%D0%B0&hl=bg&lr=lang_bg.

rendering legal the housing of significant segment of Romani population; the systemic threats and actual implementation of forced eviction of Roma without any compensation and rendering large number of Roma families homeless; the real and planned large-scale destruction of Romani neighbourhoods.

III.0.03. All the described facts and practices, initiated or supported by the official authorities, lead to the conclusion of racial animus in the housing policies of the Bulgarian government, and amount to racial segregation of the Romani community as a whole. The government approach to housing Roma points to discriminatory policies aiming at keeping Roma excluded, marginalised and oppressed through their spatial exclusion and material denial. As a result, Romani families are denied public services and benefits solely on the racial criteria, contrary to a range of international commitments undertaken by Bulgaria towards elimination and prosecution of all forms of discrimination.

III.0.04. In September 2004 the ECSR found that Bulgaria has not complied with the Revised European Social Charter with respect to its obligations under Article 16. The ECSR noted the inadequate housing situation of Roma in Bulgaria “including segregation and lack of dwellings suitable to family size and needs”. Further, in its Conclusions, the Committee stated that “Roma often live in segregated areas with little or no infrastructure, sometimes surrounded by big walls or high sheet metal fences.” The Committee found that “Roma families are discriminated in practice as regards access to family benefits and housing” and concluded that “[i]t considers the situation not to be in conformity to the Charter.”⁹³

III.0.05. Racial segregation practices, as described above, are also in violation of the new Bulgarian Anti-Discrimination Act,⁹⁴ in force since January 2004, which transposed the EU anti-discrimination Directives. Article 5 of the Act stipulates that racial segregation is to be deemed a form of discrimination and therefore is prohibited under the Act. Furthermore, Article 37 of the same act prohibits the refusal to provide goods or services, or provision of any goods or services of lesser quality, or under worse conditions on the grounds of, *inter alia*, race or ethnicity. Several cases have already heard in connection with the law's provisions, in three of which the Sofia state-owned electricity company was found in violation of the law because of discriminatory denial of services to Roma or for committing acts of discrimination thereof. However, these court decisions in individual decisions have not yet brought about a significant change in approach or any noticeable heightening of levels of action by the Bulgarian government.

III.0.06. The ERRC has welcomed the new Bulgarian anti-discrimination law. Its adoption indicates political will on part of the Bulgarian Government to bring domestic law in conformity with the European Union *acquis*, as well as with international human rights treaties. However, in light of:

- The existence of widespread racial segregation of Romani communities in Bulgaria; of other unremedied violations of the right to adequate housing including substandard living conditions, the nearly blanket lack of security of tenure and forced evictions on Bulgarian territory; as well as of widespread racial discrimination against Roma in the realisation of social rights in Bulgaria;
- The existence of sufficient commitments under the Revised European Social Charter, of related norms included in Bulgaria's domestic legal order, and of freely undertaken

⁹³ See European Committee of Social Rights Conclusions 2004 (Bulgaria), pp.40-42, at: http://www.coe.int/T/E/Human_Rights/Esc/3_Reporting_procedure/2_Recent_Conclusions/1_By_State/Revised_Social_Charter/CONCLUSIONS%202004%20Bulgaria-1.pdf.

⁹⁴ See Protection against Discrimination Act.

international legal commitments in the field of anti-discrimination and the right to adequate housing,

III.0.07. The European Roma Rights Center respectfully requests that the European Committee of Social Rights view with the utmost gravity the facts presented in this Collective Complaint and to find Bulgaria in violation of Article 16 of the Revised European Social Charter read together with and/or independently of the non-discrimination provisions in Article E of the Charter, and to urge the Bulgarian government to:

- Enact and implement comprehensive policies aiming at curbing and preventing residential and other racial segregation of Roma in Bulgaria.
- Bring Bulgarian law into conformity with international human rights law by:
 - Amending the Bulgarian Constitution to provide explicitly for a right to adequate housing;
 - Remedying the current dearth of protections available to individuals under domestic law against the serious harm of forced eviction.
- Use all appropriate means to protect and promote the right to housing and guarantee protection against forced evictions. Ensure that evictions do not result in individuals being rendered homeless or vulnerable to other human rights abuses. Guarantee security of tenure to Romani occupants of houses and land, ensuring, *inter alia*, a general protection from forced evictions. Guarantee due process in line with international standards related to forced evictions. Ensure that evictions can be carried out after the court examines the circumstances of the case and not before. Guarantee non-discrimination against Roma in processes related to forced evictions. Guarantee adequate pecuniary and non-pecuniary civil compensation as well as comprehensive criminal and administrative redress in cases of illegal forced evictions. Make available adequate alternative housing, resettlement and/or access to productive land where those affected by evictions are unable to provide for themselves.
- Bring to justice public officials responsible for forced evictions of Roma in breach of Bulgarian and international law.
- In order for many Roma – especially those presently living in Romani slum settlements – to be set on an equal footing with other Bulgarian citizens in the area of housing rights:
 - In the interest of empowering Roma to take control of their own housing fate, provide an executive “amnesty” for the so-called “illegal” Romani slum settlements currently existing on state-owned land, granting title to land and property to persons factually resident on a particular plot, and establishing a “year zero” for the purposes of zoning and future regulation;
 - Adopt, in consultation with representatives of the affected communities, comprehensive plans for the improvement of Romani slum settlements and fund them to levels adequate to need;
 - Order local authorities to provide, without delay, adequate potable water, electricity, waste removal, public transport, road provisions and other public infrastructure and services to those Romani settlements which presently lack one or more of the above.
- Without delay, ratify Protocol 12 to the European Convention on Human Rights.
- Ensure that adequate legal assistance is available to victims of discrimination and human rights abuse by providing free legal services to indigents and members of weak groups, including Roma.

- Conduct systematic monitoring of access of Roma and other minorities to social and economic rights -- the right to adequate housing in particular -- and establish a mechanism for collecting and publishing disaggregated data in these fields, in a form readily comprehensible to the wider public.
- Conduct public information campaigns on human rights and remedies available to victims of human rights abuse, including such public information campaigns in the Romani language and via media channels extending to excluded Romani communities.
- Provide training on the Anti-Discrimination Act for state and municipal officials involved in the implementation of the law;
- At the highest levels, speak out against racial discrimination against Roma and others, and make clear that racism will not be tolerated.

Thank you for your consideration of these matters.

On behalf of the European Roma Rights Centre,

Claude Cahn
Acting Executive Director