|  |  |
| --- | --- |
| C:\Users\SSD2017\Desktop\Logo_E1.PNG |  |

**Written Comments of the Open Society European Policy Institute and the Equal Opportunities Initiative Association Concerning Bulgaria**

**For the Consideration of the United Nations Committee on Civil and Political Rights for its 124 Session (8 October to 2 November 2018)**

**Bulgaria’s Discriminatory Treatment of Roma in the Area of Housing**

September 2018

Contents

[1. EXECUTIVE SUMMARY 3](#_Toc526188611)

[2. FACTS 4](#_Toc526188612)

[2.1. The housing situation of Roma in Bulgaria 4](#_Toc526188613)

[2.2. The Bulgarian legal framework regarding housing 5](#_Toc526188614)

[2.3. Recent research findings regarding demolition practices 7](#_Toc526188615)

[2.4. Mass demolitions of houses in Roma settlements – examples 9](#_Toc526188616)

[3. LEGAL ARGUMENTS 14](#_Toc526188617)

[3.1. Article 26: Bulgarian government bodies discriminate directly on grounds of Roma ethnicity 14](#_Toc526188618)

[3.2. Article 26: Bulgarian government bodies discriminate indirectly on grounds of Roma ethnicity 15](#_Toc526188619)

[3.3. Articles 2, 26 and 17: Bulgarian law fails to ensure effective remedies for race discrimination 17](#_Toc526188620)

[3.4. Article 17: Bulgarian law fails to protect from arbitrary interference with the home. 18](#_Toc526188621)

[4. CONCLUSIONS AND RECOMMENDATIONS 19](#_Toc526188622)

[4.1. General Conclusions 19](#_Toc526188623)

[4.2. Recommendations 20](#_Toc526188624)

# EXECUTIVE SUMMARY

Open Society European Policy Institute, part of the Open Society Foundations, and the Equal Opportunities Initiative Association (‘EOIA’), а Bulgarian non-governmental organization, submit their observations related to the implementation of the ICCPR (the Covenant) in the area of housing for the period 2012 - 2018. The OSEPI and the EOIA are concerned at the lack of progress made by Bulgarian authorities since CCPR issued its concluding observations on Bulgaria in 2011 with specific reference to the committee’s recommendations concerning the situation of Roma in the area of housing. Bulgarian authorities continue to target Romani communities for forced evictions, and the de facto segregation of Roma continues in all areas of life, in particular in the spheres of residential segregation. The submission sets out evidence that Bulgarian government bodies discriminate on grounds of Roma ethnicity in the area of housing rights and that Bulgaria does not comply with the standards of the Covenant.

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

The submission:

* provides detailed new evidence showing the systematic practice of Bulgarian government bodies to target Roma for eviction and demolition of their only homes, violating the prohibition on racial and ethnic discrimination in Articles 26 and 27 of the Covenant.
* shows that Bulgarian legislation fails to ensure that the Bulgarian courts have jurisdiction to consider objections to eviction and demolition on grounds of racial and ethnic discrimination are admitted by courts, in violation of Articles 2 and 26, and of the requirement to provide an effective remedy (article 2) and to prohibit arbitrary interference with the home (article 17).
* shows that Bulgarian legislation fails to ensure that Government bodies and courts give individual consideration to the necessity for and proportionality of forced demolitions and evictions, in violation of Articles 2, 17 and 26 of the Covenant.
* In light of the new evidence set out in this analysis and the lack of adequate and effective response by the Bulgarian authorities at the time of writing, recommendations are made on how to align the legislative framework and administrative practices in Bulgaria with the standards of the Covenant.

# FACTS

## The housing situation of Roma in Bulgaria

Persons from the Roma ethnic group live in all areas of Bulgaria. According to the last national census (2011), Roma in Bulgaria constitute 4.9 percent of the population.[[1]](#footnote-1) According to unofficial data, the percentage of Roma in Bulgaria exceeds 10% of the total population.[[2]](#footnote-2) Roma are likely to be undercounted in national censuses, as, due to the widespread discrimination[[3]](#footnote-3) they face, many prefer not to identify themselves as such. Roma are the most disadvantaged minority group in Bulgaria in all areas of public life. They live in segregated, sub-standard and unsecured settlements, and are precluded from legally registering their housing.

The housing for predominantly Roma communities is of significantly poorer quality than housing in communities, which are predominantly ethnic Bulgarians or other ethnic groups. This housing situation has led to serious social exclusion, and is connected to other problems including: poor infrastructure (or the absence of infrastructure); poor transport links; low levels of access to public services (electricity, water supply, sewerage, street lighting, refuse); absence of official plans and opportunities for legal construction. The living space per capita is significantly lower in Roma neighbourhoods than for the rest of the population. The neighbourhoods are dense in construction and occupation; large groups of family members are required to live together, despite the downward trend in birth rate within the Roma community. As a result, the average living space for a Roma family is approximately 10 square metres compared with almost 25 square meters for the ethnic Bulgarian population.[[4]](#footnote-4)

These factors mean that Roma as an ethnic group have been systemically compelled (directly or indirectly) to reside in housing without legal basis, and therefore in a state of permanent high insecurity. The existing Bulgarian legal framework and the policies, including the National Roma Integration Strategy 2012-2020, and actions of central and local government fail to facilitate or aim to achieve an end to this situation.

There are very limited possibilities to legalize housing, which remain unused by the proportion of Roma who might benefit. In most areas, local administrations do not seek to inform or assist Roma to use procedures for legalization of residential status, while Roma lack information on these procedures as well as confidence in law and state structures.

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

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

## The Bulgarian legal framework regarding housing

*Legislation related to housing*

The Constitution states that the home shall be inviolable (Article 33(1)). However, the right to adequate housing is not guaranteed at statutory level. The Territorial Organisation Act, [[6]](#footnote-6) (‘the TOA’), is the main legislation governing planning. The TOA requires demolition of all illegally constructions and does not distinguish between residential houses and non-residential constructions.[[7]](#footnote-7) The TOA does not contain any explicit prohibition on discrimination.

Article 6 of the Bulgarian Constitution provides “(1) All persons are born free and equal in dignity and rights. (2) All citizens shall be equal before the law. Neither abridgement of rights nor any privileges whatsoever shall be admissible on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliation, personal and social status, or property status.” The Protection against Discrimination Act (‘PADA’) explicitly prohibits discrimination on all protected grounds (including ethnic origin) in the spheres of education, employment access to and supply of goods and services. However, PADA does not explicitly refer to housing and has no provisions referring to eviction or demolition.

The law makes it impossible to regularize many homes and requires demolition. The law determines which buildings are illegal.[[8]](#footnote-8) There are opportunities for legalization of illegal constructions, but this applies only to those built before 31 March 2001.[[9]](#footnote-9)Any illegal construction built after 31 March 2001 cannot be legalised and is subject to demolition. This applies regardless of its use, so applies to residential accommodation. Bulgarian law allows for some illegal constructions built before 31 March 2001 to be legalised (accorded the status of ‘tolerable constructions’) but only by application of the individual concerned and not *ex officio* or automatically. However, legalisation is not available for constructions built before 31 March 2001 where there was any violation of the construction requirements, no matter how minor. For illegal buildings which cannot be legalised – including all those built after 31 March 2001 - the sanction is demolition. The penalty is not affected by the gravity of the violation, nor the use of the construction: national law requires demolition.

*Court practice in cases of illegal construction*

Judicial review in cases of forced demolitions is available at two key points in the demolition process: first, when an order is issued and later, if the order is executed. At both points, the administrative courts have jurisdiction. A first instance administrative court ruling about a demolition order can be reviewed by the Supreme Administrative Court (‘SAC’), but first instance court rulings on execution are final.[[10]](#footnote-10)

As to demolition orders, over the last seven years the SAC has consistently interpreted Bulgarian laws requiring demolition of illegal constructions as conferring no discretion on administrative or judicial authorities not to issue a demolition order. The SAC has ruled that a demolition order must be issued for a construction built without a permit, even if it is not in breach of the local zoning plan or other legal requirements. [[11]](#footnote-11) The SAC has ruled that administrative authorities have no discretion on issue of demolition orders of illegally constructed buildings, and that the only lawful course of action open to the court in such cases is to uphold the order. [[12]](#footnote-12)These rulings preclude application of the Bulgarian law requiring administrative authorities to adhere to the principle of proportionality,[[13]](#footnote-13) since this applies only where the authority has a discretion.[[14]](#footnote-14) The SAC has ruled that the authorities are not obliged to consider and assess the harm caused to the persons affected by a demolition order.[[15]](#footnote-15)

As to the execution of demolition orders for illegal constructions, the courts do not maintain consistent practice. First, there are limitations on the scope of judicial review as it does not apply to any action undertaken during the execution procedure of a demolition order.[[16]](#footnote-16) Some judgments do not recognise the standing of those who are not addressees of the demolition order and whose property rights would not be affected by its execution.[[17]](#footnote-17) As to the question of applicability of the principle of proportionality, some judges have found it to be non-applicable and limited judicial review to procedural issues. [[18]](#footnote-18) Others examine the matter by reference to the principle of proportionality[[19]](#footnote-19), but even where the building is the applicants’ sole residence, the claim is dismissed on the grounds that there are no other means of combatting illegal construction[[20]](#footnote-20). There is no practice from the Commission for Protection against Discrimination (Bulgaria’s national equality body) on house demolition cases as it is not considered competent to suspend or quash the execution of demolition orders.

## Recent research findings regarding demolition practices

In 2016, EOIA conducted a survey of the practice from 2010-2016 of Bulgarian administrative authorities in issuing and executing demolition orders against the residential homes of Roma (“the EOIA survey”). This survey gathered information from central and municipal authorities, from Roma communities affected and from other reliable sources.

Bulgarian law provides for two separate administrative frameworks as regards the removal of illegal constructions. As set out in the TOA*,* before November 2012, control of all illegal constructions was centralised in one body, namely the National Agency on Construction Control (‘the NACC’). From November 2012, responsibility for residential constructions[[21]](#footnote-21) was transferred to Bulgarian mayors. However, responsibility for unexecuted demolition orders issued under the old regime remains with the NACC, which also operates through the Regional Agency on Construction Control (‘the RACC’).

*Removal of illegal constructions by the NACC*

To promote transparency in respect of the NACC’s actions to remove illegal constructions, on 10 December 2010, a public register of enforced orders was created. This register is maintained online and updated monthly.[[22]](#footnote-22) In February 2016, the EOIA survey analysed all NACC decisions on illegal constructions in Bulgaria available on the public register. The public register contains information on the number of orders, the type of the construction, the location of the construction, actions taken to date regarding the implementation of the order and the date of demolition of the construction (insofar as demolition has taken place).

The EOIA survey showed that, as of February 2016, there were 6080 demolition orders of which 4530 had been executed.[[23]](#footnote-23) 514 of these demolition orders had been issued against residential buildings, with Roma owned buildings constituting 500 (97%) of these. Of the orders against residential buildings, 201 had already been executed. In these cases the Roma – including children and vulnerable family members – were not provided with any alternative accommodation, and were left homeless as a result. The demolitions in the Roma settlements took place *en masse*. The Roma were not given notice of the exact date of execution of the orders and most of them were not able to remove their furniture and personal belongings. Some of them also lost identity and other personal documents and were then not in a position to claim new identity documents, as they lack address registration since the buildings have been demolished.

*Removal of illegal constructions by mayors*

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

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

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

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

An analysis of the information received from the mayors shows that many of the demolition orders were issued in response to complaints made by individuals. This practice of relying upon individual complaints, rather than a systematic and balanced approach, empowers prejudiced and discriminatory individuals and mayors and leads to disproportionate use of these powers against Roma owned houses.

## Mass demolitions of houses in Roma settlements – examples

*The Gurmen case*

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

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

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

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

In May 2015, there was a violent disturbance between groups of Roma and Bulgarian people. After the incident, local ethnic Bulgarians formed an “Initiative Committee” which demanded that the municipality demolish the unlawfully built Roma houses and expel the Roma from the municipality[[24]](#footnote-24). There were daily anti-Roma demonstrations[[25]](#footnote-25) outside the town hall.

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

The demolition of two more houses was planned for 13 July 2015. The two families affected were in a desperate situation. They were extremely poor and did not have alternative housing. Both families had children under the age of 18, two of whom had severe disabilities, and the mother of one of the families was 8 months pregnant. The 12 family members, represented by EOIA, filed a request with the European Court of Human Rights (‘ECtHR’) for interim measures under Article 39 of the Rules of the Court[[26]](#footnote-26). The ECtHR granted the Rule 39 indication, addressing a letter to the Bulgarian Government requiring the suspension of demolition proceedings and asking whether alternative accommodation had been secured for the vulnerable family members.

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

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

*The Bourgas case*

In 2009, the houses of 18 Roma families of the Gorno Ezerovo Roma settlement in Bourgas were forcibly demolished[[27]](#footnote-27). The Roma families, including children and vulnerable adults were left homeless. No alternative accommodation was proposed or secured. Another 17 Roma families of Gorno Ezerovo and 21 Roma families of the Meden Rudnik Roma settlement in Bourgas were served with demolition orders. Between 2009 and 2015, many of these Roma houses were demolished and their occupants left without alternative accommodation. The demolition orders in these cases had been issued by the NACC. Due to the change in the law set out above, from 2012, the Bourgas municipality became the authority responsible for dealing with unlawful constructions. According to the EOIA survey, between 2012 and March 2016, the Bourgas municipality issued 200 demolition orders, of which 111 concerned residential buildings. Of these 111 orders, 105 were issued against Roma homes, while the remaining six were against second homes owned by ethnic Bulgarians (but are second homes).

*The Varna case*

Masada’s dere is a Roma settlement in Varna municipality, Mladost-sub-district. Around 1000 people live there on a permanent basis, known by the local authorities. Most residents were born there and many live in houses they have built themselves. Many houses were built more than

20 years ago on land abandoned by the owners or on municipal land. This is a close-knit community: neighbours who have known each other their whole lives live side-by-side, and the children go to the local school in Varna.

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

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

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

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

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

*The Maglizh case*

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

*The Stara Zagora case*

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

*The Sofia case*

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

# LEGAL ARGUMENTS

## Article 26: Bulgarian government bodies discriminate directly on grounds of Roma ethnicity

Article 26 of the Covenant requires Bulgaria to guarantee equal and effective protection against discrimination on any ground, such as race. In General Comment No. 18, the Committee noted that “the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing”, para. 7. The Committee has also noted that “article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”, para. 12.

This Committee found, in its most recent concluding observations, that the “*on-going widespread discrimination suffered by the Roma population, especially in terms of access to … housing …*,” is deeply concerning.[[28]](#footnote-28)

The evidence set out above shows that Bulgarian government bodies systematically use government powers of eviction and demolition against Roma on grounds of the race/ethnicity of those Roma[[29]](#footnote-29).

The research findings set out in Section II show how the Bulgarian government bodies – the NACC and municipalities – use their powers to order eviction from, and demolition of, buildings occupied as sole homes, on grounds of irregular construction or lack of ownership of land. The study found that these powers are almost entirely directed at Roma people. While Roma constitute at most 10% of the Bulgarian population, 90% of all such orders issued by NACC were directed at Roma people; and 90% of all such orders issued by the municipalities that responded were directed at Roma people.

This statistical evidence shows a powerful case for inferring that the orders were adopted and executed because of the Roma ethnicity of the occupants. There is also direct evidence that ethnicity was the reason: both NACC and municipalities acted on demands by anti- Roma campaigns in Gurmen and Varna, as set out above.

The statistics have been published and provided to the Bulgarian Government, including as a submission to the European Commission under the Race Equality Directive[[30]](#footnote-30). The Government has not provided an explanation for the statistics showing that these are not caused by discriminatory decisions of government bodies.

Under international law, where a prima facie case of discrimination by government bodies has been shown, it is for the state to disprove discrimination. This is shown by the case-law of the European Court of Human Rights[[31]](#footnote-31), the Inter-American Court of Human Rights[[32]](#footnote-32), and the Court of Justice of the European Union[[33]](#footnote-33). As the Inter-American Court of Human Rights said, “this Court acknowledges the difficulty for those who are the object of discrimination to prove racial prejudice, so that it agrees with the European Court that, in certain cases of human rights violations motivated by discrimination, the burden of proof falls on the State, which controls the means to clarify incidents that took place on its territory”.

In the absence of evidence showing a convincing explanation for the decisions which has no basis in the ethnicity of the subjects, it must be concluded that the Bulgarian government bodies concerned are directly discriminating on grounds of Roma origin, contrary to Article 26 of the Covenant.

We also conclude that the recommendations made by the Human Rights Committee on forced evictions of Roma in the concluding observations of 2011 (CCPR/C/BGR/CO/3) have not been implemented by the Bulgarian Government.

## Article 26: Bulgarian government bodies discriminate indirectly on grounds of Roma ethnicity

If the Bulgarian Government were to prove that, in some or all respects, there is not direct discrimination, the practices shown above would still constitute unlawful indirect discrimination.

As the Committee noted in *Althammer et al. v. Austria*, Communication No. 998/2001, “a violation of article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate. However, such indirect discrimination can only be said to be based on the grounds enumerated in Article 26 of the Covenant if the detrimental effects of a rule or decision exclusively or disproportionally affect persons having a particular race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”[[34]](#footnote-34)

These practices of evictions and demolitions are not in fact shown to achieve the legitimate aim of eliminating sub-standard housing, nor is there any other available legitimate aim. The Committee’s decision in *Naidenova v Bulgaria* (cited above), concerned the eviction of Roma people from municipal land. The Committee considered “it highly pertinent that, for several decades the State party’s authorities did not move to dislodge the authors or their ancestors and, therefore, de facto tolerated the presence of the informal Dobri Jeliazkov community on municipal land. Moreover, despite the issuance of an expropriation order in 1974, the community has remained at its present location for over thirty years thereafter. While the informal occupants cannot claim an entitlement to remain indefinitely, the authorities’ inactivity has resulted in the authors’ developing strong links with the Dobri Jeliazkov site and building a community life there. In the Committee’s view, these facts should have been taken into consideration in deciding whether and how to proceed with regard to the authors’ homes built on municipal land.”

There are other appropriate and less restrictive measures to achieve the aims in question. As the Committee has noted “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population.”, General Comment No 18. para. 10.

The Bulgarian Government can and should adopt legislative, administrative and practical measures to facilitate the regularisation of irregular properties, through accessible schemes for acquiring ownership, and for adapting or rebuilding homes to meet planning standards. If pursued systematically and for sufficient time, this would bring about an end to these violations of the Covenant.

This course has been urged on Bulgaria by the Council of Europe, following the 2005 decision of the European Committee of Social Rights that the practices of eviction are a violation of the European Social Charter prohibition on discrimination[[35]](#footnote-35). The Bulgarian Government responded in 2007 stating that it would introduce legislation “to make it easier to legalise existing buildings”[[36]](#footnote-36). However, the law did not change. In 2011, the Committee reviewed Bulgaria’s periodic report under Article 16 of the Charter, concluding that “as no relevant information appears in these documents, in order to assess whether the situation is in full conformity with Article 16 of the Charter as regards adequate housing of Roma families and proper amenities, as well as legal security of tenure and conditions accompanying eviction of Roma families, the Committee . . . considers that the situation is still not in conformity with the Charter on this point.”[[37]](#footnote-37)

The disadvantages caused by the practice at issue are also disproportionate to the aims pursued and unduly prejudice the legitimate interests of the persons concerned.

Bulgarian law makes no clear provision for administrative or judicial authorities to consider the proportionality of demolition orders or to take into account the personal circumstances of the families to be evicted or the consequences for them of eviction and demolition. The responsible Bulgarian Government bodies and Bulgarian courts routinely refuse to take into account such matters when deciding whether to make an eviction order. This means that no proper consideration is given to the effects of the order on the Roma occupants’ right to respect for their home and to their right to social and housing assistance. It follows that the Bulgarian Government cannot objectively justify any such indirect discrimination.

## Articles 2, 26 and 17: Bulgarian law fails to ensure effective remedies for race discrimination

The Bulgarian Government is required by Article 2 of the Covenant- ‘*To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy*.’

This requires that Bulgarian law provides an effective remedy for violations of the prohibition on discrimination on grounds of race in Article 26 of the Covenant.

Bulgarian legislation does not provide this effective remedy as regards remedies for eviction and demolition proceedings. The legislation governing these does not explicitly provide that the occupant may raise a claim of racial discrimination. Courts routinely refuse to admit arguments of discrimination on grounds of ethnicity, while Bulgarian government bodies contest the power of courts hearing such proceedings to admit such arguments. Since the Bulgarian courts consider that objections to eviction and demolition can only be raised in proceedings concerning demolition orders and execution of them, the existence of the right to bring separate proceedings under PADA is not an effective remedy for ethnic discrimination in relation to eviction or demolition.

This report shows the consistent practice of Bulgarian government bodies and courts to violate the prohibition on discrimination on ethnic grounds in respect of the provision of housing. In light of this, the failure of the Bulgarian Government to make explicit provision in national law applying the principle of equal treatment to housing is a failure to properly respect Art 2 of the Covenant.

This also constitutes a violation of Article 17 of the Covenant, since it fails to protect Roma people arbitrary and unlawful interference with their home.

## Article 17: Bulgarian law fails to protect from arbitrary interference with the home.

Article 17 of the Covenant requires the Bulgarian Government to ensure that “*no-one is subjected to arbitrary or unlawful interference with his privacy*”. In its 2012 decision in *Naidenova v Bulgaria* (cited above) the Committee found a violation of Article 17 of the Covenant because Bulgarian law did not require the government bodies and courts to have regard to the interests of the occupants or the reasonableness of eviction: “The eviction order of 24 July 2006 was based on section 65 of the Municipal Property Act, under which persons unlawfully living on municipal land can be removed regardless of any special circumstances, such as decades-old community life, or possible consequences, such as homelessness, and in the absence of any pressing need to change the status quo. In other words, under the relevant domestic law, the municipal authorities and the State party’s courts were not required to have regard to the various interests involved or to consider the reasonableness of the authors’ immediate eviction.”, para. 14.6.

As shown above, despite six years having passed since the Naidenova decision, the Bulgarian Government has failed to bring Bulgarian law and practice into compliance with Article 17 of the Convention.

# CONCLUSIONS AND RECOMMENDATIONS

## General Conclusions

As a result of the conducted research, the following main conclusions can be made:

A large portion of the Roma population is faced with a constant risk of becoming homeless.

The Roma population in Bulgaria amounts to more than 10% of the total population of the country and most Roma live in segregated neighbourhoods, which are unregulated and chaotically built-up without respect for any procedural rules. There is no accurate statistics regarding the number of illegal houses in the Roma segregated neighbourhoods, but it is considered that they constitute at least one quarter of all houses in these neighbourhoods. This places a considerable part of the Roma population under constant risk of becoming homeless, as its only homes are under the threat of demolition.

In many cases, due to the magnitude of the problem and the need for serious investments, local authorities are unable to come up with an adequate solution to the problem.

There are no adequate opportunities for alternative accommodation for the affected families, due to insufficiency or lack of municipal social housing. For this reason, demolition orders affecting illegal housing in Roma neighbourhoods, issued in response to requests from citizens, are not enforced for years as the municipalities cannot provide adequate alternatives for accommodation. However, once issued, these orders have no expiration date and can be activated during election campaigns or when there is an increasing interest to invest in the relevant land.

The reviewed administrative practices of demolition of illegal houses in Roma neighbourhoods are in violation of the international legal provisions for non-discrimination, adopted by Bulgaria.

In the period 2010-2016, the orders to demolish illegal housing concerned primarily Roma people’s only homes. Their enforcement was not preceded by discussion of possible reasonable alternatives and the affected families were not offered adequate alternative accommodation. This leads to serious repercussion for the affected families. They are unable to register at a new permanent address, as they are homeless; and if they lack a permanent address, they cannot issue an identity paper, which in turn deprives them of access to basic rights and services.

The existing practices for demolition of illegal Roma houses in segregated Roma neighbourhoods do not contribute for finding a sustainable solution to the Roma housing situation and are in conflict with the long-term Roma integration strategy, adopted by the country.

Due to the fact that the affected families do not settle elsewhere and remain homeless, by default they remain in the same neighbourhoods – at first, they stay with relatives and several weeks or months later, they build new illegal houses on the place where the previous ones stood, or within close proximity. Therefore, the state and/or local municipalities only spend tax money on the demolitions in vain, and the housing situation remains disastrous. Moreover, the manner, in which the evictions of Roma families out of their houses are conducted, is in violation of the principles and norms adopted by the National Roma Integration Strategy of the Republic of Bulgaria (NRISRB).

A serious obstacle to resolving the problem with illegal housing in segregated Roma neighbourhoods is the delay in the implementation of most of the objectives under the third policy priority of NRISRB – «improvement of living conditions»

A major problem is the lack of visible outcomes under the objective for «improvement and amendment of legislation concerning housing conditions» both for creating opportunities for the legalization of sound constructions, as well as for synchronizing the existing legislation regulating illegal construction with the adopted international legal norms and principles for non-discrimination, ratified by Bulgaria.

Another major problem is the failure to implement the envisaged objective to adopt a systematic communication plan for informing the public regarding Roma integration policies.

The lack of systematic communication on the part of central and local administrations, both with the affected parties and with the majority of the population, exacerbates interethnic tension. It affirms anti-Roma sentiments among the majority population and complete lack of faith in institutions among the Roma community. Most of the orders for mass demolition of Roma houses were enforced in the period 2012-2016 when there was a clear increase in anti-Roma actions and conflicts, especially during 2014-2015. The passiveness of the responsible central administration institutions to take a stand in relation to the growing number of conflicts and anti-Roma actions, as well as the lack of awareness raising and information campaigns about the necessity for Roma integration and its benefit to the entire society in practice hamper the effective implementation of the NRISRB.

## Recommendations

In order to overcome this situation, the following recommendations are put forward:

1. Creating an expert working group within the Ministry of Regional Development and Public Works, which should propose, in foreseeable timelines, adequate legislative amendment, allowing for a/ the legalization of constructively-stable buildings for residential use, which constitute only homes, and b/ for differentiation of the rules concerning the treatment of illegally constructed buildings for residential and non-residential use. This group should use and further develop the already made proposals of the previous sub-group on housing within the former inter-institutional group for legislative amendments created on the initiative of the NCEDII in 2012. There needs to be a clear commitment of the responsible institutions to finalize the suggestions for needed amendments and propose them to Parliament.
2. Taking measures to incorporate into Bulgarian legislation the international legal framework for protection of citizens in cases of compulsory demolitions and/or evictions from only homes.
3. Imposing a Moratorium on the enforcement of issued orders to demolish only homes until the proposed legislative amendments for legalization and international legal protection have been developed and adopted.
4. Stricter control and proactive behaviour on the part of municipalities towards preventing new illegal construction in isolated neighbourhoods. For this purpose, it is necessary to develop, with the assistance of Roma and pro-Roma non-governmental organisations, an approach that would ensure the awareness and involvement of Roma community (for instance, by creating initiative committees in the Roma neighbourhoods).
5. Mid-term assessment of the progress of implementation of the NRISRB’s priority of improving housing conditions, which should be carried out no later than the beginning of 2018 in consultation with non-governmental organisations.

The purpose of this assessment is to review what has been achieved with respect to the different objectives in the first two years of implementation of the 2015-2020 strategy and to see in what worked well and what did not and why, where there have been delays and what are the reasons for that, to what extent the lack of resources blocks the implementation of the set objectives, and what additional resources can be provided to help with advancement of envisaged measures. It is also important to analyse where there is a need to develop mid-term and long-term outcome indicators, which will assist develop a system of results based monitoring of achieved outcomes towards desired changes, rather than only of completed activities.

In this respect, the following aspects of the NRIS and the corresponding National implementation plan are especially important for the mid-term assessment:

* 1. Detailed mapping of the areas with building constructions in Roma neighbourhoods.
  2. Identification of the buildings, designed for residential use, which are stable in their construction.
  3. Capacity of local authorities to take measures to raise funds for the regulation of neighbourhoods with concentrated Roma population which should take into consideration existing construction, to the extent possible.
  4. Designation of public land for residential use, which the Roma families will be able to purchase, and provision of support for the families with respect to the construction of buildings in accordance with construction rules and norms.
  5. Taking measures to construct social housing for families that do not have the resources to purchase land and/or a home and to settle them in.

1. Development of an adequate National Communication Strategy to change the negative stereotypes towards Roma, with a particular action plan regarding key political aspects, including housing policy, as well as envisaged financial resources for its implementation and clear mid-term and long-term success indicators.
2. Adoption of measures to enforce the decisions of the European Court of Human Rights issued against Bulgaria and concerning the protection of citizens of Roma ethnic origin in cases of threats to remove their only homes.

Open Society European Policy Institute contact on Roma and Social Inclusion – Violeta Naydenova, Senior Policy Analyst: [violeta.naydenova@opensocietyfoundations.org](mailto:violeta.naydenova@opensocietyfoundations.org)

Open Society Justice Initiative contact on legal analysis - Simon Cox, Legal Officer: [simon.cox@opensocietyfoundations.org](file:///C:\Users\nkazatchkine\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\JE0TAUEX\simon.cox@opensocietyfoundations.org)

Equal Opportunities Initiative Association contact on legal programs – Daniela Mihaylova, Legal expert: [equal\_opportunities@abv.bg](mailto:equal_opportunities@abv.bg)



The Open Society European Policy Institute (OSEPI) is the EU policy arm of the Open Society Foundations.

We work to influence and inform EU policies, funding and external action to promote open societies.

OSEPI enriches EU policy debates with evidence, argument and recommendations drawn from the work of the Open Society Foundations around the world and from its own research.

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable and open to the participation of all people.

1. See Bulgarian National Census at <http://www.nsi.bg/census2011/indexen.php> [↑](#footnote-ref-1)
2. European Commission at [http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-](http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national_en.htm) [strategy/national\_en.htm](http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national_en.htm) [↑](#footnote-ref-2)
3. 4 EU MIDIS-II at <http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf> [↑](#footnote-ref-3)
4. See National Roma Integration Strategy of the Republic of Bulgaria 2012 – 2020, section II. Available in English at [http://www.nccedi.government.bg/page.php?category=125&id=1740](http://www.nccedi.government.bg/page.php?category=125&amp;id=1740) (accessed 18 November 2016). [↑](#footnote-ref-4)
5. According to Article 92 of the Property Law. [↑](#footnote-ref-5)
6. Published in State Gazette (‘SG’) No [1](http://web6.ciela.net/Document?documentId=2135163904&amp;dbId=0&amp;edition=0) of 2 January 2001, last amended: SG No 15 with effect from 23 February 2016. The ECtHR analysed parts of this law in *Ivanova & Cherkezov v Bulgaria*, ECtHR judgment of 21 April 2016, §25-29. [↑](#footnote-ref-6)
7. this is inherited from previous legislation. See §4.2, of [Equal Opportunities Initiative’s report: “Analysis of the Legal Framework Concerning Demolition of Unlawful Buildings and the Practice of Imposing the Framework in Bulgaria with the Purposes of](https://dokumen.tips/documents/violations-of-eu-law-and-fundamental-rights-open-of-eu-law-and-fundamental.html)

   [Identification of Compliance with the European Union Law concerning Protection against Discrimination based on Ethnic Origin”](https://dokumen.tips/documents/violations-of-eu-law-and-fundamental-rights-open-of-eu-law-and-fundamental.html) (“Analysis of Legal Framework Report”). [↑](#footnote-ref-7)
8. Article 225, para 2 of the TOA. See detailed description and analysis in Analysis of Legal Framework Report §4.4. [↑](#footnote-ref-8)
9. § 184, para 1 the TOA. [↑](#footnote-ref-9)
10. The law on execution of demolition orders was considered by the ECtHR in *Ivanova & Cherkezov v Bulgaria*, judgment of 21 April 2016, §31-40. [↑](#footnote-ref-10)
11. See Decision No 4726/9.04.2009, case No 14546/2008, SAC, II Division; Decision No 1930/23.02.2015, case No 75/2015, SAC, II Division. [↑](#footnote-ref-11)
12. See, e.g., Decision No 13030/04.11.2009, case No 7857/2009, SAC, II Division; Decision No 942/27.01.2015, case No 7908/2014, SAC,

    II Division. [↑](#footnote-ref-12)
13. As provided under Article 6 of the Administrative Procedure Code (2006). [↑](#footnote-ref-13)
14. See Decision No 4035/22.03.2013, case No 632/2013, SAC, II Division; Decision No 15733/27.11.2013, case No 9665/2013 of SAC, II

    Division; and Decision No 1876/11.02.2014, case No 12967/2013, SАС, II Division. But see calls from the Ombudsman of the Bulgarian Republic for authorities to act proportionately, quoted by the ECtHR in *Ivanova & Cherkezov v Bulgaria*, judgment of 21 April 2016, §41-43. Available at <http://hudoc.echr.coe.int/eng/?i=001-162117> [↑](#footnote-ref-14)
15. Decision No 13426/10.11.2014, case No 10090/ 2014, SAC, II Division. [↑](#footnote-ref-15)
16. For example, an application for judicial review of a notice for voluntary execution is inadmissible: see Decision No

    2433/02.03.2016, case No 2334/2016 SAC, I panel; Decision No 2165/25.02.2016, case No 1684/2016 SAC, II Division; Decision No 13664/15.12.2015, case No 1684/2016 SAC, II Division. Applicants also cannot challenge decisions on the extension of the period for removal of residential buildings: See Decision No 1099/03.02.2016, case No 14261/2015 SAC, II panel; Decision No 1004/01.02.2016, case No 14276/2015 SAC, II Division. [↑](#footnote-ref-16)
17. See, e.g., Decision No 7946/16.06.2009, case No 3935/2009, SAC, II Division. [↑](#footnote-ref-17)
18. See, e.g., Decision No 06.03.2015, case No 47/2015, Administrative court in Haskovo. [↑](#footnote-ref-18)
19. As provided under Article 6 of the Administrative Procedure Code and Article 8 of the European Convention of Human Rights. [↑](#footnote-ref-19)
20. See Decision No 5/06.01.2016, case No 112/2015, Administrative court in Lovech, and Decision No 7/13.01.2016, case No 156/2015, Administrative court in Lovech; Decision No 749/22.03.2013, case No 911/2013, Administrative court in Varna; Decision No 1782/04.07.2013, case No 1650/2013, Administrative court in Varna; Decision No 929/17.04.2014, case No 911/2013, Administrative court in Varna. [↑](#footnote-ref-20)
21. categories 4 to 6 under the TOA [↑](#footnote-ref-21)
22. See [http://www.dnsk.mrrb.government.bg](http://www.dnsk.mrrb.government.bg/) [↑](#footnote-ref-22)
23. See [http://www.mrrb.government.bg/?controller=news&id=7227](http://www.mrrb.government.bg/?controller=news&amp;id=7227) (accessed 18 November 2016). [↑](#footnote-ref-23)
24. Bulgaria tensions lead to Roma home demolitions, BBC: <http://www.bbc.com/news/world-europe-33597660> [↑](#footnote-ref-24)
25. Bulgaria's Garmen Braces for Massive anti-Roma Protest, Novinite: <http://www.novinite.com/articles/168825/Bulgaria's+Garmen+Braces+for+Massive+anti-Roma+Protest> [↑](#footnote-ref-25)
26. Aydarov v Others v Bulgaria (App no. 33586/15). On 27 April 2016, the ECtHR communicated the case to the Bulgarian Government. [↑](#footnote-ref-26)
27. Forced evictions of Roma, <https://www.ecoi.net/file_upload/1930_1303998236_cohre-eoa-bulgaria100.pdf> [↑](#footnote-ref-27)
28. www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-BGR-CO-3.doc [↑](#footnote-ref-28)
29. This evidence was compiled after Human Rights Committee’s decision in Naidenova v Bulgaria, 30 October 2012, which found that claims of discrimination in that case had not been substantiated: para. 13.6. [↑](#footnote-ref-29)
30. In February 2017 by the Equal Opportunities Association, Open Society Justice Initiative and OSEPI, see <https://www.opensocietyfoundations.org/briefing-papers/memorandum-violations-eu-law-and-fundamental-rights-bulgaria-s-discriminatory> [↑](#footnote-ref-30)
31. European Court of Human Rights, *D.H. and others v. Czech Republic*, Judgment of 13 November 2007, paras. 177-179 and 188-195. [↑](#footnote-ref-31)
32. Inter-American Court of Human Rights, *Nadege Dorzema and others v Dominican Republic*, Judgment of 24 October 2012, para. 229. [↑](#footnote-ref-32)
33. *CHEZ v Nikolova (C-83/14)*, CJEU judgment of 16 July 2015, § 85. [↑](#footnote-ref-33)
34. The Committee’s footnote stated: “See the Committee's general comment No. 18 on non-discrimination and the Committee's Views adopted on 19 July 1995 in case No. 516/1992 (Simunek et al. v. the Czech Republic)” [↑](#footnote-ref-34)
35. Complaint No 31/2005, *European Roma Rights Center v Bulgaria* [↑](#footnote-ref-35)
36. Appendix to Resolution CM/ResChS(2007)2 on Collective Complaint No. 31/2005 *European Roma Rights Centre v Bulgaria* <http://hudoc.esc.coe.int/eng?i=reschs-2007-2-en> [↑](#footnote-ref-36)
37. *CHEZ v Nikolova* (cited above), §120, 123. [↑](#footnote-ref-37)