

# RIGHT TO HOUSING IN THE JURISPRUDENCE OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

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**Abstract.** *The article analyses the right to housing in the context of the European Social Charter and the jurisprudence of its monitoring institution the European Committee of Social Rights. The Committee has developed the meaning, scope and content of this right and clarified the nature and extent of the State obligations in a number of its Conclusions adopted in the national reports and Decisions on Collective Complaints. The article focuses on recent Conclusions on Housing Rights of 2011, which revealed the lack of the States Parties to comply with the obligations emerging from the European Social Charter. The enforcement of the housing rights in Lithuania is discussed and the most problematic issues are disclosed on the basis of the Conclusions of the Committee.*

**Keywords:** *right to housing, European Social Charter, European Committee of Social Rights.*

## Introduction

The right to housing is no doubt one of the most crucial social rights closely connected to the right to life and other civil, political and economic, social rights and freedoms. The right to housing secures social inclusion and integration of individuals into society and contributes to the abolishment of socio-economic inequalities<sup>1</sup>.

The right to housing is guaranteed by various international and regional instruments mostly as a part of other rights, for instance, right to an adequate standard of living<sup>2</sup>; right to respect for private and family life<sup>3</sup>, etc. Revised European Social Charter<sup>4</sup> (hereinafter – Revised Charter) is the only one instrument which contains provisions that are directly related to the housing rights, i.e. Article 31 is intended to protect the right to housing. Although the original European Social Charter of 1961<sup>5</sup> (hereinafter – Charter) does not contain the direct provision, its Article 16 addresses housing in the context of securing the right of families to social, legal and economic protection.

The European Committee of Social Rights (hereinafter – Committee) as the body entrusted with supervising implementation of both Charters in its case law has developed the meaning, scope and content of the right to housing and clarified the nature and extent of the State obligations. The recent Conclusions on the national reports disclosed that almost all of still rather few countries, having accepted the provisions of the right to housing, were found to have problems with aspects of its application. On the whole, the sub-standard housing conditions of many Roma and their forced evictions were one of the main recurring issues in the last year's Conclusions. But recent Collective complaints<sup>6</sup> raised new problematic issues of the right to housing related to the application of this right to other vulnerable groups such as children, elderly people and disabled persons.

Therefore, the goal of the article is to analyse the right to housing in the context of the European Social Charter and the case law of the European Committee of Social Rights. The author discusses the main aspects related to the goal and content of the housing rights, the meaning of the adequacy and forced evictions and the extent and nature of the States obligations. The last part focuses on the situation in Lithuania and discloses the most problematic issues related to the application of the right to housing.

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1 *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, para. 18.

2 Article 11 of International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

3 Article 8 of the European Convention on Human Rights.

4 Revised European Social Charter of 1996, CETS No. 163, Strasbourg, 3.V.1996.

5 European Social Charter of 1961, CETS No. 35, Turin, 18.X.1961.

6 *Association of Care Giving Relatives and Friends v. Finland*, Complaint No. 71/2011, Decision on admissibility of 7 December 2011; *International Federation for Human Rights (FIDH) v. Belgium*, Complaint No. 75/2011, Decision on admissibility of 22 March 2012.

## 1. The Scope and Content of the Right to Housing

Significant references to the right to housing are set out in Article 31 of the Revised European Social Charter:

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

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

The interpretation of the right to housing was carried out in the case-law of the European Committee of Social Rights. In a number of Conclusions adopted after the examination of the national reports from States<sup>7</sup> and Decisions on Collective Complaints<sup>8</sup> the Committee gives explanations on the scope, content, and meaning of the housing rights and elaborates the extent of the States' obligations.

The Committee agrees that the actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of “results”. However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form<sup>9</sup>. The Committee considered that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right to housing<sup>10</sup>.

This means that, for the situation to be in conformity with the Treaty, the State party must:

- a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b. maintain meaningful statistics on needs, resources and results;
- c. undertake regular reviews of the impact of the strategies adopted;

7 The European Committee of Social Rights examines the reports and decides whether or not the situations in the countries concerned are in conformity with the European Social Charter. Conclusions of the European Committee of Social Rights [interactive]. [accessed on 12-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp)>.

8 The Collective Complaints procedure is set up in the Additional Protocol of 1995, which came into force in 1998. To date 15 countries have accepted the Collective Complaints procedure: Belgium, Bulgaria, Czech Republic, Cyprus, Croatia, Finland, France, Greece, Ireland, Italy, Norway, the Netherlands, Portugal, Slovenia and Sweden. Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, CETS No.: 158 [interactive]. [accessed on 12-09-2012]. <<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=158&CM=8&CL=ENG>>. For more information on the Collective Complaints procedure, see: Churchill, R. R.; Khaliq, U. The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights? *European Journal of International Law*. 2004, 15(3): 417–456; Cullen, H. The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights. *Human Rights Law Review*. 2009, 9(1): 61–93.

9 *International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, para. 32.

10 *European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005, Decision on the merits of 18 October 2006, para. 35.

d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e. pay close attention to the impact of the adopted policies on each of the categories of persons concerned, particularly the most vulnerable<sup>11</sup>.

However, following the case law of the European Court of Human Rights (hereinafter – ECtHR), the Committee acknowledged a margin of appreciation of the States in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources. Nonetheless, “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”<sup>12</sup>. For instance, Article 31§2 (Prevention and Reduction of Homelessness) obliges Parties to gradually reduce homelessness with a view of its elimination.

The general article on housing rights was included only in the Revised Charter, but not all States are parties to this Charter, to date still 11 States are parties to the 1961 Charter<sup>13</sup>. Moreover, not all States parties to the Revised Charter have accepted the provisions of Article 31<sup>14</sup>. Therefore, it is significant that the Committee had held that Articles 16<sup>15</sup> (which could be found in both Charters) and 31 overlap: “The Committee considers that, as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31”<sup>16</sup>.

Further, the Committee considered that the fact that the right to housing is stipulated under Article 31 of the Charter, does not preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection. In this context and with respect to families, Article 16 focuses on the right of families to an adequate supply of housing, on the prerequisite to take into account their needs in framing and implementing housing

11 *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, Decision on the merits of 5 December 2007, paras. 59–60.

12 *Autism-Europe v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, para. 53.

13 States which had ratified the 1961 Charter: Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, United Kingdom. Member States of the Council of Europe and the European Social Charter [interactive]. [accessed on 14-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp)>.

14 States which had accepted the provisions of Article 31: Andorra, Finland, France, Italy, Lithuania, Netherlands, Norway, Portugal, Slovenia, Sweden, Turkey, Ukraine. Acceptance of provisions of the Revised European Social Charter (1996) [interactive]. [accessed on 14-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevJuly2012\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevJuly2012_en.pdf)>.

15 *Article 16. The right of the family to social, legal and economic protection*: With a view to ensuring the necessary conditions for the full development of the family <...> the Parties undertake to promote the economic, legal and social protection of family life by such means as <...> provision of family housing <...>.

16 *European Roma Rights Centre v. Bulgaria*, *supra* note 10, para. 17.

policies and ensuring that existing housing be of an adequate standard and include essential services.<sup>17</sup>

Apart from the above mentioned Articles, the European Social Charter also contains rights to housing in relation to:

- Physically and mentally disabled persons<sup>18</sup>. The Committee concluded that all newly constructed or renovated public buildings, facilities and buildings open to the public and cultural and leisure activities should be physically accessible. The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing<sup>19</sup>.
- Children and young persons.<sup>20</sup> The Committee emphasised the importance of the interests of children. Therefore, “children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to a special protection and assistance. <...> A unit in a child welfare institution should be of such a size as to resemble home environment and should not therefore accommodate more than 10 children<sup>21</sup>.”
- Migrant workers.<sup>22</sup> The Committee reiterated the need to eliminate all legal and *de facto* discrimination concerning access to public and private housing to migrant workers (home-buying<sup>23</sup>, access to subsidised housing or housing aids, such as loans or other allowances<sup>24</sup>).
- Elderly persons.<sup>25</sup> The Committee highlighted the significance of the housing rights to the elderly persons and specified that the supply of adequate housing

17 *European Roma Rights Center (ERRC) v. Bulgaria*, *supra* note 10, para. 9.

18 *Article 15. The right of persons with disabilities to independence, social integration and participation in the life of the community*: With a view to ensuring to persons with disabilities <...> the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular: 3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to <...> housing <...>.

19 Conclusions 2003, Italy, p. 299

20 *Article 17. The right of children and young persons to social, legal and economic protection*: With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: 1. <...> c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support.

21 Conclusions 2005, Moldova, p. 474.

22 *Article 19. The right of migrant workers and their families to protection and assistance*: With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake: <...> 4. to secure for such workers lawfully within their territories <...> treatment not less favourable than that of their own nationals in respect of the following matters: <...> c. accommodation.

23 Conclusions IV, Norway, p. 121.

24 Conclusions III, Italy, p. 92.

25 *Article 23. The right of elderly persons to social protection*: With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly

for an elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes<sup>26</sup>.

Article 30 on rights to protection against poverty and social exclusion also includes an obligation on contracting states to promote effective access to, *inter alia*, housing. The Committee pointed out that housing is a critical policy area in fighting poverty and social exclusion<sup>27</sup>. Article 30 requires States Parties to adopt positive measures for groups generally recognised as excluded or disadvantaged, such as Roma, to ensure that they are able to access rights such as housing, which in turn will have an impact on access to other rights such as education, employment and health<sup>28</sup>.

The Committee emphasised the importance of other international human rights documents in the interpretation of housing rights and acknowledged that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied. This applies above all to the European Convention on Human Rights (hereinafter - ECHR). The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights' interpretation of the relevant provisions of the Convention<sup>29</sup>. The jurisprudence of the Committee regarding housing rights has been notable for its reference to Article 8 of the ECHR and the judicial statements of the ECtHR<sup>30</sup>. In some decisions, the Committee draws the practical consequences of the general principals adopted by the ECtHR<sup>31</sup>. But it should be noted that the Charter does not guarantee the same rights as they are protected by the ECHR. For instance, the Committee emphasised that the right to housing under the Charter "does not directly concern a specific right to ownership of a specific piece of property, nor a right to enjoy

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or in co-operation with public or private organisations, appropriate measures designed in particular: <...> to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing.

26 Conclusions 2003, Slovenia, p. 530.

27 Conclusions 2003, France, Article 30.

28 *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010, Decision on the merits of 30 June 2011, para. 65.

29 *International Movement ATD Fourth World v. France*, *supra* note 11, paras. 68–69.

30 Nolan, A. 'Aggravated Violations', Roma Housing Rights and Forced Expulsions in Italy: Recent Developments under the European Social Charter Collective Complaints System. *Human Rights Law Review*. 2011, 11(2): 343–361, p. 356.

31 Benoît-Rohmer, F. The impact of the European Convention on Human Rights on the jurisdictionalisation of the European Committee of Social Rights. In: *Social Rights at European, Regional and International Level. Challenges for the 21<sup>st</sup> Century*. Aliprantis, N.; Papageorgiou, I. (eds.). Bruxelles: Bruylant, 2010, p. 240. For example, in the first housing rights case *ERRC v. Greece*, the Committee made a reference to the ECtHR judgment *Connors v. United Kingdom* in order to widen the scope of Article 16 of the Social Charter concerning the family's right to social, legal and economic protection and stated "The implementation of Article 16 as regards nomadic groups including itinerant Roma, implies that adequate stopping places be provided, in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights". *European Roma Rights Center (ERRC) v. Greece*, Complaint No. 15/2003, Decision on the merits of 8 December 2004, para. 25.

property such as analogous to that contained in Article 1 of the First Protocol of the ECHR. <...> does not therefore require a state to provide full and complete restitution for the unjustified deprivation of property rights”<sup>32</sup>.

Moreover, the Committee attaches great importance to the materials on the protection of housing rights gathered by other international bodies. Information disclosing the situation in the State which could be found in various reports of regional and international institutions serves as evidence in the adoption of decisions by the Committee<sup>33</sup>.

## 2. Adequate Living Conditions

The Committee in its case law developed the requirements for the adequate housing and requested States to define the notion of adequate housing in national law. The Committee considers that “adequate housing” means<sup>34</sup>:

- a dwelling which is safe from a sanitary and health point of view, i.e. possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity etc; and if specific dangers such as, for example, the presence of lead or asbestos materials are under control.
- a dwelling which is not over-crowded (over-crowding means that the size of the dwelling is not suitable in light of the number of persons in residence and the composition of the household).
- security of tenure is guaranteed, this means protection from forced eviction and other threats<sup>35</sup>.

The Committee underlines that in order to meet the criteria of adequacy, a dwelling must provide occupants with adequate space and protect them from harsh weather conditions or other threats to health. It must also be structurally secure to ensure the physical safety of occupants<sup>36</sup>. Adequate housing must be in a location which allows access to public services, employment, health-care services, schools and other social facilities. States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or immigrants<sup>37</sup>. The Committee emphasised that living in segregated settings means that there will be inadequate access

32 *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No. 52/2008, Decision on the merits of 22 June 2010, para. 60.

33 For example, see: *European Roma Rights Center (ERRC) v. Greece*, *supra* note 31, para. 40; *International Movement ATD Fourth World v. France*, *supra* note 11, para. 152; *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, Complaint No. 49/2008, Decision on the merits of 11 December 2009, paras. 39, etc.

34 For comparison, see the General Comment 4 of the UN Committee on Economic, Social and Cultural Rights, where the criteria for the “adequate housing“ were developed. The criteria include: (a) Legal security of tenure; (b) Availability of services, materials, facilities and infrastructure; (c) Affordability; (d) Habitability; (e) Accessibility; (f) Location; (g) Cultural adequacy. CESCR General comment 4. The right to adequate housing (Art.11 (1)), 13 December 1991.

35 Conclusions 2005, Lithuania, Article 31§1, p. 406.

36 *European Roma Rights Centre v. Portugal*, *supra* note 28, para. 37.

37 *Ibid.*, para. 41.

to schooling, fewer opportunities for employment or more difficult access to medical facilities. Likewise, inadequate standards of housing lead to poor health and higher incidences of diseases<sup>38</sup>.

In its recent case law the Committee explicated the new aspect of adequate housing – cultural adequacy. The Committee held that social housing offered to Roma should be, as far as possible, culturally suited to them. Re-housing of Roma families in apartment blocks has often prevented family and casual gatherings, given that their means of existence as a community and bonds of solidarity are broken. Moreover, they are also faced with hostile attitudes of neighbours in apartment blocks<sup>39</sup>.

According to the Committee, the standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to both housing available for rent as well as to housing occupied by their owners<sup>40</sup>. The temporary supply of shelter cannot be considered as adequate and individuals should be provided with adequate housing within a reasonable period<sup>41</sup>.

The requirements of adequate housing should be applied not only to the dwellings, but to the caravans and stopping places for the Travellers as well. In the Committee's view, "any place in which a family resides legally or illegally, whether a building or a movable piece of property such as a caravan, must be regarded as housing within the meaning of the Charter. By extension, <...> the site on which the caravan is installed must also be considered to form part of the dwelling"<sup>42</sup>. The Committee stated that the feature which undoubtedly makes Traveller families completely different where housing is concerned is their caravan lifestyle. This situation calls for differentiated treatment for these families and tailored measures to improve their housing conditions<sup>43</sup>. This means that public sites for Travellers must be properly fitted out with the basic amenities necessary for a decent life, such as water, waste disposal, sanitation facilities, electricity, and must be structurally secure, not overcrowded and with secure tenure supported by law<sup>44</sup>.

The analysis of the national reports in 2011 disclosed the lack of the follow-up by States after the Decisions on Collective Complaints. This is notably the case with respect to the right to adequate housing under Article 31§1, where the Committee reiterated its findings in several collective complaints that in some countries a large number of dwellings is sub-standard, lacking suitable amenities (are without reliable access to water or electricity or are unsafe or unhealthy), and, in particular, that there had been insufficient progress as regards the eradication of sub-standard housing conditions

38 *European Roma Rights Centre v. Portugal*, *supra* note 28, paras. 49–50.

39 *Ibid.*

40 Conclusions 2003, Article 31§1, France, p. 221, Italy, p. 342, Slovenia, p. 554, and Sweden, p. 650.

41 *European Roma Rights Center (ERRC) v. Italy*, *supra* note 1, para. 35.

42 *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, Decision on the merits of 21 March 2012, paras. 73–74.

43 *Ibid.*, para. 141.

44 *European Roma Rights Centre (ERRC) v. France*, Complaint No. 51/2008, Decision on the merits of 19 October 2009, para. 46.



for a large number of Roma<sup>45</sup>. Despite certain progress achieved by some States in ameliorating the living conditions of Roma, the Committee found violations of the rights to housing in cases where the significant number of Roma continue to live in conditions that fail to meet minimal standards<sup>46</sup>. Although the Committee recognises that the effective implementation of the right to housing may require time, it also finds that given the urgency of the housing situation of Roma families a time frame should not be too long (for instance, the period of six years was acknowledged sufficient to realise significant improvements<sup>47</sup>).

### 3. Forced Evictions

Eviction may be defined as the deprivation of housing which a person occupied, on account of insolvency or wrongful occupation<sup>48</sup>. The Committee pointed out that States must put in place procedures to limit the risk of evictions and to ensure that, when these do take place, evictions must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons;
- accompanied by proposals for alternative accommodation<sup>49</sup>.

To comply with the Charter, legal protection for persons threatened by eviction must be prescribed by the law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- a compensation for illegal evictions<sup>50</sup>.

The Committee notes 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”<sup>51</sup>. In the case of unlawfully residing persons no alternative accommodation

45 European Committee of Social Rights. *Activity Report 2011*. Council of Europe, 2012 [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ActivityReport2011_en.pdf)>.

46 For example, see: *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, *supra* note 33, paras. 38–39; *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, Decision on the merits of 5 December 2007, para. 78.

47 *European Roma Rights Centre v. Bulgaria*, *supra* note 10, para. 39.

48 Conclusions 2003, Sweden, p. 653.

49 *European Roma Rights Centre (ERRC) v. Italy*, *supra* note 1, para. 41; Conclusions 2011, Turkey, Article 31§2.

50 *International Movement ATD Fourth World v. France*, *supra* note 11, para. 78.

51 *European Roma Rights Centre v. Bulgaria*, *supra* note 10, para. 51.

may be required by States, however, the eviction from shelter of such persons should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity<sup>52</sup>. And even when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned<sup>53</sup>.

The destruction of housing or forced evacuation of villages violates the right to housing and in that situation, States must provide effective remedies to the victims<sup>54</sup>, and must take measures in order to re-house families in decent accommodation or to provide financial assistance<sup>55</sup>. The Committee held that, the lack of protection and investigation measures in cases of generalized violence against Roma and Sinti sites, in which the alleged perpetrators are officials, implies for the authorities an aggravated responsibility<sup>56</sup>.

As mentioned above, the caravan and the site on which it is installed forms part of a Traveller family's home. Therefore, all entries onto a site for the purposes of an eviction must be regarded as an entry into the occupant's home and must comply with the rules concerning eviction from a home<sup>57</sup>. The Committee held that "urging Traveller families to leave sites on which they have settled – even illegally – and then, even though there are not enough legal sites, evicting them if they refuse to comply without proposing a suitable long-term alternative accommodation, adds to the failure to respect these families' right to housing"<sup>58</sup>.

Special attention should be paid to the case against France concerning the forced evictions of Roma of Romanian and Bulgarian origin in the summer of 2010. Apart from the breach of the above mentioned requirements for the procedure of evictions, the Committee pointed out that adopted measures, which are incompatible with human dignity and specifically aimed at vulnerable groups, and the active role of the public authorities in framing and implementing this discriminatory approach to security, constitute "an aggravated violation of human rights from the standpoint of Article 31§2 of the Revised Charter"<sup>59</sup>.

The Conclusions of the Committee on national reports in 2011 indicated that in some countries evictions of Roma and Sinti continue to be carried out without the necessary procedural safeguards and without proper re-housing solutions<sup>60</sup>.

52 *Defence for Children International (DCI) v. the Netherlands*, Complaint No. 47/2008, Decision on the merits of 20 October 2009, para. 63.

53 *International Movement ATD Fourth World v. France*, *supra* note 11, paras. 77–78.

54 Conclusions XIII-1, Turkey, p. 258–259.

55 Conclusions XIII-3, Turkey, p. 381–385.

56 *International Movement ATD Fourth World v. France*, *supra* note 11, para. 75.

57 *International Federation of Human Rights (FIDH) v. Belgium*, *supra* note 42, para. 162.

58 *Ibid.*, para. 165.

59 *Centre on Housing Rights and Evictions (COHRE) v. France*, Complaint No. 63/2010, Decision on the merits of 28 June 2011, paras. 47, 53–55.

60 For example, see: Conclusions 2011, Italy, Article 31; Conclusions 2011, Bulgaria, Article 31; Conclusions 2011, France, Article 31, etc.

## 4. The Shortage of Affordable Housing

Article 31§3 of the Revised Charter requests States parties to make the price of housing accessible to those without adequate resources. The Committee held that an adequate supply of affordable housing must be ensured for persons with limited resources. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located<sup>61</sup>.

The Committee in its case law disclosed the obligations of the States:

- States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population<sup>62</sup>.
- States Parties must adopt appropriate measures to encourage the construction of housing, in particular social housing<sup>63</sup>. Furthermore, they must ensure access to social housing for disadvantaged groups, including equal access for nationals of other Parties to the Charter lawful residents or regularly working on their territory<sup>64</sup>.
- States Parties should adopt measures to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive<sup>65</sup>.

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or Travellers<sup>66</sup>. It could be noted that the Committee had led to conclusions of non-conformity with the provisions on affordable housing, whereas a significant shortage of social housing in some countries and the lack of equal treatment of foreigners in respect of social housing and access to housing benefits<sup>67</sup>.

## 5. Enforcement of the Right to Housing in Lithuania

Lithuania has ratified the Revised European Social Charter on 29 June 2001. It has accepted 86 of the 98 paragraphs of the Revised Charter, including paragraphs 1 and 2 of the Article 31 (Right to housing)<sup>68</sup>. Unfortunately Lithuania has not yet signed or ratified

61 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, *supra* note 46, para. 124.

62 Conclusions 2003, Sweden, p. 655.

63 *Ibid.*, p. 656.

64 *European Roma Rights Center (ERRC) v. Italy*, *supra* note 1.

65 *International Movement ATD Fourth World v. France*, *supra* note 11, para. 131.

66 *Ibid.*, paras. 149–155.

67 For example, see: Conclusions 2011, Finland, Article 31§3; Conclusions 2011, Slovenia, Article 31§3; Conclusions 2011, Turkey, Article 31§3, etc.

68 More on accepted provisions see Factsheet on Lithuania [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Lithuania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/Lithuania_en.pdf)>.

the Additional Protocol providing for a system of collective complaints, therefore, the national reports of Lithuania and Conclusions of the Committee regarding the housing rights will be analysed in this chapter. To date Lithuania has submitted two reports regarding the provisions of Article 31, the first one in 2004<sup>69</sup> and the second – in 2010<sup>70</sup>. The Committee adopted Conclusions respectively in 2005<sup>71</sup> and 2011<sup>72</sup> taking note of the information contained in the reports submitted by Lithuania.

According to the Law on State Support for the Acquisition and Lease of Housing and Renovation (Modernisation) of Multi-Apartment Buildings<sup>73</sup> “adequate housing” means a dwelling that is suitable for living for a person or a family, complies with the requirements of construction and special norms (sanitary, fire protection, etc.) and useful floor space per family member (i.e. more than 14 m<sup>2</sup>). The Committee considered that the requirements, as described in detail in the report, correspond to the criteria required for a dwelling to be structurally secure, safe from a sanitary point of view and not overcrowded<sup>74</sup>. However, the Committee further noted that the report of Lithuania did not contain any statistics on adequacy of dwellings. Nor does it provide any information on resources invested to guarantee the right to adequate housing.

The Report 2010 does not include any information on the situation of Roma and Travellers. The Committee, however, considered from other sources<sup>75</sup> that profound discrimination is faced by the Roma community, *inter alia*, in the field of access to housing. As a result of this discrimination, the Roma community lives in isolation, in ghetto-like neighbourhoods and their situation is critical as a result of their poor living and housing conditions.

It should be mentioned that the Government of Lithuania has adopted several action plans or programmes for the integration of Roma People into Lithuanian society. However, no substantial results have been achieved. The *Programme 2000-2004* mentioned the poor housing situation of the Roma, but it proposed no solutions and ultimately had no impact on Roma housing situation in Lithuania. Although *Programme*

69 The Republic of Lithuania Fourth Report on the Implementation of the European Social Charter [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Lithuania4\\_fr.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Lithuania4_fr.pdf)>.

70 8th National Report on the implementation of the Revised European Social Charter submitted by the Government of Lithuania [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Lithuania8\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/Lithuania8_en.pdf)>

71 European Committee of Social Rights Conclusions 2005 (Lithuania) [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Lithuania2005\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Lithuania2005_en.pdf)> (hereinafter – Conclusions 2005, Lithuania).

72 European Committee of Social Rights Conclusions 2011 (Lithuania) [interactive]. [accessed on 15-09-2012]. <[http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Lithuania2011\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Lithuania2011_en.pdf)> (hereinafter – Conclusions 2011, Lithuania).

73 Law on State Support for the Acquisition and Lease of Housing and Renovation (Modernisation) of Multi-Apartment Buildings. *Official Gazette*. 1992, No. 14-378.

74 Conclusions 2011, Lithuania, p. 31.

75 United Nations, Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, document A/HRC/7/19/Add.4 of 7 February 2008, p. 2–3; United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on Lithuania, document CERD/C/LTU/CO/3 of 11 April 2006.

2008-2010<sup>76</sup> recognized Roma housing problem, it did not include particular measures to solve it. And the *Action Plan 2012-2014*<sup>77</sup> does not cover housing aspects of the Roma People at all and was criticized by the NGOs working in favour of Roma rights<sup>78</sup>.

As Human Rights Monitoring Institute pointed out in its *Alternative Report*<sup>79</sup>, the issue of Roma housing quality is most evident in the Kirtimai settlement in Vilnius, housing the largest numbers of the Roma. The settlement is located on state-owned land; therefore, Roma dwellings constructed in the settlement are considered illegal. Residents cannot register and legitimise their houses. All of them are registered under a single address (Dariaus ir Girėno str. 185). In Kirtimai, dwellings do not meet standards in terms of heating, outdoor toilets, water pumps and residents have limited access to public transportation.

The future of Kirtimai settlement remains vague. During last years, municipal politicians repeatedly called for the forceful relocation of the Roma from Kirtimai, however, no programme for solving the housing issue of the Roma residing in Kirtimai settlement was adopted<sup>80</sup>. But some actions already took place. On 2-3 December 2004, Vilnius Municipality without court authorization demolished six houses in the Roma-inhabited ghetto situated in Kirtimai village. However, the Supreme Administrative Court of Lithuania stated that Vilnius Municipality carried out illegal activities and was responsible for the illegal abolition of houses<sup>81</sup>. On 13 February 2012 the State Territorial Planning and Construction Inspectorate demolished 3 buildings in Kirtimai village. This time with the authorisation of the court, but still with doubts if the demolitions comply with the requirements of evictions.

The 4<sup>th</sup> national report of Lithuania, provided statistics on the numbers of homeless persons: in 2001 there were 1,250 homeless persons, or 0.4% of the population<sup>82</sup>. The Committee highlighted that the Report 2010 did not contain updated figures or statistics concerning the number of homeless persons, nor does it refer to any specific emergency

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- 76 Programme for the Integration of Roma People into Lithuanian Society 2008-2010. *Official Gazette*. 2008, No. 42-1555 [interactive]. [accessed on 15-09-2012]. <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=317530&p\\_query=&p\\_tr2=>](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=317530&p_query=&p_tr2=>)>.
- 77 Action Plan for the Integration of Roma People into Lithuanian Society 2012-2014. *Official Gazette*. 2012, No. 36-1813 [interactive]. [accessed on 15-09-2012]. <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=420934&p\\_query=&p\\_tr2=2>](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=420934&p_query=&p_tr2=2>)>.
- 78 Resolution of Roma and with Roma working organizations regarding the Strategy on the integration of Roma People in Lithuania [interactive]. [accessed on 15-09-2012]. <[http://visiskirtingivisilygus.lt/wp-content/uploads/2012/03/Rom%C5%B3-integracijos-strategija\\_FINAL.pdf](http://visiskirtingivisilygus.lt/wp-content/uploads/2012/03/Rom%C5%B3-integracijos-strategija_FINAL.pdf)>.
- 79 Human Rights Monitoring Institute. *Alternative Report prepared for the United Nations Human Rights Committee on the occasion of its review of Lithuania's Third Periodic Report under the International Covenant on Civil and Political Rights* [interactive]. [accessed on 15-09-2012]. <[http://www.hrmi.lt/uploaded/PDF%20dokai/Alternative%20report\\_ICCPR\\_2010-11-15\\_1.pdf](http://www.hrmi.lt/uploaded/PDF%20dokai/Alternative%20report_ICCPR_2010-11-15_1.pdf)>.
- 80 For more information on Roma housing issues please refer to *Thematic Study Housing Conditions of Roma and Travellers – Lithuania* [interactive]. [accessed on 15-09-2012]. <[http://www.pedz.uni-mannheim.de/daten/edz-b/eb/09/Roma%20Housing-Lithuania\\_en.pdf](http://www.pedz.uni-mannheim.de/daten/edz-b/eb/09/Roma%20Housing-Lithuania_en.pdf)>.
- 81 Decision of the Supreme Administrative Court of Lithuania in administrative case No. A<sup>444</sup>-1003/2010 [interactive]. [accessed on 15-09-2012]. <<http://liteko.teismai.lt/viesasprenlimupaieska/tekstas.aspx?id=1375686c-b5c0-4474-bc63-627f6acb1dce>>.
- 82 Report of Lithuania, *supra* note 69.

or longer term measure taken to combat homelessness during the reference period. It should be noted that Lithuania does not regularly collect data of homeless persons, but the 2011 Population and Housing Census should disclose the recent numbers of such persons (the official results of the census should be announced in 2013).

The Report 2010 outlines the procedures and rules governing entitlement to municipal as well as to rental subsidised housing, the aim of which is to help vulnerable categories of the population to enjoy effectively their right to housing. Meanwhile, the report lacks to respond to the Committee's request for figures about the demand for social housing, the average waiting-time for being allocated social housing, the remedies available in the event of excessive waiting time and the rate of satisfaction ensured through the combined public and private social housing supply. It could be mentioned that Lithuanian Department of statistics noted the growth of number of persons applying for the rent of social housing. At the end of 2011 30,484 persons (families) were waiting for the allocation of social housing and this number is 7% higher in comparison with the statistics of 2010<sup>83</sup>.

The Committee in 2011 concluded that the situation in Lithuania is not in conformity with Article 31§1 and 31§2 of the Charter on the grounds that:

- it has not been established that the right to adequate housing is effectively guaranteed;
- insufficient measures were taken by public authorities to improve the standard housing conditions of most Roma in Lithuania;
- it has not been established that progress in reducing homelessness was achieved.

Therefore, national reports of Lithuania were not very informative and did not cover the most problematic aspects of the right to housing: renovation activities, homeless persons, social housing and the Roma People. The provided information disclosed gaps both in regulation and in enforcement of the right to housing.

## Conclusions

1. Effective enjoyment of the right to housing requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right to housing. However, the Charter leaves to the States margin of appreciation in determining the measures to be taken to fulfil their obligations under the European Social Charter.

2. "Adequate housing" means a dwelling which is sanitary (i.e. it possesses all the basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity); structurally secure; not overcrowded and with secure tenure supported by law. The requirements of adequate housing should be applied not only to the dwellings, but to the caravans and stopping places for the Travellers as well.

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83 Rent of social housing and state supported housing credit [interactive]. [accessed on 15-09-2012]. <<http://www.stat.gov.lt/lt/news/view/?id=10617>>.

3. States must put in place procedures to limit the risk of evictions and to ensure that they are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available.

4. The recent Conclusions of the Committee on the right to housing disclosed the inefficiency of the States in application of this right. On the whole, the sub-standard housing conditions of many Roma and their forced evictions were one of the main recurring issues in the last year's Conclusions.

5. The national reports of Lithuania lacked to respond to the Committee's requests and to reveal the real situation regarding renovation activities, homeless persons, social housing and the Roma People. Because of all the gaps in the information supplied, the Committee was unable to assess the real situation of the housing rights in Lithuania. Therefore, the Government of Lithuania should consider the ratification of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, that the Committee could assess the real situation of the application of the right to housing in Lithuania.

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## TEISĖ Į BŪSTĄ EUROPOS SOCIALINIŲ TEISIŲ KOMITETO JURISPRUDENCIJOJE

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**Santrauka.** *Pataisytos Europos socialinės chartijos (toliau – Pataisyta chartija) 31 straipsnyje tiesiogiai įtvirtinta teisė į būstą apsauga. Tačiau pagal šį straipsnį išpareigojimus yra prisiėmusios tik nedidelė dalis valstybių. Todėl likusioms valstybėms kyla pareiga įgyvendinti teisę į būstą užtikrinant tinkamas sąlygas šeimos vystymuisi (Chartijos 16 straipsnis). Straipsnyje analizuojama teisė į būstą, aptariant Europos socialinių teisių komiteto (toliau – Komiteto) jurisprudenciją, kuri atskleidė teisės į būstą tikslą bei turinį, suformulavo „tinkamo būsto“ bei „priverstinių iškeldinimų“ sąvokas bei išplėtojo valstybių išpareigojimų pobūdį ir ribas. Minėtus teisės į būstą aspektus Komitetas analizavo tiek savo sprendimuose, priimtuose išnagrinėjus kolektyvinius skundus, tiek Išvadoje, suformuluotose išanalizavus valstybių pateiktas nacionalines ataskaitas.*

Komitetas pabrėžė, kad valstybės, įgyvendindamos teisę į būstą, privalo imtis tam tikrų teisinių ir praktinių veiksmų, kurie padėtų tinkamai užtikrinti prisiimtus įsipareigojimus. Tačiau Komitetas taip pat pripažino valstybių diskrecijos laisvę pasirinkti, kokių konkrečių veiksmų ar priemonių ji imsis. Komitetas savo jurisprudencijoje pateikia „tinkamo būsto“ išaiškinimą, numatydamas tokiam būstui keliamus kriterijus. Kad būstas būtų pripažintas tinkamu, jis turi atitikti higienos reikalavimus, t. y. turėti būtiniausias patogumas, tokius kaip vanduo, elektra, šildymas, šiukšlių išvežimas, kanalizacija. Būstas taip pat turėtų būti struktūriškai saugus bei neperpildytas, o būsto valdymo teisės užtikrintos įstatymuose. Be to, pabrėžiama, kad tie patys reikalavimai taikomi ne tik namams, bet ir klajoklių karavanams bei jų stovėjimo aikštelėms, kadangi Komitetas ir tokias gyvenamąsias vietas yra pripažinęs būstu.

Europos socialinių teisių komitetas Pataisytos chartijos 31 str. 2 d., numatančios valstybės pareigą mažinti benamystę, taiko ir draudimui neteisėtai iškeldinti asmenis. Komitetas išskeldinimą apibrėžė, kaip „būsto, kuriame asmuo gyveno, atėmimas dėl nemokumo ar neteisėto užėmimo“. Komitetas taip pat išskyrė reikalavimus valstybėms, t. y. išskeldinimai turi būti vykdomi nepažeidžiant asmenų orumo ir suteikiant alternatyvų būstą. Taip pat valstybės teisės aktuose turi būti įtvirtintos išskeldinimo procedūros: teisinė pagalba asmenims, kuriems gresia išskeldinimas arba jau išskeldintiems asmenims, nustatytas protingas ir pagrįstas išėjimo terminas prieš išskeldinimą, draudimas išskeldinimus vykdyti naktį ar žiemos metu, numatyta kompensacija už neteisėtą išskeldinimą. Atkreiptinas dėmesys, kad išskeldinant asmenis iš neteisėtai apgyvendinto būsto, nėra reikalaujama jiems garantuoti alternatyvią apgyvendinimo vietą, tačiau, jei iškeldinti asmenys taps benamiais, tai valstybė tokiu būdu pažeistų įsipareigojimus pagal Pataisytos chartijos 31 str. 2 d.

2011 m. išnagrinėjus valstybių nacionalines ataskaitas buvo priimtos Komiteto išvados dėl teisės į būstą įgyvendinimo. Išvados atskleidė daugelio valstybių nesugebėjimą tinkamai užtikrinti šią teisę. Komitetas pastebė, kad daugiausia pažeidimų kyla dėl netinkamų romų gyvenimo sąlygų bei priverstinių jų išskeldinimų. Ne išimtis ir Lietuvos Respublika. Nors ataskaitoje ir nebuvo atskleista tikroji romų situacija, tačiau Komitetas, remdamasis kitais šaltiniais, atkreipė Lietuvos dėmesį į netinkamas romų gyvenimo sąlygas. Taip pat buvo pasigesta naujausių duomenų apie benamius ir jų apgyvendinimo klausimo sprendimą bei socialinių būstų suteikimo sistemą. Dėl minėtų priežasčių Komitetas pripažino, kad Lietuvos Respublika netinkamai įgyvendina pagal Pataisytą chartiją prisiimtus įsipareigojimus. Todėl rekomenduotina Lietuvos Vyriausybei svarstyti prisijungimo prie Papildomo protokolo dėl kolektyvinių skundų sistemos klausimą.

**Reikšminiai žodžiai:** teisė į būstą, Europos socialinė chartija, Europos socialinių teisių komitetas.

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