

TILBURG UNIVERSITY

**COMPLIANCE OF THE SERBIAN LEGISLATION IN  
RESPECT OF FORCED EVICTIONS WITH  
INTERNATIONAL LEGAL STANDARDS: THE PLIGHT  
OF ROMA PEOPLE**

Miljan Jelić  
2016

Master Thesis  
LLM International and European Public Law – Human Rights Law  
Department of International and European Public Law  
Tilburg Law School  
Supervisor: mr.dr. A.K. Meijknecht

## ABSTRACT

Roma are among the most disadvantaged social groups in Serbian society. They are constantly enduring discrimination in the areas of employment, healthcare and education. Nevertheless, one of the most important issues that Roma population in Serbia has been faced with is the problem of forced evictions. This problem disproportionately affects Roma and it is even more facilitated due to the neoliberal market reforms and colossal gentrification plans that change the urban landscape of Belgrade. Therefore, the purpose of this work is to examine to what extent Serbian legislation is compliant with the international legal framework in respect of forced evictions. Naturally, this question follows another problem that will be briefly pointed out in this work, and that is the issue of a democratic deficit in Serbia as an issue that is inextricably linked to the problem of forced evictions. In order to conduct this research, national legislation will be put in the context of international human rights law in order to shed light on these questions. In order to reach the conclusion on this topic, this master thesis will firstly describe factual background on the living conditions of Roma in Serbia. Secondly, it will focus also on the international legal framework on forced evictions. Thirdly, it will depict national legislation in this respect in order to compare it to the international legal safeguards on forced evictions. Finally, it will pose some suggestions in which direction relevant legislation should be changed.

## **LIST OF ABBREVIATIONS AND ACRONYMS:**

CE – Council of Europe;

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women;

CESCR – Committee on Economic, Social and Cultural Rights;

CRC – Convention on the Right of the Child;

EBRD- European Bank for Reconstruction and Development;

ECHR - European Convention of Human Rights;

ECtHR – European Court of Human Rights;

EIB- European Investment Bank;

ESC – European Social Charter;

ECSR – European Committee of Social Rights;

ICCPR – International Covenant on Civil and Political Rights;

ICERD – International Convention on the Elimination of All forms of Racial Discrimination;

ICESCR – International Covenant on Economic, Social and Cultural Rights;

NGO – Non – governmental organization;

OP-ICESCR - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

UDHR – Universal Declaration on Human Rights;

UN – United Nations;

YUCOM – Komitet pravnika za ljudska prava.

## Contents

ABSTRACT.....	2
LIST OF ABBREVIATIONS AND ACRONYMS: .....	3
1. INTRODUCTION .....	6
1.1. Research question .....	7
1.1.2. Research Sub-question.....	8
1.2. Added value of this paper .....	8
1.3. Methodology .....	8
1.4. Structure .....	10
2. BACKGROUND ON FORCED EVICTIONS.....	11
2.1. Introduction.....	11
2.2. Factual situation of the Roma .....	11
2.3. Justifications .....	14
2.4. Serbia: The case of Belgrade .....	15
2.5. Conclusion .....	16
3. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK.....	17
3.1. Introduction.....	17
3.2. UN framework .....	17
3.2.1 Introduction.....	17
3.2.2 The right to adequate housing.....	17
3.2.3. Forced evictions .....	19
3.2.4. Conclusion .....	22
3.3. Council of Europe (CE) .....	23
3.3.1. Introduction.....	23
3.3.2. Regional human rights system - the Council of Europe .....	23
3.3.3. Conclusion .....	24
4. NATIONAL LEGAL FRAMEWORK.....	25
4.1. Introduction.....	25
4.2 Constitution.....	25
4.2.1 Introduction.....	25
4.2.2 Constitution of the Republic of Serbia.....	25
4.2.3. Conclusion .....	27
4.3. Anti-discriminatory legislation and human rights institutions.....	27
4.3.1. Introduction.....	27
4.3.2. Law on Prohibition of Discrimination and Ombudsman.....	27
4.3.3. Conclusion .....	28
4.4. Relevant administrative law legislation .....	28

4.4.1. Introduction.....	28
4.4.2. Lex generalis.....	29
4.4.2.1. Introduction.....	29
4.4.2.2. Law on General Administrative Procedure.....	30
4.4.2.3. Conclusion .....	31
4.4.3. Lex Specialis.....	31
4.4.3.1. Introduction.....	31
4.4.3.2. Law on Housing.....	31
4.4.3.3. Law on Planning and Construction.....	32
4.4.3.4. Other problems encountered by the Roma.....	33
4.4.3.5. Conclusion .....	35
4.4.4. Conclusion .....	35
5. SUGGESTIONS ON LEGISLATION .....	37
5.1. Introduction.....	37
5.2. Recommendations on actual legislation.....	37
5.3. Conclusion .....	39
6. CONCLUSION.....	39
6.1. Way Forward?.....	42
BIBLIOGRAPHY:.....	43

## 1. INTRODUCTION

This work will explore the extent to which the Serbian legislation, in a sphere of forced evictions, is in compliance with the international legal standards. This is a highly important issue since many underprivileged people suffer from violations of eviction procedures envisaged by the international human rights rules, such as the poorest layers of society – especially, former workers of the big public undertakings that have been destroyed through the privatization processes. This work is aimed at assessing the compliancy of national legislation with international law, relying on one important and most disadvantaged group in Serbia – the Romani people. There are two reasons why I decided to do master thesis in this area. Firstly, Romani are the population who disproportionately endures violations of their rights in the course of evictions.<sup>1</sup> Secondly, this was a natural decision, since I have lived in a place near informal settlements inhabited by Roma population. The latter is a private reason that triggered my attention, giving me a strong impetus to start my work since people living in these settlements suffered violations in respect of legal safeguards regulating the eviction procedures. Although an interesting topic, many problems impeded my work in this area, especially the lack of academic sources.

Be that as it may, this does not mean that Romani people`s issues are not relevant in today`s society. All suffering of the Romani people is an example of what people have endured or are about to endure. Romani population is the litmus paper what state and public authorities are ready to embark upon when a targeted group is deprived of any kind of legal safeguards. This is not only the question of the Romani community in particular – workers of formerly large enterprises are continuously encountering this problem. Workers of the Trudbenik construction enterprise, for example, are permanently subjected to threats or evictions from their apartments, located only 15 - 20 minutes away from the place where one of the most well-known Romani settlements was placed, before it was torn down. Gentrification projects that are pursued by the government are heralding that this practice is to be continued – demolition of objects in the middle of the night or eviction of refugees from their communal centers in one part of Belgrade<sup>2</sup>, or attempt of eviction of Romani habitants from informal settlements.<sup>3</sup>

On the other hand, facilitation of the societal position of Romani people is a condition for engaging in talks on Chapter 23 of the negotiation process on Serbia`s road to EU membership.<sup>4</sup> Furthermore, European Commission provided Serbia with 3,6 million euros in order to provide accommodation of Romani who were evicted

---

<sup>1</sup> Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha Visit to Serbia, including Kosovo, Belgrade, 25 May 2015. Available on: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E> accessed 25.02.2016.

<sup>2</sup> Refugee Centre Razed For Belgrade Waterfront, Balkan Insight, 27.04.2016, available at: <http://www.balkaninsight.com/en/article/belgrade-s-refugee-aid-centre-demolished-for-belgrade-waterfront-04-27-2016> accessed 22.05.2016.

<sup>3</sup> Belgrade Roma Families Living in Fear of Eviction, Balkan Insight, 13.08.2015, available at: <http://www.balkaninsight.com/en/article/belgrade-roma-families-in-fear-of-eviction-08-13-2015> accessed 22.04.2016.

<sup>4</sup> Davenport: Improving lives of Roma key for Opening of Chapter 23, European Western Balkans, 12.04.2016. Available at: <https://europeanwesternbalkans.com/2016/04/12/davenport-improving-lives-of-roma-key-for-opening-of-chapter-23/> accessed 18.04.2016.

from one of Belgrade's settlements; eventually, that project failed, due to malpractices of city authorities.<sup>5</sup> However, it must also be said that EU and its financial institutions also played a negative role - the EBRD and EIB also pursued a project in Belgrade that eventually resulted in forced evictions of the Romani.<sup>6</sup>

Different measures that both affect the Romani and, at the same time, enhance their positions are generally practiced in Europe.<sup>7</sup> This contradictory role is also practiced in both current and prospective members – progress made is always followed by detrimental trends.<sup>8</sup> Therefore, these countries encountered what some experts label as the 'Europeanized hypocrisy' phenomenon (Ram) - parallel existence of discriminatory and inclusionary policy.<sup>9</sup> In this respect, EU is applying a top down approach which creates false images of improvement of living conditions of the Romani population – an approach simultaneously followed by racist policies emanating from public opinion and other relevant social factors.<sup>10</sup>

In addition, some other organizations played an extremely detrimental role, which directly hit the Romani people. For example, NATO aggression on the Federative Republic of Yugoslavia in 1999 resulted in Romani becoming refugees, rendering many of them helpless, leaving them to search for help on their own.<sup>11</sup> Many of them are now living in informal settlements and are struggling with the right to residence.<sup>12</sup>

Contextualization of the Romani people's living conditions is a really complicated and interesting issue, but will not be the focus of this work. However, broader insight is important, because this issue is not only a legislative one, but is deeply entrenched in the geopolitical and sociological landscape, as can be seen above.

## 1.1. Research question

The key goal of this work will be to examine to what extent Serbian legislation, with respect to the evictions, is in compliance with the international legal framework on this matter. The issue is really complicated in this aspect, not only because of the legal documents that are numerous in this area, but also because of the soft law documents that contain complex legal safeguards on forced evictions. This work will focus on the relevant provisions of several laws in this respect in order to describe them – Law on General Public Procedure, Law on Housing and the Law on Planning and the Construction of the Republic of Serbia. The legal framework is dubious in this area and shattered in numerous provisions of various legislative acts, so only laws that are deemed most important to the subject at matter are included in this

---

<sup>5</sup> Serbia: Forcibly evicted Roma still awaiting resettlement despite EU millions, Amnesty International 2015, available at: <https://www.amnesty.org/en/latest/news/2015/04/serbia-forcibly-evicted-roma-still-awaiting-resettlement-despite-eu-millions/> accessed 02.02.2016.

<sup>6</sup> Stop the Forced Evictions of Roma Settlements, Amnesty International, June 2010, p. 3.

<sup>7</sup> Melanie H. Ram, Europeanized Hypocrisy: Roma Inclusion and Exclusion in Central and Eastern Europe, *Journal on Ethnopolitics and Minority Issues in Europe*, Vol 13, No 3, 2014, p. 15-17, 36-37.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> For these issues, see full report: No Residence, No Rights, Praxis. Available at:

[http://www.praxis.org.rs/images/praxis\\_downloads/No\\_residence\\_no\\_rights.pdf](http://www.praxis.org.rs/images/praxis_downloads/No_residence_no_rights.pdf) accessed 18.03.2016.

<sup>12</sup> Ibid.

work. Furthermore, I will compare these legislations with international safeguards enshrined in some international human rights instruments, such as International Covenants and their respective General Comments, European Convention on Human Rights, European Social Charter and respective practices of the relevant regional bodies, just to name a few.

### 1.1.2. Research Sub-question

Finally, it is more than natural to define an answer to an additional question that, because this is not only a legislative question, but also a question of broader social concern. Considering this, it must be added that illegal procedures can be regarded as a consequence of democratic deficit that suffocates Serbian society.

## 1.2. Added value of this paper

This topic is important for several reasons. First of all – there is a lack of sources and literature in this area, so it is quite challenging but necessary for academics to grasp this issue and make, at least a modest, contribution in this domain. Secondly, it is highly important because evictions are frequent phenomenon in the Serbian society.

Thirdly, this can be linked with the crisis of democracy, where basic democratic processes are not implemented, such as consultations before eviction and non-participation of Romani communities. It should not only be seen in the aspect of consultations with the affected communities, but also in the context of legislative procedures – new law that will contain housing and eviction issues is drafted without transparent procedure.

Finally, Romani people, especially those who are living in informal settlements are deprived of decent living conditions and access to many rights, such as access to healthcare, education, work, et cetera. In addition, it is important to say that many evictions that have already been conducted, or are to be, have two main issues at the forefront: legality issues and development process of the Serbian neoliberal capitalism and undergoing gentrification process. Informal settlements are mainly demolished under the article of the Law on Planning and Construction, based upon the lack of construction permits for objects that are to be demolished.<sup>13</sup> Secondly, development and change of urban landscape result in the establishment of expensive shopping malls, blocks of flats with skyrocketing prices, and prospective elitist centers. This results in forced evictions going hand in hand with gentrification consequences that are fully embedded in situations where most expensive areas are located in a close vicinity of the slums where Romani people live.

## 1.3. Methodology

Many sources, especially on factual conditions in this respect could be found. Unfortunately, those sources are not approaching this question in an analytical

---

<sup>13</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, page 41.



framework; on the contrary, they are rather descriptive and focused on factual background, trying to grasp discrepancies between factual actions of the state bodies in eviction procedures and international standards. Nevertheless, they do not provide much information on differences between Serbian legislation and global safeguards in this matter.

Similarly, data on the Romani is also discouraging. It is difficult to find some information that might be regarded as valuable. For instance, the number of Romani people in Serbia. There are no relevant statistics on how many people live in the informal settlements<sup>14</sup>, or even how many of those settlements are situated in Belgrade.<sup>15</sup> There are just approximate claims that there are around 190 informal settlements just in Belgrade.<sup>16</sup> It is unnecessary to say that some of this information might be viewed as obsolete since some of the relevant statistics were made in 2002. This is not the only problem that has been encountered. Some important legal issues can make this problem even more complex. For example, what is an `informal settlement`? There are different conceptions of that term. If we glance at the UNHABITAT Issue Paper on Informal Settlements, it has a very broad definition, some of which include squatting, informal rent, structures not consistent with urban plans or `real estate speculation`.<sup>17</sup> On the other hand, in Serbia, a more precise definition was endorsed – informal settlements are those which are constructed without construction permits.<sup>18</sup>

This issue is important, since out of all Romani settlements, 70% of them are informal.<sup>19</sup> Therefore, it is not surprising that evictions in these settlements are carried out under the banner of legality, due to a lack of legal security of these households, and in the name of urban development. Just by looking at the period from 2009 – 2012, information arose that 18 big evictions occurred, affecting more than 2,800 persons.<sup>20</sup> Under Article 5 of the Law on Housing, in 2010 and 2011, 936 eviction procedures were conducted, mostly in Belgrade.<sup>21</sup> These statistics gathered by non-governmental organizations are significant, since no data on the ethnic structure of evictees was gathered by the respectful municipalities.<sup>22</sup>

Furthermore, the actual legal framework is hard to grasp. Not only is it scattered around many separate laws, with vague provisions and legal loopholes,

---

<sup>14</sup> Neformalna naselja nevidljiva za statistiku, Politika, 30.09.2014, available at: <http://www.politika.rs/scc/clanak/306566/Neformalna-naselja-nevidljiva-za-statistiku> accessed 27.03.2016.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> UNHABITAT Issue Paper on Informal Settlements, New York 2015, available at: [http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-22\\_Informal-Settlements-2.0.pdf](http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-22_Informal-Settlements-2.0.pdf) accessed 22.03.2016.

<sup>18</sup> Platforma za predlaganje “lex specijalis” zakona o legalizaciji romskih naselja, p.1, available at: <http://www.mcnis.org.rs/wp-content/uploads/2014/02/Predlog-PLATFORMA-ZA-LEX-SPECIJALIS.pdf> accessed 23.03.2016.

<sup>19</sup> Zlata Vuksanovic Macura, The Mapping and Enumeration of Informal Roma Settlements in Serbia, Environment and Urbanization, vol. 24, no 2, October 2012, p. 687.

<sup>20</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p.8.

<sup>21</sup> Ibid, p.22.

<sup>22</sup> Ibid, footnote 31.

but it also encompasses norms that are contrary to international safeguards.<sup>23</sup> Due to that, the author had to rely on relevant reports in order to try to find focus in a plethora of legal provisions, to distinguish more relevant from less relevant legislation and to compare provisions to other international sources, such as international Covenants and General Comments aimed at elaboration of human rights instruments.

In this master thesis, the `desk study` approach will be used. It will focus on various sources, such as international law and national legislation, as well as legal practices on both planes, national and international. Both legally binding sources, as well as some soft law documents, will be employed. Positive law and case law must be used in order to show the complexity of this research question and to help me to analyze the problem from both practical and positive law aspects. Most important international legislation that is to be considered is International Covenant on Economic, Social and Cultural Rights (ICESCR); regional is European Convention on Human Rights (ECHR) and European Social Charter (ESC); national legislation – Constitution, anti-discriminatory legislation, several laws in a domain of administrative procedure, especially the Law on General Administrative Procedure, the Law on Housing and the Law on Planning and Construction. Soft law sources that helped to conduct this research are General Comments 4 and 7, and UN Basic principles and guidelines on development-based evictions and displacement. Finally, some relevant case law, such as – European Court of Human Rights (Oneryildiz v Turkey) and European Committee of Social Rights (European Romani Rights Center v. Greece) case law, as well as a legal practice and creative roll of the ECtHR were relied upon. Also, other legislation will be employed for auxiliary purposes.

## 1.4. Structure

This paper is organized in six chapters. In Chapter 2, factual background and some statistics related to the Roma people in respect of living conditions and forced evictions will be presented. In addition, justifications must be depicted, ones which are utilized for evictions. In Chapter 3, the international human rights framework will be described. It is composed of two important pillars - the international legal system, which is based on the International Covenant on Economic Social and Cultural Rights, followed by the relevant General Comments, United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement and the regional legal system, which consists of Council of Europe instruments – ECHR and European Social Charter, as well as the legal practice of competent bodies. The fourth part will focus on the national legal framework in Serbia. Analysis will encompass several most relevant legal documents – firstly, the Constitution of Serbia, anti-discriminatory legislation, then the Law on General Administrative Procedure, as a *lex generalis* in the area of administrative processes, and two *lex specialis* – the Law on Housing and the Law on Planning and Construction. The fifth part will deal with some of the suggestions by the relevant institutions and

---

<sup>23</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.

organizations. The last chapter will be the conclusion on questions discussed. Also, it will contain sub-chapter on some answers to the question - what is to be done?

## 2. BACKGROUND ON FORCED EVICTIONS

### 2.1. Introduction

After a brief introduction, the social situation of the Roma people in Serbia will be examined, providing the reader with some general data on the Roma. Furthermore, justifications for conducting evictions must be explored. Finally, we will in a more detailed manner analyze evictions within the urban space of Belgrade.

### 2.2. Factual situation of the Roma

Romani people are one of the most discriminated social groups in Serbia. They are isolated from the access to healthcare and social services, employment, education and other institutions deemed necessary for development of individuals and enjoyment of their rights.<sup>24</sup> Also, many Romani do not have personal documentation, so they cannot enjoy rights derived from citizenship.<sup>25</sup>

These rights are interrelated and mutually supportive. For example, low education achievements reflect themselves in lower wages.<sup>26</sup> Undergoing lectures in schools is difficult because poverty prevents them from acquiring some basic accessories for school.<sup>27</sup> In order to earn money, they need employment, for which they need personal documentation and registration of residence; in order to apply for these documents, they have to pay taxes, and so on.<sup>28</sup>

They are the most numerous ethnicity in the Republic of Serbia after Hungarians – in 2011, population of Romani amounted to population of 147,604 or 2,05% out of total population; but, unofficially, numbers may even go up to the astonishing number of 500.000 people.<sup>29</sup> Up to 50.000 Romani fled from Kosovo to Serbia, and on the other hand, many returned to Serbia as `failed asylum seekers`.<sup>30</sup> There are 593 Roma settlements, of which 72% are illegal - only in Belgrade 137 illegal settlements were present.<sup>31</sup>

Housing is one of the major issues that affect Roma. Although there are prejudices about Romani people, many of them do not want to live in slums.<sup>32</sup> Living

---

<sup>24</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, p.7-9.

<sup>25</sup> For this issues, see the full report: No Residence, no Rights, Praxis.

<sup>26</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, page 8.

<sup>27</sup> Barbara Jovanović, Inclusion or Exclusion of Roma Children From the Serbian Educational System?, Journalism and Mass Communication, ISSN 2160-6579 July 2012, Vol. 2, No. 7, 786-790, p. 787.

<sup>28</sup> Home is More Than a Roof Over Your Head, Roma Denied Adequate Housing in Serbia, Amnesty International 2011, p.14-16.

<sup>29</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, page 7.

<sup>30</sup> Ibid.

<sup>31</sup> Tijana Joksic, Discrimination of Roma in Serbia, Government Response, Working Paper: Lecture on Discrimination of Roma in the Republic of Serbia, Freiburg, June 2015.

<sup>32</sup> Home is More Than a Roof Over Your Head, Roma Denied Adequate Housing in Serbia, Amnesty International 2011, page 12.

in slums is not a choice, but a matter of necessity for them. It is a consequence of deep poverty and discrimination - many Romani people before moving to the slums could not pay rent, thus resulting in moving to informal settlements.<sup>33</sup> Also, there are other causes - due to NATO aggression on Yugoslavia in 1999, many of them fled from Kosovo, but the government did not provide them with proper accommodation.<sup>34</sup> Furthermore, many are forcibly moved back to Serbia from the EU, finding their `sanctuary` within the slums.<sup>35</sup> Also, domestic violence can be one of the causes of moving to informal settlements if victims cannot find alternative accommodation.<sup>36</sup>

When it comes to forced evictions it must be acknowledged that it is not only the Serbian or East-European phenomena, but a general European problem. In a period after 2008, forced evictions occurred in Serbia, Albania, Bulgaria, Czech Republic, France, Hungary, Italy, Romania, Russia, Slovakia, Macedonia and Turkey.<sup>37</sup> One of the general problems of Romani people is insufficient security when it comes to tenure rights. Amnesty international pointed out that this is one of the most important things in a brief comment – `Security of tenure is key`.<sup>38</sup> Some of the Romani settlements are centuries old, but they still lack legal recognition, which causes evictions.<sup>39</sup>

In the broader context of Eastern Europe, the process of `marketization` severely hit the Romani population.<sup>40</sup> Also, Roma are among the most impacted by the economic crisis in EU.<sup>41</sup> In the period after 2000, some of the most rapid social transformations had occurred - many of them devastating the Serbian economy and life standard, such as liberalization of the market and massive privatizations. We can follow examples or consequences of it in Belgrade, the capital of Serbia. Those processes are based upon 2 key pillars – neoliberal capitalist economy – which caused some of the most powerful people to model the features of New Belgrade within a grotesque linkage between business and politics; the second is inherited authoritarian state, without participation of citizens in decision-making processes with full top-down approach.<sup>42</sup>

From this discourse, two consequences transpired. On the one hand, public space had become occupied by expensive malls and shopping centers; on the other hand, due to the racial differences and diversities in social status, segregation and gentrification emerged.<sup>43</sup> Although informal settlements were tolerated on previously public land, private owners were less hesitant in expelling people from their homes.<sup>44</sup>

---

<sup>33</sup> Ibid, page 13.

<sup>34</sup> Ibid, p. 5-6.

<sup>35</sup> Ibid. p. 5.

<sup>36</sup> Ibid, p.20.

<sup>37</sup> Human Rights of Roma and Travellers in Europe, Council of Europe, 2012.

<sup>38</sup> Stop Forced Evictions, Protect People Living in slums, Amnesty International 2011. Available at: <https://www.amnesty.org/en/documents/ACT35/026/2011/en/> accessed 01.04.2016.

<sup>39</sup> Human Rights of Roma and Travellers in Europe, Council of Europe, 2012.

<sup>40</sup> Ivana Tomovska, Poverty, Discrimination and Roma: a Human Security Issue, Human Security Perspectives, Volume 7 (2010), Issue 1, p.68.

<sup>41</sup> Ibid, 68.

<sup>42</sup> Zoran Eric, Urban Feudalism of New Belgrade: The Case of Belville Housing Block, available at: [http://www.academia.edu/4317479/Urban\\_Feudalism\\_of\\_New\\_Belgrade\\_The\\_Case\\_of\\_Belville\\_Housing\\_Block](http://www.academia.edu/4317479/Urban_Feudalism_of_New_Belgrade_The_Case_of_Belville_Housing_Block) accessed 06.03.2016.

<sup>43</sup> Ibid.

<sup>44</sup> Housing and Property Rights in Bosnia and Herzegovina, Croatia and Serbia and Montenegro, UN Habitat, 2005, page 130.

In addition, austerity measures are also hitting Romani people, due to their discriminatory nature.<sup>45</sup>

This can also be followed on the plane of social housing – because of privatizations, most of the flats came into private hands.<sup>46</sup> On the other hand, Romani people cannot afford accommodation in private sector, but also, only tiny amount of social accommodation can be provided to them.<sup>47</sup>

This racist segregationist policy was evident in the case of building the Belville block of flats built for university sport games. It was built by the firm owned by one of the richest people in Serbia, where flats were offered at enormous prices.<sup>48</sup> This resulted in contradictory picture of the most modern block standing right next to slums inhabited by Roma people.

It is important to say that they are *disproportionately hit by the evictions*, which amounts to *discrimination*.<sup>49</sup> Furthermore, the government does not make differences between newly established settlements and ones that had existed for a very long time (i.e. Veliki Rit) and it does not include them in urbanization plans, but ignores Roma settlements as if they were non-existent.<sup>50</sup> Majority of evictions took place in Belgrade - the Platform for Right to Adequate Housing recorded for the period since 2009: `18 forced evictions, affecting over 650 Romani families, numbering more than 2,700 individuals`. <sup>51</sup>

Conditions in settlements are horrible, because they don't have basic necessities. For example, they use fire in order to heat themselves up, which can result in fire and deaths, as was the case in Belgrade in 2014.<sup>52</sup> Also, only 10% of social apartments were given to Romani individuals, though many of them were not able to pay rents, which resulted in cancellation of their housing contracts.<sup>53</sup>

---

<sup>45</sup> Regular Annual Report of the Protector of Citizens for 2014, Belgrade 2015, page 37, para 3.7. Although it is not directly referred to Romani population, but to children generally, especially children on streets, majority of them are of Roma origins, as claimed by Meho Omerovic, president of the parliamentary Committee for Human and Minority Rights and Gender Equality. See also `Deca s ulice najugroženija grupa u društvu!`, Telegraf, 24.11.2014. Available at: <http://www.telegraf.rs/vesti/1322110-deca-s-ulice-najugrozenija-grupa-u-drustvu-foto> accessed 15.04.2016.

<sup>46</sup> Mina Petrovic and Milena Timotijevic, Homelessness and Housing Exclusion in Serbia, European Journal of Homelessness, Volume 7, No. 2, December 2013, p. 269.

<sup>47</sup> The Situation of Roma in EU candidate countries 2014/2015, European Roma and Travellers Forum, May 2015 p. 12.

<sup>48</sup> Zoran Eric, Urban Feudalism of New Belgrade: The Case of Belville Housing Block, available at: [http://www.academia.edu/4317479/\\_Urban\\_Feudalism\\_of\\_New\\_Belgrade\\_The\\_Case\\_of\\_Belville\\_Housing\\_Block](http://www.academia.edu/4317479/_Urban_Feudalism_of_New_Belgrade_The_Case_of_Belville_Housing_Block)

<sup>49</sup> Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha Visit to Serbia, including Kosovo, Belgrade, 25 May 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>

<sup>50</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, page 18-19.

<sup>51</sup> Ibid.

<sup>52</sup> Tijana Joksic, Working Paper: Lecture on Discrimination of Roma in the Republic of Serbia, Freiburg, June 2015, p. 12.

<sup>53</sup> Ibid, p.12.

## 2.3. Justifications

There are many reasons which are raised in order to justify evictions of Roma people. Thus, evictions are mainly based on the cover-up stories that the settlement is illegal, is unhygienic, in a dangerous locality or earmarked for development.<sup>54</sup> Eventually, the key goal is to remove Romani population from a public space.<sup>55</sup> Some of them even do not provide any justifications at all. As European Roma and Travellers Forum claimed:

‘In Hungary, the Miskolc town council is more straightforward in its approach. It has asked all the Roma residents in a particular neighborhood to leave their residence against compensation and promise not to come back before 5 years. Those that refused are being threatened with eviction. The town council is, in all honesty, telling the Roma that they are not wanted in Miskolc now or for the next five years.’<sup>56</sup>

On a more general plane, there are several ‘justifications’ that might be employed as a ‘reason’ for forced evictions, such as: processes of the so-called beautification of the cities, which are highly problematic when there is no dialogue and no representation of the people concerned; or stigmatization of slums as ‘centers of social problems’<sup>57</sup>. The latter situation may occur as a securitization of the habitants, labelling them as criminals, or pushing forward the agenda on security issues.<sup>58</sup> Furthermore, health issues as well may be one of justifications, but evictions carried out on that basis have different consequences.<sup>59</sup> If evictees are not supplied with alternative places to live, they might pour to other informal places and their health condition can deteriorate due to lack of adequate housing.<sup>60</sup> Finally, redevelopment argument may also be employed as an excuse for resettlement, in order to use an empty space for city development.<sup>61</sup> If settlements are deemed illegal, this is more than enough for authorities to tear them down without compensation.<sup>62</sup>

For example, in France, one third of all evictions are conducted on the basis of sanitary or security concerns<sup>63</sup>. Development issues can also be a ‘justification’ for undertaking forced evictions. Although they are conducted in the name of the public interest, they are deteriorating conditions of most vulnerable social groups – those who are in urgent need of help - contrary to developmental goals, which are also aimed at improving living conditions of slum inhabitants.<sup>64</sup>

---

<sup>54</sup> Evictions Unlimited – no Summer Break for the Roma, European Roma and Travellers Forum, 03.09.2015. Available at: <http://www.ertf.org/index.php/8-news/250-evictions-unlimited> accessed 03.06.2016.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Eviction; Enough Violence; We Want Justice, Environment and Urbanization, Evictions, Volume 6, no.1, April 1994, p.5-6.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Census: Forced evictions of migrant Roma in France (Year 2014), p.3. Available at: <http://www.errc.org/cms/upload/file/report%20forced%20evictions%20-%20final%20en.pdf> accessed 14.06.2016.

<sup>64</sup> Forced Evictions Fact Sheet No. 25/Rev.1, UN, New York, Geneva 2014, p.2.

## 2.4. Serbia: The case of Belgrade

In Serbia, the situation is more or less the same. Eviction of the Grmec settlement was attempted, under the justification that railroad must be built as a part of the plan for building a big gentrification structure – Belgrade Waterfront.<sup>65</sup> Although this was more unofficial, at least in the beginning, similar reasons were announced in respect of removal of the Romani settlement placed in a vicinity of the Gazela bridge. Justifications were based on the `developmental` argument – expulsion of Roma (in accordance with some international standards, though) was a *condition* for providing money by the EBRD and EIB for the reconstruction of the bridge.<sup>66</sup> As Vladan Đukić, head of the City Secretariat for Social Welfare, competent for the removal of the shanty village, put it in an interview with Amnesty international: `Nobody can stand in the way of Belgrade's development`.<sup>67</sup> Similarly, building a fence around the Romani settlement adjacent to the student accommodation reserved for sport participants, deprived Romani people of basic necessities and free movement.<sup>68</sup>

After the Gazela slum removal, people were deprived of some of their key assets. They were provided containers for living did not meet some of the key criteria, they were overcrowded and of insufficient space, so personal possession had to be left outside; on a cold weather it is difficult to be heated up, and during warm periods residents suffer breathing problems.<sup>69</sup> Furthermore, insufficient sanitary and toilet facilities were recorded, and also problems with water.<sup>70</sup> Many of relocated Romani worked downtown, collecting raw materials, of which they are now deprived since they cannot afford costs of transportation; on the other hand, in new locations, dealing with scrap material is forbidden.<sup>71</sup> Also, In Boljevci and Kijevo, where they were moved, attacks committed by locals were documented.<sup>72</sup>

In respect of Gazela settlement, people were removed without prior notice, there were no consultations or compensation, and many people were evicted to southern Serbia.<sup>73</sup> Also, journalists were denied access and police brutality was evident.<sup>74</sup>

A similar situation reoccurred in the Belville case. In 2012, more than 900 Roma men and women were evicted from this settlement and moved to containers outside of Belgrade, where their access to food was impaired and stoves and refrigerators were non-existing or dysfunctional and containers were not adjusted for disabled persons (i.e. persons using wheelchairs).<sup>75</sup> Some of them were put in a

---

<sup>65</sup> Ivana Nikolic, Serbia Taken to Euro Court Over Roma Evictions, Balkan Transitional Justice, July 30<sup>th</sup> 2015. Available at: <http://www.balkaninsight.com/en/article/strasbourg-court-targets-serbia-over-1999-idps-eviction-07-30-2015> accessed 14.06.2016.

<sup>66</sup> Stop the Forced Evictions of Roma Settlements, Amnesty International, June 2010, p. 3.

<sup>67</sup> Ibid, p.4.

<sup>68</sup> Ivana Marjanovic, Contention of Antiromaism as a Part of the Process of Decoloniality of Europe, Reartikulacija no.7, Ljubljana 2009.

<sup>69</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, p.19-20.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Stop the Forced Evictions of Roma Settlements, Amnesty International, June 2010. p.5.

<sup>74</sup> The Sound of Barking Dogs, Regional Centre for Minorities 07.12.2012. Available at: <http://www.minoritycentre.org/news/sound-barking-dogs-eviction-roma-belville> accessed 03.06.2016.

<sup>75</sup> Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, p.21.



warehouse in Nis, without water, electricity and adequate hygiene. As claimed by ERRC - `In Leskovac, the city authorities accommodated 11 homeless families from Belvil in a hostel, only to evict them again after three months because the hostel owner needed the rooms for the coming festival. Alternative accommodation was provided for two families`. <sup>76</sup> Belvil habitants could not afford to pay lawyers, and they confirmed that they stayed illegally on the land; containers were small and suffocating; they were placed far away from downtown and in that way deprived of scrap materials which they were collecting – also they were banned from collecting materials at containers.<sup>77</sup> As it was briefly put - `Even that marginal living is being privatized through large sanitation companies`<sup>78</sup> Also, in Resnik, protests occurred because the place was designated for Roma accommodation.<sup>79</sup>

In addition, similar conducts were recorded during the execution in Dalmatinska street. The property of evictees was damaged; also the firm `Beoland`, which conducted the eviction, blackmailed the people that if they do not accept alternative housing, they will not be offered another accommodation; although they applied for legalization of the accommodation, during the same process officials came to expel them.<sup>80</sup> In Milutina Milankovica and Omladinskih brigada street almost the same pattern existed. Officials came without notice and destroyed old buildings in which Roma family was settled without a proper consultation undertaken; in addition, their belongings were destroyed during the process and eviction was conducted during bad weather; containers allocated to them lacked heaters, which is highly problematic when it comes to low temperatures.<sup>81</sup>

## 2.5. Conclusion

Here I tried briefly to present factual situation on the ground, by relying mostly on NGO reports. I wanted to pick some examples in order to show how bad the situation in factual terms actually is. The further focus will be on international human rights law, in order to make an attempt to show to what extent Serbia had complied with international legal standards in respect of forced evictions of Roma communities.

---

<sup>76</sup> Ibid.

<sup>77</sup> The Sound of Barking Dogs, Regional Centre for Minorities 07.12.2012. Available at: <http://www.minoritycentre.org/news/sound-barking-dogs-eviction-roma-belville>

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Stop the Forced Evictions of Roma Settlements, Amnesty International, June 2010, p. 35.

<sup>81</sup> Ibid, p. 36.



## 3. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

### 3.1. Introduction

This Chapter will deal with the right to adequate housing and forced evictions. Although the key issue is the problem of forced evictions, the right to adequate housing and the right to adequate standard of living will also be considered in this section since all of these issues are inseparably interwoven. In addition, it must be noted that the right to adequate housing and the prohibition of forced evictions are even more complex since those are fragmented at international and regional level. National peculiarities of the Serbian legal system are to be considered in a separate Chapter.

### 3.2. UN framework

#### 3.2.1 Introduction

Many human rights documents contain the right to adequate housing and provisions on forced evictions. The legal notion of forced eviction derives from several international legal documents that enshrine the right to adequate housing – those are International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child (CRC), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); in addition, CRC and International Covenant on Civil and Political Rights (ICCPR) contain some other relevant rights in this respect such as protection of the private life.<sup>82</sup> This will also include some of the relevant General Comments that can be employed in this analysis. This section will portray two key problems, since it is impossible to make any ruptures between them – the right to adequate housing and the prohibition of forced evictions.

#### 3.2.2 The right to adequate housing

Together with the right to health and the right to food, the right to housing is a part of a broader right to adequate standard of living<sup>83</sup>, also enshrined within article 25 of the UDHR.<sup>84</sup> As article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) reads:

‘The States Parties to the present Covenant recognize the right of *everyone*<sup>85</sup> to an *adequate standard of living*<sup>86</sup> for himself and his family, including *adequate*<sup>87</sup> food, clothing and *housing*<sup>88</sup> and to

---

<sup>82</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement, para 1 and 2.

<sup>83</sup> Daniel Moeckli et al, *International Human Rights Law*, Oxford 2014, p. 199.

<sup>84</sup> UDHR, article 25.

<sup>85</sup> Emphasis added.

<sup>86</sup> Emphasis added.

the continuous improvement of living conditions. The States Parties will take *appropriate steps*<sup>89</sup> to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent<sup>90</sup>.

First of all, everyone is entitled to adequate housing. This is, from a legal point of view reasonable, since there is a provision within the same Covenant which presents an anti-discriminatory clause, stating that rights laid down in this document will be exercised regardless of the `race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status`<sup>91</sup>.

Regarding its legal status, as asserted by the CESCR in its General Comment no. 20, non-discrimination is immediate obligation in international law<sup>92</sup>, and it is not linked to the general provision in the ICESCR related to lack of resources, since `...failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority`<sup>93</sup>. States have an obligation to enact legislation, constitution and policies which would provide that states do not discriminate.<sup>94</sup> In addition, it is binding obligation regardless of becoming a part to treaties, since it had entered domain of international customary law.<sup>95</sup>

While in market societies housing can be regarded as a private good, human rights` prohibition on discrimination departs from this viewpoint, thus `socializing` it, and creating of it relatively a public good.<sup>96</sup> However, states do not possess a duty to bestow housing; but they have an obligation to *respect* – which means that it has to refrain from violations, to *protect* against private perpetrators, to *facilitate* possibility for all people to acquire housing that is reasonably prized, and finally, to *provide* it when they cannot acquire it on their own.<sup>97</sup>

Thirdly, the right to adequate housing is more than a `roof over one`s head`<sup>98</sup>. Committee on Economic, Social and Cultural Rights tried to define this right in a more concrete way, by issuing General Comment no. 4. Nevertheless, it elaborated several aspects of this right which are regarded as minimum standards by the UN<sup>99</sup>: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>100</sup>

---

<sup>87</sup> Emphasis added.

<sup>88</sup> Emphasis added.

<sup>89</sup> Emphasis added.

<sup>90</sup> ICESCR, article 11(1).

<sup>91</sup> CESCR, General Comment no.4, para 6, and ICESCR, article 2(2).

<sup>92</sup> CESCR, General Comment no. 20, para 7.

<sup>93</sup> Ibid, para 13.

<sup>94</sup> CESCR, General Comment no. 20, see paragraphs 8-9.

<sup>95</sup> Daniel Moeckli, et al, International Human Rights Law, Oxford 2014, p. 161.

<sup>96</sup> Ibid, p. 203-204.

<sup>97</sup> Ibid, p. 204.

<sup>98</sup> General Comment no.4, para 7.

<sup>99</sup> Fact Sheet No. 21/ Rev.1, The Right to Adequate Housing, available at: [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf) accessed 29.04.2016.

<sup>100</sup> CESCR, General Comment, no.4, para 8.

Furthermore, due to the interrelation between numerous human rights, it can be said that violation of the right to adequate housing can lead to violation of other human rights, such as right to work, health or education.<sup>101</sup>

Finally, the article reads that states `will take appropriate steps to ensure realization of this right`<sup>102</sup>. In a classification of human rights, there is a distinction between economic, social and cultural rights on the one hand, and on the other, political and civil rights. In this respect, economic rights are regarded as something that is to be attained gradually, while protection of political and civil rights consist immediate duty for states.<sup>103</sup> But, this is not always the case, as we can see from the right to adequate housing. Firstly, we can see this from the principle of non-discrimination as an immediate obligation in international human rights law.<sup>104</sup> Furthermore, basic shelter and housing can be regarded as a core right, from which no departure can be made and which are related to `basic conditions of human life`.<sup>105</sup> However, there is a problem. There are minimum core obligation which are of immediate effect, but it is questionable which of the 7 aspects of the right to housing, as described under General Comment no.4 are of `immediate` and which are of `gradual` character.<sup>106</sup> Insufficient resources cannot be invoked as a justification for non-fulfilment of minimum core rights.<sup>107</sup> Importantly, regarding the legal security of tenure, Committee stated in its General Comment no.4 that members: `should consequently take *immediate measures*<sup>108</sup> aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups`.<sup>109</sup>

Although accepted, the adequate housing is a restricted principle, due to the general `gradual` approach of economic rights.<sup>110</sup>

### 3.2.3. Forced evictions

Forced evictions are a violation of the right to adequate housing.<sup>111</sup> From the aspect of international law, of utmost importance is that the prohibition on forced evictions establishes legal security, even for those living in informal settlements.<sup>112</sup> Prohibition of forced evictions is of utter significance, since violation in that domain can render people without other human rights – such as right to free movement or privacy.<sup>113</sup> It arises not only from the already mentioned article of the ICESCR 11(1), but also from other international human right documents which contain right to

---

<sup>101</sup> Fact Sheet No. 21/ Rev.1, The Right to Adequate Housing, available at: [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf)

<sup>102</sup> ICESCR, article 11(1).

<sup>103</sup> CESCR, General Comment no.3, paragraph 9.

<sup>104</sup> CESCR, General Comment no. 20, paragraph 6 and 7.

<sup>105</sup> Daniel Moeckli et al. International Human Rights Law, Oxford 2014, p. 150-151.

<sup>106</sup> Jessie Hohmann, The Right to Housing, Law, Concepts, Possibilities, Oxford and Portland, Oregon, 2013.

<sup>107</sup> Arturs Kucs, et al, The Right to Housing: International, European and National Perspectives, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol nº 64/65, pp. 101-123, page 102.

<sup>108</sup> Emphasis added.

<sup>109</sup> CESCR, General Comment no. 4, paragraph 8.

<sup>110</sup> John G. Sprankling, International property law, Oxford 2014, page 128.

<sup>111</sup> Daniel Moeckli et al. International Human Rights Law, Oxford 2014, p. 204.

<sup>112</sup> John G. Sprankling, International property law, Oxford 2014, page 128.

<sup>113</sup> Resolution of Forced Evictions, Sub- Commission Resolution, 2003/17.

adequate housing. Those are CRC (article 27, para 3), ICERD (article 5, para e), and CEDAW (article 14, para 2, item h), as it was already mentioned.<sup>114</sup>

The Committee on Economic, Social and Cultural Rights asserted that forced evictions are:

...permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection<sup>115</sup>

Other definition is contained within the Basic Principles and Guidelines on Development-Based Evictions and Displacement (in further text Guidelines), where it encompasses:

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection<sup>116</sup>

It seems that key elements of definition are: involuntary/coercive move and absence of legal safeguards.<sup>117</sup>

First of all, prohibition of forced evictions is of immediate effect and not related to resources that are available to states.<sup>118</sup>

The state must employ specific legislation or measures<sup>119</sup> in order to keep actions of third parties consistent with human rights standards.<sup>120</sup>

Although the General Comment no.7 calls states to use comprehensive approach, the cornerstone of protection against forced evictions is legislation which should provide, among other things, legal security of tenure regarding the occupation of both land and houses.<sup>121</sup> Effective remedy must be provided for the victims and safeguards should be applied in respect of evictions, such as consultation which must be genuine as well as the compensation.<sup>122</sup> More concretely, safeguards include – prior and adequate notice before defined day of eviction, an information on eviction provided to targeted persons in a reasonable time (and if possible, to provide information for what purpose land will be utilized), presence of public officials at the time of eviction, legal assistance (if possible) and legal remedies; evictions must not be conducted on a bad weather or during the night and finally, an identification of individuals who are undertaking eviction.<sup>123</sup> Effective legal remedies are particularly important, because they are minimum that state must provide in a domain of human rights.<sup>124</sup>

---

<sup>114</sup> Guidelines, para 1.

<sup>115</sup> CESCR, General Comment no. 7, para. 3.

<sup>116</sup> Guidelines, para 4.

<sup>117</sup> John G. Sprankling, International property law, Oxford 2014, p.125.

<sup>118</sup> Forced Evictions, Fact Sheet No. 25/ Rev.1, New York and Geneva 2014, p. 21.

<sup>119</sup> Ibid, p. 24.

<sup>120</sup> Ibid.

<sup>121</sup> CESCR, General Comment no.7, para 9.

<sup>122</sup> Ibid, para 13.

<sup>123</sup> Ibid, para 15.

<sup>124</sup> Walter Kälin, Jörg Künzli, The law of international human rights protection, Oxford, 2009, p. 185

Eviction by force will not always amount to forced eviction provided that they are conducted within confines of human rights,<sup>125</sup> and under `most exceptional circumstances`.<sup>126</sup> These circumstances can encompass:

(a) racist or other discriminatory statements, attacks or treatment by one tenant or resident against a neighbouring tenant; (b) unjustifiable destruction of rented property; (c) the persistent non-payment of rent despite a proven ability to pay, and in the absence of unfulfilled duties of the landlord to ensure dwelling habitability; (d) persistent antisocial behaviour which threatens, harasses or intimidates neighbours, or persistent behaviour which threatens public health or safety; (e) manifestly criminal behaviour, as defined by law, which threatens the rights of others; (f) the illegal occupation of property which is inhabited at the time of the occupation; (g) the occupation of land or homes of occupied populations by nationals of an occupying power.<sup>127</sup>

Evictions must be reasonable and proportionate and situations in which penetration in a sphere of home is legal must be contained in *law in a specified way*.<sup>128</sup> As provided by the relevant human rights instruments, article 4 of the ICESCR contains general limitation clause<sup>129</sup>, which enables to define the scope of rights, provided it is determined by law, and with a `sufficient precision`<sup>130</sup>. Furthermore, alternative adequate accommodation must be secured if it would result in possibility of violations of other human rights.<sup>131</sup> Of course, eviction must be conducted without discrimination.<sup>132</sup> Also, states have to provide information related to forced evictions, and measures related to development projects providing protection against evictions and `rehousing based on mutual consent`<sup>133</sup>. Finally, CESCR asserted that it is mandatory to effectuate remedies that had already been provided.<sup>134</sup>

The problem emerges when it comes to justification of forced evictions. General Comment no.7 refers only to the ICESCR where the right to housing can be limited for the furtherance of the `general welfare in democratic society`<sup>135</sup>, which is very vague principle, especially problematic if we talk about big `public projects`<sup>136</sup>. But, the Guidelines define that forced evictions are legitimate *only* when enforcing human rights duties, especially in the case of the enhancement of position of the most disadvantaged groups.<sup>137</sup>

---

<sup>125</sup> CESCR, General Comment no.7, para 3.

<sup>126</sup> CESCR, General Comment no 4, para 18.

<sup>127</sup> Fact Sheet No.25, Forced Evictions and Human Rights. Available at <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf> accessed 05.03.2016.

<sup>128</sup> CESCR, General Comment no 7, para 14

<sup>129</sup> `The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society`. See article 4 of the ICESCR.

<sup>130</sup> Sunday Times v UK, n 22, para 49, see in Daniel Moeckli, et al, International Human Rights Law, Oxford 2014, p.111.

<sup>131</sup> CESCR, General Comment no 7, para 14 – 16.

<sup>132</sup> Ibid, para 10.

<sup>133</sup> Ibid, para 19-20.

<sup>134</sup> Ibid, para 13.

<sup>135</sup> ICESCR, article 4. See also, CESCR, General Comment no.7, para 5.

<sup>136</sup> John G. Sprankling, International property law, Oxford 2014, p.126.

<sup>137</sup> Ibid,p.127. footnote d.

The Guidelines offer more elaborated rules on this topic, although it is a soft law source.<sup>138</sup> Many procedural rules<sup>139</sup> are contained within the Guidelines regarding periods prior to eviction, during the eviction and after eviction, but a few of the safeguards will be mentioned that are deemed to be of utter significance. The imposition of legislation and policies which are compliant with international standards and aimed at the protection against forced evictions is an obligation of immediate effect.<sup>140</sup> Furthermore, individuals must be protected against evictions during the review of their case before a national body (which also, in addition, includes both regional and international bodies).<sup>141</sup>

In this section the General Comments of UN treaty bodies were used in order to further elaborate abstract articles of Covenants. Nevertheless, some important remarks must be made on them. Firstly, they are not legally binding.<sup>142</sup> But, we cannot regard them as something deprived of any legal strength.<sup>143</sup> They can help us in drafting legislations or contributing to behavior of states - which are, although not binding sources, under a duty to employ them and to regard them as significant documents.<sup>144</sup> The latter case can be seen in CESCR's Conclusions on Serbia where it urged Republic of Serbia to undertake measures in respect of consultation, procedure and compensation, and alternative adequate accommodation, *taking into account*<sup>145</sup> the Committee's general comments No. 4 (1991) and 7 (1997) on the right to adequate housing and on forced evictions.<sup>146</sup>

### 3.2.4. Conclusion

Finally, some general conclusions can be drawn from this. Human rights are interrelated, so violation in a domain of forced evictions may render people without other human rights - as well as violation of the right to housing can result in a similar outcome. Non - discrimination is one of the most important principles in international human rights law. Many social groups suffer disproportionately from forced evictions. It is an immediate obligation of the states and, as seen in the Committee's comment, forced evictions must not be conducted in a discriminatory way and everyone is entitled to the right to housing. There are minimum standards of adequacy, but it is not sure which are of immediate and which are of gradual nature. As for tenure, states should create legal security through immediate measures. Evictions must be undertaken with regard to international standards in this matter. Legal status of General Comments and Guidelines is not binding, but it does not mean that they do

---

<sup>138</sup> Ibid, p.127.

<sup>139</sup> Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines` Guidelines, para 21.

<sup>140</sup> Ibid, para 23.

<sup>141</sup> Ibid, para 36.

<sup>142</sup> Principal Investigator: Wayne Martin, Lead Author: Sabine Michalowski, The Legal Status of General Comments, Essex Autonomy Project, 23. May, 2014.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Emphasis added.

<sup>146</sup> Concluding Observations on the Second Periodic Report of Serbia, July 2014, para 30. I could not find any, at least explicit, legislative proposals in this document.

not have any impact– for example, general comments can have influence on a creation of national legislation. Importantly, human rights can be limited only in a specified way via law.

### 3.3. Council of Europe (CE)

#### 3.3.1. Introduction

In the last Section we examined right to adequate housing and prohibition of forced evictions on the international plane. Now we are shifting to a narrow frame of the Council of Europe. This regional system influenced Serbian legislation and it can help us to further elaborate abstract provisions of human rights documents.

#### 3.3.2. Regional human rights system - the Council of Europe

European Convention on Human Rights does not explicitly refer to the right to housing, but related issue can be found in article 8 (which relates to family, private life, home and correspondence), and article 1 of the Protocol no. 1 (protection of property); ECtHR also through practice interlinked this right to other rights, such as prohibition of torture, right to fair trial, and to article 14 which enshrines prohibition of discrimination.<sup>147</sup>

ECtHR gave the term `home` the broadest scope, and through its practice, several features emerged:

- Home as an independent concept, existing regardless of national legislation
- In asserting this right, Court employs test in order to define whether relation to home is sufficient and continuous.
- Broad conception of what is home, which includes land, caravans and mobile accommodation.
- unlawful occupations also fall within the scope of home.<sup>148</sup>

But the creative role of the ECtHR was well embedded in the case *Oneryildiz v. Turkey*. The case is important for two reasons: firstly, regarding property rights - Mr. Masallah Oneryildizi, although his slum was built in a breach of law, had an interest which was tolerated by the authorities, and therefore, Court asserted that it amounted to possession. This was possible because of autonomous meaning of article 8 of the ECHR, which is independent from national law; secondly, not only the

---

<sup>147</sup> Arturs Kucs, et al, *The Right to Housing: International, European and National Perspectives*, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol n° 64/65, pp. 101-123, page 105-106.

<sup>148</sup> *Ibid*, page 106-108.

state must refrain from interference, but positive obligations to protect can be necessary.<sup>149</sup>

In respect of evictions, the ECtHR also developed some legal practice in that respect. It determined that eviction must be mounted within a time limit which is appropriate, regardless of legal basis for living in an apartment. This is highly important, because of its influence made on Serbian Constitutional Court which, by referring to article 8 (1) of the Convention and respective practice of the ECtHR asserted that time limit of 15 days for a person to leave an apartment is inappropriate temporal framework.<sup>150</sup>

Some positive trajectories were recorded in respect of other CE institutions. Regarding European Social Charter, although Serbia did not accept article 31 on the right to housing, it accepted article 16<sup>151</sup> which entitles family to social, legal and economic protection. Interestingly enough, this article was interpreted by the European Committee of Social Rights which asserted that:

‘The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. The Committee recalls its previous case law to the effect that in order [to] satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence.<sup>2</sup> Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.’<sup>152</sup>

In this case we can see how this regional body actually remedied bad state practices throughout its creative role.

### 3.3.3. Conclusion

As we can see, although not expressly defined, the right to housing can be derived from rights contained within article 8, through the creative role of the Court. Importantly, it went even further, elevating the notion of the ‘home’ from national law, and generalizing it to illegal occupation. Furthermore, the European Committee of Social Rights showed how it can circumvent States’ practices of avoiding ratifications through further concretization as well as generalization of relevant articles. Finally, although prima facie practical matter, this creative development can influence national institutions and bodies, as was the case with the time limit embraced by the Constitutional Court in Serbia.

---

<sup>149</sup> Oneryildiz vs. Turkey (Application no. 48939/99), Judgment, Strasbourg, 30 November 2004. See paragraphs: 121,124, 127,130,135.

<sup>150</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013. p.39, footnote no.67

<sup>151</sup> First Report on the Non-Accepted Provisions of the European Social Charter, Serbia, European Committee of Social Rights, 2015.

<sup>152</sup> European Roma Rights Center v. Greece, Complaint No. 15/2003, Decision on Merits, European Committee of Social Rights, 8 December 2004, para 24.



## 4. NATIONAL LEGAL FRAMEWORK

### 4.1. Introduction

After a brief description of the international legal framework, the Serbian legislation in respect of forced evictions will be depicted. In this Chapter, several key documents will be examined. Firstly, the Constitution of the Republic of Serbia will be considered as the most important source of law on the national plane. The second section will contain some insight into the matter of anti-discrimination legislation as well as human rights institutions. Finally, the administrative procedure and respective legislation in that domain will be depicted because the evictions are carried out under its provisions.

### 4.2 Constitution

#### 4.2.1 Introduction

The most important legal act is the Constitution of the Republic of Serbia.<sup>153</sup> It is at the top position in a hierarchy of legal acts in Serbian legal organization and the entire legal system originates from it. For this reason, it is more than natural to take this legal source as a departure point for the analysis of the national legal framework.

#### 4.2.2 Constitution of the Republic of Serbia

The Serbian Constitution does not expressly guarantee the right to adequate housing, nor prohibition of forced evictions.<sup>154</sup> Interestingly, some important things on minorities and human rights protection must be emphasized. Article 18 of the Constitution reads that international human rights instruments `shall be implemented directly`<sup>155</sup>. Furthermore, relevant human rights provisions `shall be interpreted`<sup>156</sup> in a way to benefit promotion `of values in democratic society`<sup>157</sup> in compliance with international human rights and practice of monitoring bodies that follow their application.<sup>158</sup> Finally, there are also some provisions that must be regarded as important in this matter. Those are: article 23, which provides inviolability of human dignity, article 32 which establishes the right to fair trial, and article 36 which guarantees equal protection of right before the court and other state institutions, as well as the right to appeal (or some other legal remedy)<sup>159</sup> `against any decision on

---

<sup>153</sup> Constitution of the Republic of Serbia, 2006, available at:

[http://www.srbija.gov.rs/cinjenice\\_o\\_srbiji/ustav.php?change\\_lang=en](http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en), accessed 12.05.2016.

<sup>154</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.

<sup>155</sup> Constitution, article 18.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid. see articles 23,32,36 and 36.

his rights, obligations or lawful interests<sup>160</sup>. In addition, article 22 of the Constitution entitles individuals whose human rights are violated to seek judicial protection as well as elimination of detrimental consequences.<sup>161</sup> Article 35 provides the right to compensation due to damage inflicted upon individual through illegal practice of the state institution. Importantly, the inviolability of home (article 40) and the right to legal assistance (article 67) are also contained within the Constitutional provisions.<sup>162</sup> It seems that some of those provisions, such as the right to legal assistance (and more specifically, the right to *free* legal assistance) or the right to compensation for example, shall be more precisely defined by relevant laws, in respect of terms and conditions for exercising those entitlements.<sup>163</sup>

There are several points that are deemed important. Firstly, the possibility of direct implementation of international legal standards in the domain of minority and human rights seems to be really useful. Few examples can be mentioned. The Krsmanovaca case was the watermark case in this matter, since the court had applied directly provisions of ICCPR in spite of the absence of anti-discrimination legislation at that time, although it was in the domain of access of the Roma people to public facilities.<sup>164</sup> Secondly, hallmark progress had recently emerged on the plane of evictions. In 2015, the municipality of Zemun directly applied the ICESCR, thus halting eviction of the informal settlement in Grmec. As reported by YUCOM: `This is the first case that international human rights standards have been used as the direct instructions for situations of forced evictions of informal Roma settlements.`<sup>165</sup> This is important since courts are inactive in considering international standards.<sup>166</sup> On the other hand, Constitutional provisions leave internal laws to define conditions for invoking some of the rights, what can be seen problematic. For example, legislation on free legal assistance has not been enacted yet, so many of the inhabitants of informal settlements must rely upon legal assistance provided by the NGO sector, thus impeding the access to legal remedy.<sup>167</sup> This is important, since under General Comment no. 7, legal remedies must be *effective*, and where possible, legal assistance provided.<sup>168</sup> In addition, duty to provide an effective legal remedy is one of the `minimums` that States must impose.<sup>169</sup> Finally, when remedies are granted, there is an obligation of states to impose them.<sup>170</sup>

---

<sup>160</sup> Ibid, art. 36.

<sup>161</sup> Ibid, art. 22.

<sup>162</sup> Ibid, art. 35,40,67.

<sup>163</sup> Constitution, see articles 35 and article 67.

<sup>164</sup> Country Report, Non-Discrimination, Serbia 2015, European Commission 2015, p. 39.

<sup>165</sup>, Press release: City municipality Zemun halted forced eviction of informal Roma settlement Grmeč, YUCOM 2015. Available at: <http://en.yucom.org.rs/press-release-city-municipality-zemun-halted-forced-eviction-of-informal-roma-settlement-grmec/> accessed 26.03.2016.

<sup>166</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.

<sup>167</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p. 45.

<sup>168</sup> Ibid.

<sup>169</sup> Walter Kälin, Jörg Künzli, The law of international human rights protection, Oxford, 2009, p. 185 See also Guideliness, para 59: `All persons threatened with or subject to forced evictions have the right of access to *timely* [my emphasis] remedy. *Appropriate* [my emphasis] remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation...`

<sup>170</sup> ICESCR, General Comment, no.7, para. 13.

### 4.2.3. Conclusion

It is important to note two things. Firstly, although the Serbian Constitution grants many legal rights that are important for the actual or potential evictees, many of those are left without any concretization, which is reserved for particular laws to further elaborate these rights. Secondly, a positive thing is that international standards can be directly applied, even if there is no good legislation or no legislation at all. However, this does not eradicate the problem since there are no provisions on adequate housing or prohibition on forced evictions.

## 4.3. Anti-discriminatory legislation and human rights institutions

### 4.3.1. Introduction

Although not a focal point of this analysis, anti-discriminatory legislation and human rights institutions must be at least summarily illustrated, since they represent one of the legal mechanisms in a suppression of discrimination. At the same time, regardless of general importance of these institutions, their effectiveness can be regarded as disputable.

### 4.3.2. Law on Prohibition of Discrimination and Ombudsman

Serbia enacted the Law on Prohibition of Discrimination in 2009 as a *lex generalis* in the sphere of discrimination.<sup>171</sup> Enactment of this legislation was highly important since it was a prerequisite for Serbia to enter the `White Schengen List`, enabling Serbian citizens to move freely across the EU. This law contains many grounds of discrimination, as well as some particular parts reserved for specific modes of discrimination.<sup>172</sup> However, it does not encompass provisions on housing.<sup>173</sup> From the aspect of the Council of Europe this is problematic, since it can discourage persons to claim their rights before the relevant bodies, or, on the other hand, claim can be dismissed.<sup>174</sup>

However, it established tort law, misdemeanor law and criminal law protection, as well as the institution of the Commissioner for the protection of equality, as a central body in the struggle against discrimination.<sup>175</sup>

In addition, Serbia recognizes the institution of Ombudsman. It is an independent body, whose purpose is to protect and upgrade the status of human

---

<sup>171</sup> Serbia, Anti-Discrimination Laws, available at: [http://www.equalrightstrust.org/ertdocumentbank/395178321\\_5\\_PILI%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf](http://www.equalrightstrust.org/ertdocumentbank/395178321_5_PILI%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf) accessed 06.05.2016.

<sup>172</sup> Ibid.

<sup>173</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Serbia adopted on 28 November 2013, para 54.

<sup>174</sup> Ibid.

<sup>175</sup> Tibor Varadi, et al, Contributions to the Strategy for Improving Roma Status, Belgrade 2014. p. 74-75.

rights in Serbia.<sup>176</sup> It controls compliance of the conduct of administration and establishes the existence of violations of citizens` rights committed by the administrative institutions.<sup>177</sup> It also possesses the right to initiate legislative changes within confines of its competence or to question constitutionality and legality of laws and other documents.<sup>178</sup> Finally it can initiate procedures on its own initiative or after a submission of a complaint by the citizens.<sup>179</sup> It can start criminal or misdemeanor proceeding against the person employed in an administrative body.<sup>180</sup>

However, there are some concerns that there is no adequate monitoring procedure in this respect. For example, Commissioner for Equality held that evictions are not within her competence.<sup>181</sup> Similarly, Ombudsman was not effective in undertaking actions following complaints submissions.<sup>182</sup> Therefore, practical impact of these institutions can be regarded as questionable.

### 4.3.3. Conclusion

The non-existence of housing in a domain of non-discriminatory legislation can be condemned, because of the obligation of the states to fight discrimination in a sphere of legislation.<sup>183</sup> Furthermore, although it is important to have human rights institutions in order to strengthen their position within a society, practical impact of these institutions can be regarded as questionable.

## 4.4. Relevant administrative law legislation

### 4.4.1. Introduction

Finally, administrative procedure deserves meticulous description, since it is the most relevant legal source in respect of evictions. It deserves special attention because maybe the most significant problems emerge in this area. Therefore, the main downsides are to be depicted in this respect. In this Section, 3 key laws are to be described and critically evaluated: the Law on General Administrative Procedure, the Law on Housing and the Law on Planning and Construction.

---

<sup>176</sup> Zakon o zaštiti građana, Sl. glasnik RS, 79/2005, 54/2007, art. 1. para 1 and 2.

<sup>177</sup> Ibid, art. 17, para 1 and 2.

<sup>178</sup> Ibid, art. 18 and 19.

<sup>179</sup> Ibid, art 24.

<sup>180</sup> Ibid, article 20(2).

<sup>181</sup> Amnesty International, Home is More Than a Roof over Your Head, Roma denied adequate housing in Serbia, 2011, p.31.

<sup>182</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013 p. 43.

<sup>183</sup> CESCR, General Comment no. 20, see paragraphs 8-9.

## 4.4.2. Lex generalis

### 4.4.2.1. Introduction

As claimed by the ERRC, legislation on forced evictions is complicated, non-coherent and non - satisfactory.<sup>184</sup> It is dispersed into several legislations, classified on the basis of objects that they are regulating. Those are: the Law on General Administrative Procedure, the Law on Execution and Security, the Law on Housing, the Law on Planning and Construction, the Law on Communal Services, the Law on Expropriation.<sup>185</sup> Therefore, Romani people`s rights are breached under the article 4 (containing general limitation clause) in relation to article 11 (adequate standard of living) of ICESCR in an aspect that ` the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society`. <sup>186</sup>Therefore, as submitted by the ERRC to the CESCR: ` the law on forced evictions is so vague and complex as to lack the quality of law that Article 4 of the Covenant requires`. <sup>187</sup>This is understandable, since under human rights law, limitations of rights must be imposed via law<sup>188</sup> which is defined with a `sufficient precision`. <sup>189</sup>

One of the most prominent failures of the Serbian legal system is that it does not provide the right to adequate housing as a `self-standing right`<sup>190</sup>, alternative accommodation<sup>191</sup> and prohibition on forced evictions, and other legal safeguards.<sup>192</sup>

Although this legal framework is complex and vague, this work will focus only on some laws that are considered relevant. Generally, evictions of informal settlements of the Romani people are mainly conducted under the administrative law procedure.<sup>193</sup> The Law on General Administrative Procedure is a *lex generalis* in this respect, while the Law on housing and the Law on Planning and Construction are regarded as a *lex specialis* in a domain of evictions, which means that provisions of general law are applied subsidiary.<sup>194</sup>

---

<sup>184</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.

<sup>185</sup> Ibid.

<sup>186</sup> ICESCR, art.4.

<sup>187</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.5.

<sup>188</sup> Daniel Moeckli, et al, International Human Rights Law, Oxford 2014, p.111.

<sup>189</sup> Sunday Times v UK, n 22, para 49, in Daniel Moeckli, et al, International Human Rights Law, Oxford 2014, p.111.

<sup>190</sup> Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.

<sup>191</sup> Marko Davinic, Prinudno iseljenje I raseljavanje – upravno-pravni aspekti, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 159.

<sup>192</sup> Home is More than a Roof Over your Head, Amnesty International, 2011, p.30.

<sup>193</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p.41.

<sup>194</sup> Marko Davinic, Prinudno iseljenje I raseljavanje – upravno-pravni aspekti, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 164.

#### 4.4.2.2. Law on General Administrative Procedure

Firstly, this legislation contains the principle of proportionality. This means that when there are multiple ways of executing the eviction, the way that is most gentle for a targeted person will be employed.<sup>195</sup> Furthermore, during Sunday, state holidays, and at night, eviction can be conducted only if there is a threat of postponement and if there is a written warrant.<sup>196</sup> In addition, under general administrative procedure the right to appeal is envisaged, but the major downside with administrative law in this respect is that using an appeal does not result in postponement of the execution.<sup>197</sup> Importantly, this Law does not contain a provision that a targeted person shall be provided with a written note on information about execution, more specifically on the modus of the execution and on the date of the execution.<sup>198</sup>

After this brief description, several remarks can be made. Firstly, the Law on General Administrative Procedure does not contain provisions on the relevant international standards that eviction cannot be carried out during the bad weather.<sup>199</sup> It is not strange that revision of this legislation was required by some NGOs in this matter, as well as prohibition of accelerated procedures.<sup>200</sup> Secondly, appeal does not have a suspensive effect, while under the Guidelines it is laid down that individuals or groups must be protected against evictions if their case is being reviewed by the national or international institution.<sup>201</sup> Finally, under relevant provisions of international legal framework, 'adequate and reasonable notice'<sup>202</sup> must be provided to affected persons before the eviction,<sup>203</sup> what is not the case in these provisions. Similar things will be seen in other relevant laws.

However, another problem must be added to the previous ones. As the Special Rapporteur on adequate housing had warned, evictions are conducted in contravention with article 221 of the Law on General Administrative Procedure, which provides that resorting to appeal result in halt of the eviction process.<sup>204</sup> Furthermore, some other legislation creates legal safeguards for evictees. For example, provisions of the Law on Enforcement and Security provide evictees who are about to be expelled with a protection by the issuance of interim measures.<sup>205</sup> The major downside of these provisions is that they are not implemented in practice in respect of time limits; also, courts are unwilling to issue decisions on these

---

<sup>195</sup> Zakon o opštem upravnom postupku, Sl. list SRJ, br. 33/97 i 31/2001 i Sl. glasnik RS, br. 30/2010.

<sup>196</sup> Ibid, art.263 (2).

<sup>197</sup> Ibid, art. 270.

<sup>198</sup> Marko Davinic, *Prinudno iseljenje I raseljavanje – upravno-pravni aspekti*, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 155.

<sup>199</sup> Ibid, p.156.

<sup>200</sup> Serbia: After Belvil, Serbia needs new laws against forced eviction, Amnesty international, p. 6-7

<sup>201</sup> Guidelines, para 36.

<sup>202</sup> CESCR, General Comment no.7, para 15.

<sup>203</sup> Ibid.

<sup>204</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo, 26.02.2016, para 60.

<sup>205</sup> Ibid.

measures if the case is related to the possession of the owner.<sup>206</sup>In addition, from a technical point of view, these procedures are complicated because they render people insecure and, on the other hand, it happens that procedures are distinct or some of them may even overlap.<sup>207</sup>

#### **4.4.2.3. Conclusion**

Here we must highlight three important things. Firstly, administrative law is highly contradictory, not only within the Law on the General Administrative Procedure, but also, collision is apparent between this *lex generalis* and the particular legal regimes, such as under the Law on Enforcement and Security. Secondly, competent bodies are reluctant to apply provisions of the relevant legislation which are more beneficial to evictees, especially when it comes to private property issues. Finally, a lack of implemented international legal safeguards in respect of notification, suspensive effect and executions during the bad weather must be emphasized.

#### **4.4.3. Lex Specialis**

##### **4.4.3.1. Introduction**

Besides the general law that regulates eviction, there are more specific legal regimes that are covered by the following laws - the first one is the Law on Housing which focus on evictions from residential buildings and the second one is the Law on Planning and Construction, which covers evictions of the informal settlements.

##### **4.4.3.2. Law on Housing**

The Law on Housing is considered with the eviction procedures from the flats or common areas of the residential buildings.<sup>208</sup> The legal basis for using an apartment can be ownership or a lease.<sup>209</sup> The owner (or basically, any other person that has a legal interest), can make an eviction request from the competent municipal body.<sup>210</sup> The owner is entitled to do that if the targeted person is someone who had moved in an apartment or common areas without a legal basis, or lives in an apartment or common areas without legal basis, or if legal basis has been cancelled.<sup>211</sup> Eviction procedure is urgent, and an appeal does not result in postponement of the eviction.<sup>212</sup> However, no explanation on what `urgent` means is

---

<sup>206</sup> Ibid.

<sup>207</sup> Ibid, para 61.

<sup>208</sup> Zakon o stanovanju, Službeni Glasnik RS, 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94 48/94, 44/95, 49/95, 16/97, 46/98, 26/2001, 101/2005, 99/2011, article 5(2).

<sup>209</sup> Ibid, article 5(1).

<sup>210</sup> Ibid. art. 5(2).

<sup>211</sup> Ibid.

<sup>212</sup> Ibid. art 5, para 3 and 4.



provided in this legislation.<sup>213</sup> Time limit for evictions is left to be envisaged by an administrative decision, and it generally amounts to 1-3 days.<sup>214</sup>

Some critical voices had been raised on this Law on Housing, enacted as early as 1992 (although it had undergone numerous changes). Firstly this is an exemption where eviction can be mounted without a judicial decision.<sup>215</sup> As stated by the Amnesty International, on the occasion when massive forced evictions took place in Belgrade:

‘In the first instance, there must be a decision to evict. The affected individuals should then be given a notice of the decision to evict, which should include the legal grounds for eviction; they should subsequently be issued with a written decision (*rešenje*). This document should include the date or deadline by which the individual or family is required to move out, which may be within three, five or seven days etc. However, if for some reason the eviction does not take place on the stated date, a new official notice should be issued, even if the legal ground for eviction remains the same. No advice or information is routinely given to enable persons at risk of eviction to challenge the decision, *nor is there any specific provision made in law*<sup>216</sup>’.<sup>217</sup>

As we can see, basically no legal safeguards are provided to the endangered persons in this respect. There is no need for judicial decision, evictions are urgent (this law does not explain what this means), appeals are without suspensive effect and law gives institutions the competency to define very short due dates for evictions. Also, one remark must also be made in this case – legal basis for the eviction is the absence of legal security. This is highly important because many evictions are inextricably linked to this legal problem, as we will see also in the next part.

#### 4.4.3.3. Law on Planning and Construction

In the previous section, we could see that evictions from residential buildings and apartments are operated under the Law on Housing. On the other hand, evictions of informal settlements are conducted under the Law on Planning and Construction.<sup>218</sup> Problems regarding the legal security still remain. As we can see from article 176 (para 1, item 1), the legal basis for demolition of the illegally constructed building is established. A construction inspector can order a demolition of buildings built without proper legal documentation, such as construction permits.<sup>219</sup> This can be regarded as detrimental because firstly, an informal settlement is

---

<sup>213</sup> Marko Davinic, *Prinudno iseljenje i raseljavanje – upravno-pravni aspekti*, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 154.

<sup>214</sup> Ibid, 154.

<sup>215</sup> Policy Brief, Skrug, 2015, p.7, available at:

[http://www.ligaroma.org.rs/images/stories/izvestaji/SKRUG\\_Policy\\_brief\\_Final.pdf](http://www.ligaroma.org.rs/images/stories/izvestaji/SKRUG_Policy_brief_Final.pdf) accessed 24.04.2016.

<sup>216</sup> Emphasis added.

<sup>217</sup> Amnesty International, *Home is More Than a Roof Over Your Head, Roma denied adequate housing in Serbia*, 2011, p. 31. See *Zakon o planiranju i izgradnji*, Službeni glasnik RS, 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014.

<sup>218</sup> *Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing*, Praxis, Belgrade 2013, page 41.

<sup>219</sup> *Zakon o planiranju i izgradnji*, Službeni glasnik RS, 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014, art 177, para 1, item 1.



defined as a settlement that lacks construction permits<sup>220</sup>, and secondly, precisely this article is the main legal basis for demolition of these settlements.<sup>221</sup> One of the problems here is also that article 171 (para 3) envisages that costs of the execution are charged to the perpetrator, and the perpetrator is obliged to remove illegally constructed objects.<sup>222</sup> This was the case in Grmec, where Roma inhabitants received decisions that obliged them to remove objects on their own, `under the threat of enforcement`.<sup>223</sup> This is when we come to a problematic issue – a time limit for execution of this kind of decisions. Let us stick to the example of Grmec – in this case, the due date was only one day for people to destroy huts they were living in.<sup>224</sup> The Law on Planning and Construction in its article 183 (para 1 and 2) does not envisage a time limit for the implementation of this decision, but it leaves it to be elucidated by the decision of the construction inspector.<sup>225</sup> This highly problematic legislative solution results in definition of very short time limits for the Roma living in informal settlements, stretching from 1 to 3 days.<sup>226</sup>

Interestingly, the Serbian Constitutional Court endorsed the position of the ECtHR on appropriate time limit for eviction, thus labelling even a period of 15 days as inappropriate; in this way, it basically renders period of 1 or 3 days as `particularly inappropriate`.<sup>227</sup> Importantly, as is the case under the Law on Housing in the aspect of eviction, appeal against the decision on removal issued by the construction inspector does not have suspensive effect, as is enshrined in article 184 (para 8), which is dangerous because of the possibility of evicted people becoming homeless.<sup>228</sup> Bearing in mind this legal solution, habitants of informal settlements usually do not resort to the right to appeal.<sup>229</sup>

As we can see, similar problems exist as in the previous case. Time limits for demolition of homes are short and defined by administrative bodies. An appeal does not have suspensive effect and problem of legal security of tenure is still present.

#### **4.4.3.4. Other problems encountered by the Roma**

Due to these detrimental legal solutions, Roma are pressured to seek solutions elsewhere. Two alternative lanes were used. Firstly, human rights institutions were employed in the case of forced evictions. However, Praxis reported

---

<sup>220</sup> Platforma za predlaganje "Lex Specijalis" zakona o legalizaciji romskih naselja, p1.

<sup>221</sup> Marko Davinic, Prinudno iseljenje i raseljavanje – upravno-pravni aspekti, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 158.

<sup>222</sup> Ibid, art 171, para 3

<sup>223</sup>, Press release: New threat by way of forced eviction from Roma settlement in Belgrade, YUCOM 23.07.2015. Available at: <http://en.yucom.org.rs/press-release-new-threat-by-way-of-forced-eviction-from-roma-settlement-in-belgrade/> accessed 23.03.2016.

<sup>224</sup> Ibid.

<sup>225</sup>Zakon o planiranju i izgradnji, Službeni glasnik RS, 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014 and 145/2014, art.183 para 1 and 2.

<sup>226</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p.39

<sup>227</sup> Ibid p.39. footnote.67.

<sup>228</sup>, Press release: New threat by way of forced eviction from Roma settlement in Belgrade, YUCOM, 23.07.2015.

<sup>229</sup>Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p.41. However, this can also be a consequence of the lack of legal culture. Ibid.

that of 16 submitted complaints Ombudsman reacted only in one case.<sup>230</sup>As has already been mentioned, the Commissioner for the Equality protection said that the evictions of Romani settlements do not fall under her mandate. However, some progress has been made, since this institution started issuing recommendations on eviction procedures, as was the case with Grmec.<sup>231</sup>

On the other hand, private law safeguards were also employed. The Law on Torts provides provisions that can claim damage compensation, even in the case of evictions.<sup>232</sup> Secondly, it can be possible even to prevent the evictions by referring to personal and family life.<sup>233</sup> Finally, this Law provides that even the eviction can be challenged through the right to appeal.<sup>234</sup>

Nevertheless, those alterative legal means cannot be compensation for not having an adequate legal framework on forced evictions that would provide effective legal remedies and other safeguards.<sup>235</sup>

In addition, it is noteworthy to say that access to legal assistance, and more generally the right to legal remedy is further impeded by not enacting the law which would provide people with the right to free legal assistance; therefore, many Roma rely on NGOs in this matter.<sup>236</sup>

As for the protection of the legal security of tenure, there were some attempts to remedy this detrimental situation. In 2013 two important laws were passed - Law on the Legalization of Objects and the Law on Special Conditions for the Registration of Property Rights on Objects Constructed without a Construction Permit.<sup>237</sup> The Law on the Legalization of Objects entitled individuals who do not possess building permits to apply for legalization by January 2014.<sup>238</sup> Although it unburdened some of the vulnerable groups of paying the fee for legalizations, Roma were not included on this list.<sup>239</sup> However, the due date for this registration had already passed by the beginning of 2014.<sup>240</sup> In addition, the significant downside with this kind of legislation is the lack of information on these possibilities as well as problems with necessary documentation.<sup>241</sup> Furthermore, no competent statistics was recorded in the area of housing, so effects on Roma of the policy in this sphere cannot be assessed.<sup>242</sup>

---

<sup>230</sup> Ibid, p.43.

<sup>231</sup> Recommendation no. 07-00-365/2015-02, 27.7.2015, available at: <http://www.ravnopravnost.gov.rs/sr/preporuke-mera-organima-javne-vlasti/preporuka-mera-op%C5%A1tini-zemun>, accessed 22.04.2016.

<sup>232</sup> Home is More Than a Roof Over Your Head, Roma denied adequate housing in Serbia, Amnesty International, 2011, p. 31-32.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p. 45.

<sup>237</sup> Serbia, Submission to the UN Committee on Economic, Social and Cultural Rights, 52nd session, Amnesty International, p.7-8.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Policy Brief, Skrug, 2015, p.7.

<sup>241</sup> Serbia, Submission to the UN Committee on Economic, Social and Cultural Rights, 52nd session, Amnesty International, p.8.

<sup>242</sup> Ibid,

Finally, many of these objects could not be legalized, because they were built in areas envisaged for public purposes or made of non-durable materials.<sup>243</sup>

Two problems persist on a more practical plane in a matter of forced evictions and housing. Firstly- there is no mechanism that would raise the accountability issue of the public officials involved.<sup>244</sup> Secondly, data on Roma housing needs and discrimination in respect of housing is non-existent.<sup>245</sup> No monitoring mechanism was implemented, although it was conceived by the previous strategy on Roma inclusion.<sup>246</sup> We must remember that there is an obligation of states to monitor and provide the information about stigmatized groups in a sphere of housing.<sup>247</sup>

#### 4.4.3.5. Conclusion

The *lex specialis* legal regime suffers major defects. We can name several: short due dates, no effective legal remedies, right to compensation must be sought via alternative mechanisms, there is no postponement of eviction when this procedure is challenged, no judicial decision needed for evictions from flats. What must be noted is the absence of a monitoring mechanism that would measure impact on Roma. Bureaucratic requirements are too harsh and conditions for legalization of informal objects do not help Roma in combating legal insecurity. Maybe the most important downsides (besides not having regulated alternative accommodation and prohibition on forced evictions) are those that people who do not have proper legal security in respect of their tenure rights are rendered helpless if faced with evictions.

#### 4.4.4. Conclusion

Finally, we can make some more concrete remarks on this problem.

Firstly, as we could have seen, legal security can be regarded as a thing of great importance. In both laws- Law on Housing and Law on Planning and Construction, the possibility to evict someone from a flat or common areas or to demolish houses in informal settlements is linked to the lack of legal basis for living in an apartment or lack of construction permits.

Secondly, the right to a legal remedy is another issue where the link between the Law on Housing and the Law on Planning and Construction can be made. Under the administrative procedure that governs evictions, suspensive effect of the appeal is not envisaged, as is the case with *lex generalis* in this area, thus not postponing the eviction; importantly, besides a lack of legal culture, this is the reason why the right to appeal is not used. Furthermore, the time limit is very short for eviction or demolition of houses in settlements, roughly amounting to 1-3 days, as defined by

---

<sup>243</sup> Marko Davinic, *Prinudno iseljenje I raseljavanje – upravno-pravni aspekti*, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013, p. 157, footnote 39.

<sup>244</sup> *Home is More Than a Roof Over Your Head*, Roma denied adequate housing in Serbia, Amnesty International, 2011, p.32.

<sup>245</sup> *The Strategy for Social Inclusion of Roma for the 2016-2025 Period*, p. 40. Available at: <http://www.minrzs.gov.rs/lat/dokumenti/medjunarodna-saradnja/strategija-za-socijalno-uklju%C4%8Divanje-roma-i-romkinja-u-republici-srbiji-za-period-od-2016-do-2025-godine> accessed 22.05.2015.

<sup>246</sup> *Ibid*, p.39.

<sup>247</sup> CESCR, General Comment no. 4, para 13.

administrative decisions. Eventually, no legislation is passed on free legal assistance, thus impairing affected individuals of the right to legal remedy.

Thirdly, it must be highlighted that procedures are not only linked to the problem of legal security of tenure issues, but also problems linked to eviction procedures. Legislation in this respect is in contradiction, procedures overlap as noticed by the Special Rapporteur on adequate housing. In addition, it is also important to mention that on the one hand, institutions do not apply provisions on evictions that are more favorable to the people who are to be evicted and on the other hand, it seems that private property is more important than protection of human rights during the eviction procedures.

Finally, Serbian legislation does not contain a prohibition of forced evictions or a provision on adequate housing or alternative accommodation.

When it comes to the legal aspect of tenure, Serbia is under immediate obligation to impose legal security upon people who lack this. It is further elucidated by the General Comment no. 7 issued by the CESCR, as one of the aspects of adequate housing, as is provided also by the Guidelines in this respect. The ECtHR had a creative role in interpreting article 8 of the ECHR. The Court asserted the concept of `home` as having an autonomous legal existence, thus emancipating it from national legislations, as well as broadening it by enhancing also those objects that lack legal basis and even caravans.

As for the eviction procedures, several specific points must be made. The right to effective legal remedy must be provided, what Serbian legislation manifestly failed to introduce. Appeal does not result in a suspension of the eviction or demolition. This can be regarded as something that is contrary to provisions of the Guidelines, which claim that affected persons must be protected from eviction during the revision of the relevant case before the competent body. Furthermore, the time limit for eviction or demolition is defined by the competent decisions. The due date is, as already mentioned, very short. It contravenes the interpretation of article 8 of the ECHR, where the ECtHR asserted that the time limit for leaving a home is inappropriate. Consequently, people do not use their right to appeal since the period varies from 1 to 3 days. Finally, General Comment no. 7 provides legal assistance. In this matter, the right to a legal remedy is undermined, since no law on free legal assistance was enacted, creating an obstacle for people to use legal remedy. However, the Constitutional provision envisages the right to free legal assistance, although it is stipulated that relevant law in this domain will further elaborate this provision. Similarly, the right to compensation, although contained within Constitutional provision, was not integrated within relevant national legislation in respect of evictions.<sup>248</sup> Nevertheless, CESCR in its General comment no. 7 invoked provisions of ICCPR on effective remedy, meaning that institutions are *obliged* to `enforce such remedies when granted`.<sup>249</sup>

Finally, we can draw some general conclusions. Firstly, as highlighted by the ERRC referring to article 4 and 11(1) of the ICESCR, Serbian legislation is complicated and unclear in respect of evictions, thus lacking the legal substance, particularly because of failing to impose restrictions on the right to adequate housing

---

<sup>248</sup> Home is More Than a Roof Above Your Head, Roma denied adequate housing in Serbia, Amnesty International, 2011, p.31.

<sup>249</sup> CESCR, General Comment no.7, para 13.

by legislation.<sup>250</sup> On the other hand, this is a clear violation of the requirements laid down in the General Comment, because it is designated that the law is most important measure in this matter,<sup>251</sup> as well as the Guidelines, asserting that 'States must adopt legislative ... measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations'.<sup>252</sup> This is important, since in that way, evictions can be carried out 'solely for the purpose of promoting general welfare'<sup>253</sup> - the situation where there is a 'need to ensure the human rights of the most vulnerable'.<sup>254</sup>

In the end, it is significant to mention that, although evictions are carried out under administrative law as an internal law of the Serbian legal system, Serbia cannot invoke internal provisions in order to avoid its human rights obligations – an important principle of international human rights law.<sup>255</sup>

## 5. SUGGESTIONS ON LEGISLATION

### 5.1. Introduction

Since the legislation in Serbia is quite vague in the domain of housing and forced evictions, many raised suggestions in which way Serbian legislation should be reformed. Various bodies and organizations offered some insight into the problem, providing us with valuable sources on this matter.

### 5.2. Recommendations on actual legislation

In respective CESCR's Observations, there were no legislative suggestions to be found, at least expressly defined.<sup>256</sup> However, the Special Rapporteur on adequate housing urged that law should be enacted in a way where it prohibits forced evictions 'except in the most exceptional circumstances'<sup>257</sup>, and that standards contained in General Comment no. 7 must be integrated in legislation.<sup>258</sup> Furthermore, she also suggested that Serbia should become a state party to the

---

<sup>250</sup> Written Comments, of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), p.5.

<sup>251</sup> CESCR, General Comment no. 7, para 9.

<sup>252</sup> Guidelines, para 22.

<sup>253</sup> Ibid, para 21.

<sup>254</sup> Ibid, para 21, footnote d. As further elaborated by the Guidelines: 'For instance, an eviction may be considered *justified* [my emphasis] if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved.' para 22.

<sup>255</sup> Home is More Than a Roof Above Your Head, Roma denied adequate housing in Serbia, Amnesty International, 2011, p.32.

<sup>256</sup> Concluding Observations on the Second Periodic Report of Serbia, CESCR, July 2014, para 30.

<sup>257</sup> Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha, Visit to Serbia, including Kosovo, Belgrade, 25 May 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>

<sup>258</sup> Ibid.

Optional Protocol to ICESCR.<sup>259</sup> The Council of Europe recommended to Serbia, since Law on Prohibition of Discrimination does not encompass domain of housing, to revise respective legislation `if necessary`<sup>260</sup>. In addition, Serbia must integrate in national legislation adequate housing and to be `free of forced evictions`<sup>261</sup>. European Union assessed that streamlining with international standards on evictions must be conducted; in order to regulate Roma settlements, legalization approach might be a good solution.<sup>262</sup>

One of the most detailed suggestions in the NGO sector is made by the Amnesty International. These include enactment of legislation which would include consultation with targeted population, adequate and reasonable notice prior to eviction, information on evictions, protection safeguards that would be implemented during the eviction, provide legal assistance and legal remedies, compensation, alternative adequate housing.<sup>263</sup> Furthermore, the Law on General Administrative Procedure must be derogated in order to prevent evictions during bad weather as well as accelerated evictions.<sup>264</sup> In addition, adequate housing must be designated as a legal category that would be effectuated via court by derogating contemporary legislation and by ratification of article 31 of the ESC (revised).<sup>265</sup> The Law on Prohibition of Discrimination must be changed in order to prevent and to ban discrimination in a sphere of adequate housing, and monitoring mechanisms should be applied.<sup>266</sup> Finally, laws should be passed that would prohibit forced evictions and plan on legalization of Roma settlements should be created.<sup>267</sup>

At the level of national institutions, the Serbian Government passed a Strategy for Social Inclusion of Roma for the 2016-2025 Period. The competent ministry will trigger a revision of relevant legislation in order to create a possibility for subsequent legalization and reduce expenditures for Roma in this respect.<sup>268</sup> The Law on Planning and Construction should be amended in order to recognize self-built facilities as a legal way of construction.<sup>269</sup> Finally, some legislation reform must be made in respect of housing and evictions. The Law on Housing and Law on Construction and Planning, as well as the Law on General Administrative Procedure must be derogated in order to be streamlined with international standards on housing and non-discrimination.<sup>270</sup> As for evictions, adequate legal document must be made with defined procedures on evictions which would be in compliance with General Comment no. 7.<sup>271</sup>

Also, there were some suggestions that Serbia should become part to the Optional Protocol to the International Covenant on Economic, Social and Cultural

---

<sup>259</sup> Ibid.

<sup>260</sup> Third Opinion on Serbia adopted on 28 November 2013, para 54,56.

<sup>261</sup> Ibid, para 82.

<sup>262</sup> Serbia 2015 Report, European Commission, Brussels 2015, p. 58.

<sup>263</sup> Serbia: After Belvil, Serbia needs new laws against forced eviction, Amnesty international, p. 6

<sup>264</sup> Ibid.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid. p.7.

<sup>267</sup> Ibid, p.12.

<sup>268</sup> The Strategy for Social Inclusion of Roma for the 2016-2025 Period, p. 68.

<sup>269</sup> Ibid, p.70.

<sup>270</sup> Ibid, 72.

<sup>271</sup> Ibid.

Rights (OP-ICESCR)<sup>272</sup> or to article 31 of the ESC (revised).<sup>273</sup> However, although it might be regarded as useful, it must be added that international procedures cannot be regarded as compensation for non-existent remedies, but they are of an auxiliary nature, as defined by CESCR in its General Comment no.9.<sup>274</sup>

### 5.3. Conclusion

As we can see, recommendations in reports and strategies in respect of housing and forced evictions are really vague, except maybe in the case of NGO proposals and maybe Government strategy. Analysis of these problems (in legal terms) is also vague and descriptive. It is mainly considered with a factual background, and with compliance of state`s bodies` actions to international legal standards in a frame of forced evictions, and not with the compliance of the national legislation with the international legal standards. Secondly, it is deemed that there are two key pillars on which improvement must be based. First one is the creation of the national law that would ban forced evictions and live up with safeguards in international law and the latter, which is concerned with the legalization of Roma settlements.

## 6. CONCLUSION

In this work I tried to depict to what extent Serbian legislation is in compliance with international legal standards in the respect of forced evictions, focusing on the Roma people, as a one of the most disadvantaged groups in the Serbian society. I will try to go briefly throughout my work in order to draw out most relevant remarks. Also, I wanted at least in short lines to show that the issues of evictions and non-democratic political framework are interlinked.

As for the problem on the international stage, it seems that there are still some uncertain solutions in the area of adequate housing, since economic rights are linked to the progressive realization of them. We mentioned that the right to adequate housing consists of several elements. However, at least in the academic sphere, there is a problem in making a distinction between those aspects which are of the immediate effect, and which are of gradual effect. For us, it is important that measures for the establishment of the legal security of tenure are labelled as immediate by the General Comment no. 4. Be that as it may, standards encompassed by the right to housing are labeled as a minimum. The International Covenant on Economic, Social and Cultural Rights and its General Comments contain language that is sometimes written in a non- mandatory way, as is the case with measures that legal security `should` be provided.

Roma people are amongst the most disadvantaged groups in Serbian society. They disproportionately suffer from evictions. Conditions of living in informal settlements are bad, and during the evictions, those executing them are not

---

<sup>272</sup> Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha Visit to Serbia, including Kosovo, Belgrade, 25 May 2015.

<sup>273</sup> Serbia: After Belvil, Serbia needs new laws against forced eviction, Amnesty international, p. 6.

<sup>274</sup> CESCR, General Comment no.9, para 4.

consistent with international legal standards on evictions. There can be many so-called justifications for evictions, but in Serbia or more specifically Belgrade, urban development projects such as roads and big gentrification projects, for example, the Belgrade Waterfront, seem to take precedence. Although Serbia must collect data on housing conditions of Roma People and forced evictions, it seems that this is not the case.

Secondly, there is a lack of consideration when it comes to the complex legal evaluation of the issue of compliance of positive Serbian legislation with international legal standards on forced evictions. Reports are mainly vague, descriptive and non-analytical. As it was described in the part dealing with factual background, reports are more accentuating contemporary situation than evaluating extent to which the Serbian legislation is consistent to the international standards and analysis of the legal framework. In addition, their analysis is based upon comparing practices of public authorities during the eviction with international framework. Furthermore, it seems that reports, provided by NGOs are more concrete than conclusions issued by competent regional or international bodies. Although forced evictions are a very complex issue from the aspect of legal science, and important due to recent events that had taken place in Belgrade, there was only one academic work dealing with the similar topic available, which is why this work relies mainly on various reports.

Thirdly, the problem with democratic procedures in the Serbian society must be emphasized. Drafting of the new legislation that would encompass forced evictions was not transparent and was executed under the accelerated procedure<sup>275</sup>. We could see the similar pattern during the evictions, which are conducted without participation of affected communities.

Finally, the problem still persist with data on the Roma people living in informal settlements and the current situation in the domain of housing or needs of the Roma people. The monitoring mechanism is of questionable effect, since the previous Strategy failed to implement this procedure – rather, it was more sporadic and made by national and international institutions.<sup>276</sup> It is yet to be seen what will happen with the new strategy in this sphere.

As for the legal framework, several things can be certain.

Firstly, the international legal framework cannot be avoided by the Serbian authorities – a state cannot hide behind the provisions of its internal law, thus circumventing human rights obligations. Administrative law that regulates evictions cannot be above international human rights law. Although provisions of the relevant international documents are vague, they are more elucidated through legal practices of their relevant bodies. Nonetheless, a problem still remains as these practical achievements rest in the domain of soft law – however, interpretations of these bodies, although not binding, can be used by NGOs in assessing compliance of evictions with international standards, and mobilize public opinion. Also, these bodies can help to end the practice of reservations by broadening the scope of relevant articles of some legal documents, as is the case with the ECSR. Finally, it seems that there is tension between creative activity of international bodies on housing and evictions, and passivity and inertness of local bodies in applying them.

---

<sup>275</sup> Draft Law on Housing and Maintenance of Buildings, p. 60, available at: [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/132-16%20LAT.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/132-16%20LAT.pdf) accessed 24.05.2016.

<sup>276</sup> The Strategy for Social Inclusion of Roma for the 2016-2025 Period, p.39.



Secondly, the Constitution grants no provisions on housing or forced evictions, nor anti-discriminatory legislation contains housing. However, it guarantees several legal safeguards, such as the right to compensation, equality before the court and the right to legal remedy. The beauty of Serbian Constitution is that in article no. 18 human rights as well as minority rights `shall be implemented directly`<sup>277</sup>. This is highly important, since in absence of international safeguards in respect of human rights, Covenants can be applied in cases before Serbian institutions, as was the case with Grmec. However, it seems that institutions in Serbia still do not use this positive possibility. In addition, the Constitution provides some elucidation on the interpretation of human rights provisions, that they will be interpreted in a line with international human rights standards. However, Constitutions provides that relevant provisions (for example, on compensation or free legal assistance) will be specified via particular laws.

Thirdly, the legal framework on forced evictions is dispersed into several relevant legislations – Law on Housing, Law on Planning and Construction, Law on Communal Services, Law on General Administration Procedure, etc.

The Law on Housing and Law on Planning and Construction are relevant when we talk about forced evictions. Three key downsides can be marked on them. Firstly, there is no effective legal remedy. Secondly, limit for eviction or demolition can amount from 1 – 3 days as defined by decision, which is inappropriate bearing in mind standards developed by the ECtHR. Finally, as had already been stated in the previous Strategy, evictions are mainly linked to the lack of legal security of tenure – lack of legal basis for living in a flat or moving in without proper legal ground, or lack of building permits.<sup>278</sup> Also there is lack of provision in the Law on General Administrative Procedure, because it does not envisage that eviction cannot be carried out during bad weather, appeal does not have suspensive effect and there is no notification provided to affected individuals.

Be that as it may, at first glance, one can claim that some positive remarks can be made. Firstly, the right to appeal is provided. Secondly, the principle of proportionality – which means that, in executing the eviction, means will be employed that are aimed at achieving the goal, but at the same time most gentle for the targeted person. In addition, Law on General Administrative Procedure, as a *lex generalis* in the area of evictions, contains some safeguards in this respect - it cannot be executed on Sunday, during state holidays or during the night.

These `positive` trajectories cannot compete with their negative counterparts. This can also be seen in a way that people are trying to find some alternative lanes in the protection against evictions. It seems that there are two alternatives to administrative challenges. The first one is under private law provisions – under the Law on Torts. The other one is by using human rights institutions, such as the Ombudsman (whose efficiency can be regarded as questionable, as we have seen). NGOs can be helpful in assisting affected people, since no law on free legal assistance has been passed.

In addition, it must be also mentioned that law in a sphere of administrative proceedings that manages evictions is also contradictory, and that competent bodies

---

<sup>277</sup> Constitution of the Republic of Serbia, art. 18.

<sup>278</sup> Strategy for Improvement of the Status of Roma in the Republic of Serbia, Belgrade 2010, p. 16, available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf> accessed 06.05.2016.

are more inclined to protection of private property. Private possession has the priority over the right to housing.

As we can see, although envisaged by the international standards, there is no effective legal remedy in eviction procedure. Prohibition on forced evictions is not enshrined in relevant legislation. No alternative accommodation is provided to targeted people or adequate housing is enshrined in Serbian legislation. Although it does not enhance the notion of forced evictions, adequate housing is important in this respect, especially in terms of legal security of tenure. This must be highlighted, since the legal basis for eviction from flats or demolition of building in informal settlements is linked to the lack of legal basis for living in a flat or lack of building permits. Serbian legislation is thus violating immediate obligation to confer the legal security to those who lack it, even if they live in informal settlements- individuals who lack building permits.

From the broader social perspective, Roma people are stuck between city development on the one hand, and on the other, democratic deficit, that marginalized vulnerable groups and citizens from decision making processes in a society, in a landscape of marketization. In human rights law, adequate housing is partly a public good, which is incompatible with the neoliberal reforms.

It is useful just once again to sum up some key procedural problems that Serbian legislation encounters in respect of evictions, rendering it inconsistent to international and regional safeguards. These are: short time limits for evictions or demolitions, no effective legal remedy, no suspensive effect of the appeal, compensation sought via alternative lanes due to inappropriate legal framework in that respect, no prohibition of the evictions in bad weather, no free legal assistance, no prohibition of forced evictions or guarantees on alternative accommodation, and also a lack of notification for evictees about relevant information on the procedure.

## 6.1. Way Forward?

Some suggestions have been made in the domain of forced evictions, many of them very vague and abstract. Nonetheless, those can be regarded as useful guidance for determination in which course Serbian legislation should go. Those can be taken separately, or in a combination with other solutions. These include revision of the Law on prohibition of Discrimination as a *lex generalis* in a domain of discrimination, derogation of Law on General Administrative Procedure, Law on Construction and Planning, etc. In this work two solutions should be given proper attention. Firstly, a law on forced evictions should be enacted, that would prohibit these kinds of illegal practices. Secondly, legalization of informal Roma settlements should be undertaken, especially bearing in mind the lack of legal safeguards. However, there is a new draft legislation that entered parliament procedure, which was solemnly announced by one of the members of the Government as a law which will bring ` economic and social development and protection of the environment`<sup>279</sup>. It seems that this is a bridge too far, since the eviction procedure was not lined up with international legal standards - for example, it is excluded from this draft that eviction can be mounted only when all means had already been carried out, and,

---

<sup>279</sup> Paragraf, 30.03.2016, available at: <http://www.paragraf.rs/dnevne-vesti/300316/300316-vest7.html> accessed 15.06.2016.

importantly, it does not determine what is the adequate alternative accommodation.<sup>280</sup> So, it seems that good chance is missed in this respect, because this law, when adopted, will suspend the Law on housing.<sup>281</sup> Since contemporary legislation is atomized in the domain of forced evictions, it seems that a comprehensive approach must be employed when reforming the relevant laws, what will take time. Due to that, it is important that members of administrative and judicial institutions follow positive examples of the Krsmanovaca case or Grmec example in dealing with human rights issues, by directly implementing provisions of the relevant human rights documents, until Serbia finally enacts legislation that would legalize informal Roma settlements, prohibit forced evictions, and integrate safeguards on evictions that are allowed.

In my opinion, changes should take place at two levels: short term level and long term. In the case of the former, it should be aimed at a facilitation of application of human right standards in Serbian legal system, by providing mandatory education for administration officers and judges. The latter would enhance cross-cutting and comprehensive strategy on evictions and housing in which creation would take part government officials, members of Roma communities and Roma organizations as well as various NGOs. This strategy should define concrete goals and implementation and monitoring mechanisms. Those goals should result in the creation of law that would prohibit forced evictions and which would encompass all relevant international legal standards on eviction procedures. This can only go hand in hand with legalization of informal Romani settlements, due to the mutual relation between evictions and legal security. However, it seems that the first avenue is the priority, bearing in mind *en masse* and constant violations of human rights in this sphere, especially in a domain of adequate accommodation.<sup>282</sup> We do not have much time to lose.

## BIBLIOGRAPHY:

### 1. Literature and articles:

- 1) Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha Visit to Serbia, including Kosovo, Belgrade, 25 May 2015. Available on: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E> accessed 25.02.2016.
- 2) Neformalna naselja nevidljiva za statistiku, Politika, 30.09.2014. Available at: <http://www.politika.rs/scc/clanak/306566/Neformalna-naselja-nevidljiva-za-statistiku> accessed 27.03.2016.

---

<sup>280</sup>Uprkos izmenama Predlog Zakona o stanovanju i održavanju zgrada i dalje neprihvatljiv, Danas, 18.02.2016. Available at: [http://www.danas.rs/dodaci/uploaddocumentsdodaci2013biltenpdf/uprkos\\_izmenama\\_predlog\\_zakon\\_a\\_o\\_stanovanju\\_i\\_odrzavanju\\_zgrada\\_i\\_dalje\\_neprihvatljiv.1117.html?news\\_id=316182](http://www.danas.rs/dodaci/uploaddocumentsdodaci2013biltenpdf/uprkos_izmenama_predlog_zakon_a_o_stanovanju_i_odrzavanju_zgrada_i_dalje_neprihvatljiv.1117.html?news_id=316182) accessed 15.06.2016.

<sup>281</sup> Draft Law on Housing and Maintenance of Buildings, art 130.

<sup>282</sup> Danas, 18.02.2016.

- 3) UNHABITAT Issue Paper on Informal Settlements, New York 2015, available at: [http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-22\\_Informal-Settlements-2.0.pdf](http://unhabitat.org/wp-content/uploads/2015/04/Habitat-III-Issue-Paper-22_Informal-Settlements-2.0.pdf) accessed 22.03.2016.
- 4) Platforma za predlaganje "lex specijalis" zakona o legalizaciji romskih naselja, p.1, available at: <http://www.mcnis.org.rs/wp-content/uploads/2014/02/Predlog-PLATFORMA-ZA-LEX-SPECIJALIS.pdf> accessed 23.03.2016.
- 5) Zlata Vuksanovic Macura, The Mapping and Enumeration of Informal Roma Settlements in Serbia, Environment and Urbanization, vol. 24, no 2, October 2012, p. 687.
- 6) Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing, Praxis, Belgrade 2013, p.8.
- 7) Written Comments of the European Roma Rights Centre, Concerning Serbia For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (2-6 December 2013), ERRC, p.4.
- 8) Refugee Centre Razed For Belgrade Waterfront, Balkan Insight, 27.04.2016, available at: <http://www.balkaninsight.com/en/article/belgrade-s-refugee-aid-centre-demolished-for-belgrade-waterfront-04-27-2016> accessed 22.05.2016.
- 9) Belgrade Roma Families Living in Fear of Eviction, Balkan Insight, 13.08.2015, available at: <http://www.balkaninsight.com/en/article/belgrade-roma-families-in-fear-of-eviction-08-13-2015> accessed 22.04.2016.
- 10) Davenport: Improving lives of Roma key for Opening of Chapter 23, European Western Balkans, 12.04.2016. Available at: <https://europeanwesternbalkans.com/2016/04/12/davenport-improving-lives-of-roma-key-for-opening-of-chapter-23/> accessed 18.04.2016.
- 11) Serbia: Forcibly evicted Roma still awaiting resettlement despite EU millions, Amnesty International 2015, available at: <https://www.amnesty.org/en/latest/news/2015/04/serbia-forcibly-evicted-roma-still-awaiting-resettlement-despite-eu-millions/> accessed 02.02.2016.
- 12) Stop the Forced Evictions of Roma Settlements, Amnesty International, June 2010, p. 3.
- 13) Melanie H. Ram, Europeanized Hypocrisy: Roma Inclusion and Exclusion in Central and Eastern Europe, Journal on Ethnopolitics and Minority Issues in Europe, Vol 13, No 3, 2014, p. 15-17.
- 14) For these issues, see full report: No Residence, No Rights, Praxis. Available at: [http://www.praxis.org.rs/images/praxis\\_downloads/No\\_residence\\_no\\_rights.pdf](http://www.praxis.org.rs/images/praxis_downloads/No_residence_no_rights.pdf) accessed 18.03.2016.
- 15) Serbia: a Report by the European Roma Rights Centre, Country Profile 2011-2012, page 7.
- 16) Barbara Jovanović, Inclusion or Exclusion of Roma Children From the Serbian Educational System?, Journalism and Mass Communication, ISSN 2160-6579, July 2012, Vol. 2, No. 7, 786-790.
- 17) Tijana Joksic, Discrimination of Roma in Serbia, Government Response, Working Paper: Lecture on Discrimination of Roma in the Republic of Serbia, Freiburg, June 2015.
- 18) Home is More Than a Roof Over Your Head, Roma Denied Adequate Housing in Serbia, Amnesty International 2011, page 12.

- 19) Human Rights of Roma and Travellers in Europe, Council of Europe, 2012.
- 20) Stop Forced Evictions, Protect People Living in slums, Amnesty International 2011. Available at: <https://www.amnesty.org/en/documents/ACT35/026/2011/en/> accessed 01.04.2016.
- 21) Ivana Tomovska, Poverty, Discrimination and Roma: a Human Security Issue, Human Security Perspectives, Volume 7 (2010), Issue 1, p.68.
- 22) Zoran Eric, Urban Feudalism of New Belgrade: The Case of Belville Housing Block, available at: [http://www.academia.edu/4317479/ Urban Feudalism of New Belgrade The Case of Belville Housing Block](http://www.academia.edu/4317479/Urban_Feudalism_of_New_Belgrade_The_Case_of_Belville_Housing_Block) accessed 06.03.2016.
- 23) Housing and Property Rights in Bosnia and Herzegovina, Croatia and Serbia and Montenegro, UN Habitat, 2005, page 130.
- 24) Regular Annual Report of the Protector of Citizens for 2014, Belgrade 2015, page 37, para 3.7.
- 25) Deca s ulice najugroženija grupa u društvu! Telegraf, 24.11.2014. Available at: <http://www.telegraf.rs/vesti/1322110-deca-s-ulice-najugrozenija-grupa-u-drustvu-foto> accessed 15.04.2016.
- 26) Mina Petrovic and Milena Timotijevic, Homelessness and Housing Exclusion in Serbia, European Journal of Homelessness, Volume 7, No. 2, December 2013, p. 269.
- 27) The Situation of Roma in EU candidate countries 2014/2015, European Roma and Travellers Forum, May 2015 p. 12.
- 28) Evictions Unlimited – no Summer Break for the Roma, European Roma and Travellers Forum, 03.09.2015. Available at: <http://www.ertf.org/index.php/8-news/250-evictions-unlimited> accessed 03.06.2016.
- 29) Eviction; Enough Violence; We Want Justice, Environment and Urbanization, Evictions, Volume 6, no.1, April 1994, p.5-6.
- 30) Census: Forced evictions of migrant Roma in France (Year 2014), p.3. Available at: <http://www.errc.org/cms/upload/file/report%20forced%20evictions%20-%20final%20en.pdf> accessed 14.06.2016.
- 31) Forced Evictions Fact Sheet No. 25/Rev.1, UN, New York, Geneva 2014, p.2.
- 32) Ivana Nikolic, Serbia Taken to Euro Court Over Roma Evictions, Balkan Transitional Justice, July 30th 2015. Available at: <http://www.balkaninsight.com/en/article/strasbourg-court-targets-serbia-over-1999-idps-eviction-07-30-2015> accessed 14.06.2016.
- 33) Ivana Marjanovic, Contention of Antiromaism as a Part of the Process of Decoloniality of Europe, Reartikulacija no.7, Ljubljana 2009.
- 34) The Sound of Barking Dogs, Regional Centre for Minorities 07.12.2012. Available at: <http://www.minoritycentre.org/news/sound-barking-dogs-eviction-roma-belville> accessed 03.06.2016.
- 35) Daniel Moeckli et al, International Human Rights Law, Oxford 2014.
- 36) Fact Sheet No. 21/ Rev.1, The Right to Adequate Housing, available at: [http://www.ohchr.org/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf) accessed 29.04.2016.

- 37) Jessie Hohmann, *The Right to Housing, Law, Concepts, Possibilities*, Oxford and Portland, Oregon, 2013.
- 38) Arturs Kucs, et al, *The Right to Housing: International, European and National Perspectives*, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol nº 64/65.
- 39) John G. Sprankling, *International property law*, Oxford 2014.
- 40) Walter Kälin, Jörg Künzli, *The law of international human rights protection*, Oxford, 2009.
- 41) Fact Sheet No.25, *Forced Evictions and Human Rights*. Available at <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf> accessed 05.03.2016.
- 42) Principal Investigator: Wayne Martin, Lead Author: Sabine Michalowski, *The Legal Status of General Comments*, Essex Autonomy Project, 23. May, 2014.
- 43) *Concluding Observations on the Second Periodic Report of Serbia*, July 2014.
- 44) *First Report on the Non-Accepted Provisions of the European Social Charter, Serbia*, European Committee of Social Rights, 2015.
- 45) *Country Report, Non-Discrimination, Serbia 2015*, European Commission 2015.
- 46) Press release: *City municipality Zemun halted forced eviction of informal Roma settlement Grmeč*, YUCOM 2015. Available at: <http://en.yucom.org.rs/press-release-city-municipality-zemun-halted-forced-eviction-of-informal-roma-settlement-grmec/> accessed 26.03.2016.
- 47) *Serbia, Anti-Discrimination Laws*, available at: [http://www.equalrightstrust.org/ertdocumentbank/395178321\\_5\\_\\_PILI%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf](http://www.equalrightstrust.org/ertdocumentbank/395178321_5__PILI%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf) accessed 06.05.2016.
- 48) *Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Serbia adopted on 28 November 2013*.
- 49) Tibor Varadi, et al, *Contributions to the Strategy for Improving Roma Status*, Belgrade 2014.
- 50) Marko Davinic, *Prinudno iseljenje I raseljavanje – upravno-pravni aspekti*, Anali Pravnog fakulteta u Beogradu, godina LXI, 2/2013.
- 51) *Serbia: After Belvil, Serbia needs new laws against forced eviction*, Amnesty international.
- 52) *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo*, 26.02.2016.
- 53) *Policy Brief*, Skrug, 2015, p.7, available at: [http://www.ligaroma.org.rs/images/stories/izvestaji/SKRUG\\_Policy\\_brief\\_Final.pdf](http://www.ligaroma.org.rs/images/stories/izvestaji/SKRUG_Policy_brief_Final.pdf) accessed 24.04.2016.
- 54) Press release: *New threat by way of forced eviction from Roma settlement in Belgrade*, YUCOM 23.07.2015. Available at:

- <http://en.yucom.org.rs/press-release-new-threat-by-way-of-forced-eviction-from-roma-settlement-in-belgrade/> accessed 23.03.2016.
- 55) Recommendation no. 07-00-365/2015-02, 27.7.2015, available at: <http://www.ravnopravnost.gov.rs/sr/preporuke-mera-organima-javne-vlasti/preporuka-mera-op%C5%A1tini-zemun>, accessed 22.04.2016.
  - 56) Serbia, Submission to the UN Committee on Economic, Social and Cultural Rights, 52nd session, Amnesty International.
  - 57) Concluding Observations on the Second Periodic Report of Serbia, CESCR, July 2014.
  - 58) Serbia 2015 Report, European Commission, Brussels 2015.

2. International and national legislation, government documentation and international case law:

- 1) Basic Principles and Guidelines on Development-Based Evictions and Displacement.
- 2) Universal Declaration of Human Rights (UDHR).
- 3) International Covenant on Economic, Social and Cultural Rights (ICESCR).
- 4) International Covenant on Civil and Political Rights (ICCPR)
- 5) Convention on the Rights of the Child (CRC)
- 6) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
- 7) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
- 8) CESCR, General Comment no.4.
- 9) CESCR, General Comment no. 20.
- 10) CESCR, General Comment no. 3.
- 11) Resolution of Forced Evictions, Sub- Commission Resolution, 2003/17.
- 12) CESCR, General Comment no 7.
- 13) European Social Charter (ESC)
- 14) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).
- 15) CESCR, General Comment no.9.
- 16) Oneryildiz vs. Turkey (Application no. 48939/99), Judgment, Strasbourg, 30 November 2004.
- 17) European Roma Rights Center v. Greece, Complaint No. 15/2003, Decision on Merits, European Committee of Social Rights, 8 December 2004.
- 18) Constitution of the Republic of Serbia, 2006, available at: [http://www.srbija.gov.rs/cinjenice\\_o\\_srbiji/ustav.php?change\\_lang=en](http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en), accessed 12.05.2016.
- 19) Zakon o zaštitniku gradjana, Sl. glasnik RS, 79/2005, 54/2007.
- 20) Zakon o opštem upravnom postupku, Sl. list SRJ, br. 33/97 i 31/2001 i Sl. glasnik RS, br. 30/2010.
- 21) Zakon o stanovanju, Službeni Glasnik RS, 50/92, 76/92, 84/92, 33/93, 53/93, 67/93, 46/94, 47/94 48/94, 44/95, 49/95, 16/97, 46/98, 26/2001, 101/2005, 99/2011, article 5(2).

- 22) Zakon o planiranju I izgradnji, Službeni glasnik RS, 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014.
- 23) The Strategy for Social Inclusion of Roma for the 2016-2025 Period. Available at: <http://www.minrzs.gov.rs/lat/dokumenti/medjunarodna-saradnja/strategija-za-socijalno-uklju%C4%8Divanje-roma-i-romkinja-u-republici-srbiji-za-period-od-2016-do-2025-godine> accessed 22.05.2015.
- 24) Draft Law on Housing and Maintenance of Buildings, p. 60, available at: [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/132-16%20LAT.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/132-16%20LAT.pdf) accessed 24.05.2016.
- 25) Strategy for Improvement of the Status of Roma in the Republic of Serbia, Belgrade 2010, p.16, available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf> accessed 06.05.2016.