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DOI

[10.1163/22131035-00501002](https://doi.org/10.1163/22131035-00501002)

Publication date

2016

Document Version

Final published version

Published in

International Human Rights Law Review

[Link to publication](#)

Citation for published version (APA):

Donders, Y. (2016). Protecting the Home and Adequate Housing - Living in a Caravan or Trailer as a Human Right. *International Human Rights Law Review*, 5(1), 1-25.
<https://doi.org/10.1163/22131035-00501002>

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INTERNATIONAL HUMAN RIGHTS LAW REVIEW

5 (2016) 1-25



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Protecting the Home and Adequate Housing

Living in a Caravan or Trailer as a Human Right

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Abstract

Many Roma, gypsies and travellers live in caravans or trailers, sometimes in together trailer parks or camps. This article analyses how this specific lifestyle connected to their housing is protected under the various regimes and provisions of international human rights law. Home and adequate housing, as well as family life and private life, are clearly protected under international human rights law. Moreover, Roma, gypsies and travellers are considered vulnerable communities for whom special measures need to be taken. States are for instance obliged to take the specific cultural interests related to the housing of Roma, gypsies and travellers into account. Although there is no accepted right to be provided with a home of choice, these rights imply an obligation to provide suitable alternative housing in cases of forced removal and sufficient procedural guarantees. This article is based on an analysis of several provisions in international and European human rights treaties covering non-discrimination, housing, private life and family life, including their interpretation by treaty monitoring bodies.

Keywords

caravan – cultural adequacy – cultural identity – cultural rights – gypsies – home – housing – human rights – Roma – travellers – trailer

1 Introduction

On 14 January 2016 the Court Oost-Brabant in The Netherlands decided that a citizen of Oss is entitled to rent the caravan spot inherited from his late mother.¹ This decision implied a rejection of the so-called ‘extinction policy’ of the municipality of Oss for caravan or trailer parks. The Dutch government abolished in 1999 its special policy for trailer park residents, instead treating them as ‘ordinary’ citizens and ‘normalizing’ their housing situation. Several municipalities have since then applied phasing out or extinction policies for trailer parks by dismantling spots that become vacant after someone has left or passed away, not allowing anyone to take over such an unoccupied place. The Court based its decision on Dutch tenant law, arguing that the complainant had lived in a situation of sustainable joint household which gave him the right to continue his rental contract. It did not refer to the human rights aspects in this case raised by the lawyers representing the applicant.

The human rights aspects were, logically, more prominent in earlier cases brought before the Netherlands Institute for Human Rights. The Institute declared in December 2014 and May and October 2015 that municipality policies leading to the eventual disappearance of the trailer park culture violate national laws on equal treatment and the International Convention on the Elimination of Racial Discrimination.²

At the international level, UN treaty bodies and the European Court of Human Rights have recognised that the way of living of gypsies in trailers or caravans is part of their cultural identity and thereby protected under the right to housing and the right to respect for private life, family and home. However, this does not mean that these rights are absolute; States may take measures limiting this right, as long as they respect the criteria to do so, taking into account the cultural dimensions and properly balancing the different interests.

The specific cultural dimensions of housing for Roma, gypsies and travellers were also recognized at the Dutch level when in August 2014 the trailer culture was put on the Dutch national inventory of intangible cultural heritage.

1 Rechtbank (Court) Oost-Brabant, Case No. 3996705, judgment of 14 January 2016, available at <<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOBR:2016:2>> (in Dutch).

2 Netherlands Institute for Human Rights (College voor de Rechten van de Mens), Case 2014-165 (Municipality of Oss), 19 December 2014; Case 2015-61 (Municipality of Vlaardingen), 28 May 2015; Case 2-15-119 (Municipality of Bloemendaal), 22 October 2015. Opinions by the NIHR are not legally binding. See on the Dutch cases and the general topic Leonie Huijbers, ‘Het woonwagengebeleid in Nederland vanuit mensenrechtelijk perspectief’ [The trailer policy in The Netherlands from a human rights perspective], *NTM/NJCM-Bull.*, 2015, pp. 387-417.

Cultural human rights as well as the cultural dimensions of specific human rights have been a subject of broader research.³ This article analyses the cultural dimensions of human rights related to the specific way of housing of Roma, gypsies and travellers.⁴ How and under what circumstances is this way of living protected under the various regimes and provisions of international human rights law? In this article the human rights dimensions of housing in general and living in a trailer or caravan in particular will be discussed. Home and housing are generally protected under international human rights law. However, Roma, gypsies and travellers are considered minorities or vulnerable communities for whom special measures of protection may need to be taken. Moreover, the specific way of living in a trailer or caravan has been recognized as part of their cultural identity, which is also protected under international human rights law. What are the precise rights and obligations under human rights in relation to the specific way of living and housing of Roma, gypsies and travellers? This article is based on an internal analysis of several provisions in international and European human rights treaties that cover non-discrimination as well as rights related to housing, private life and family life.⁵ Interpretation of these provisions by treaty monitoring bodies is analysed to elaborate their normative content in more detail. The conclusion elaborates the rights of Roma, gypsies and travellers to the protection of their trailer culture under international and regional human rights law and the corresponding legal obligations of states in this regard.

2 Equality and Non-Discrimination: Roma, Gypsies and Travellers as Minorities and/or Vulnerable Communities

All human rights treaties include equality and non-discrimination provisions, for instance Article 26 of the International Covenant on Civil and Political

3 See eg F Lenzerini, *The Culturalization of Human Rights* (OUP, 2014); A Vrdoljak (ed), *The Cultural Dimension of Human Rights* (OUP, 2013); and Y Donders, 'Exploring the Cultural Dimensions of the Right to the Highest Attainable Standard of Health', (2015) 18(2) *Potchefstroom Electronic Law Journal* 179–222.

4 The terms Roma, Gypsies and Travellers reflect the different background of the communities involved. Since in relation to housing the rights and obligations are the same for the different communities, in this article these terms will be used intermixed.

5 This article will focus on the general human rights treaties at international and European level and does not deal specifically with the human rights instruments related to minorities, such as the Council of Europe Framework Convention on National Minorities, ETS No. 157 or the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, GA res. 47/135.

Rights⁶ (ICCPR) and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms,⁷ (European Convention of Human Rights–ECHR). It is broadly recognised that the right to equality also implies the right to be different. Having equal rights is not the same as being treated equally. Indeed, equality and non-discrimination not only imply that equal situations should be treated equally, but also that unequal situations should be treated unequally. At the international level it is understood that ‘the enjoyment of rights and freedoms on an equal footing...does not mean identical treatment in every instance.’⁸ Consequently, not all difference in treatment constitutes discrimination, as long as the criteria for differentiation are reasonable and objective and serve a legitimate aim.⁹ Difference in treatment may also involve affirmative or positive action to remedy historical injustices, social discrimination or to create diversity and proportional group representation.¹⁰

In other words, sometimes special measures need to be taken to guarantee the equal enjoyment of human rights and equal access to human rights. Roma,

6 999 UNTS 171.

7 213 UNTS 222.

8 Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 10 November 1989, UN Doc. HRI/GEN/1/Rev.1 at 26 (1994), para 8. The European Court of Human Rights (ECtHR) has reaffirmed this in many cases, including the cases of *Thlimmenos v Greece*, Application No. 34369/97, 6 April 2000, (2001) 31 EHRR 411, para 44 and *D.H. and others v The Czech Republic*, Application No. 57325/00, 7 February 2006, (2008) 47 EHRR 59, para 44.

9 Legal doctrine generally distinguishes between differentiation, distinction and discrimination. Differentiation is difference in treatment that is lawful; distinction is a neutral term which is used when it has not yet been determined whether difference in treatment is lawful or not; and discrimination is difference in treatment that is arbitrary and unlawful. Consequently, only treatment that results in discrimination is prohibited. See M Bossuyt, *Prevention of Discrimination – The Concept and Practice of Affirmative Action*, 17 June 2002, UN Doc. E/CN.4/Sub. 2/2002/21, (2002) para 91.

10 See, also, Article 1(4) of the *International Convention on the Elimination of Racial Discrimination*, adopted by GA res. 2106 (XX) of 21 December 1965, entry into force on 4 January 1969: ‘Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.’ The Human Rights Committee (HRC) has further stated that the principle of equality under Article 26 ICCPR may sometimes require States parties to take affirmative action to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the ICCPR. HRC, *General Comment No. 18*, supra n. 8, para 10.

gypsies and travellers have been recognized as minorities and vulnerable communities that may need special measures in order to enjoy equal rights.¹¹ These special measures may concern political participation, education, health, but also their specific way of living including housing.

In its opinions on several cases concerning municipal policies on trailer parks, the Netherlands Institute for Human Rights (NIHR) focused its argumentation on the right to equality and non-discrimination. It argued that persons living in a trailer or caravan are an ethnic group, protected under the term 'race', as defined in the International Convention on the Elimination of All Forms of Racial Discrimination¹² (ICERD). The local policies concerning the extinction of trailer camps constituted discrimination, because there was no reasonable justification for the direct distinction based on race. The conclusion was that these policies violated national laws on equal treatment and the ICERD. The NIHR also made a link with the cultural dimension of the housing situation. It argued that living in a trailer is an essential part of the trailer culture and that the extinction policies affect the core of this culture by not allowing children of persons living on the camp to live independently in their own trailer. By slowly but consistently emptying the camps, the trailer culture also slowly dies and may disappear.

International monitoring bodies (Netherlands Institute for Human Rights (College voor de Rechten van de Mens), Case 2014-165 (Municipality of Oss), 19 December 2014, paras 3.15–3.16.) have also recognized the vulnerable position of Roma, gypsies and travellers as minorities, which requires a special consideration of their needs and their different lifestyle in regulatory planning interfering with their rights.¹³ However, in most cases these bodies were reserved or did not find the need to address the specific issue of whether or not there was discrimination. Most cases focused on the alleged violations of substantive rights. In a few cases, however, the European Court of Human Rights (ECtHR) has addressed the issue of (non-) discrimination.

These cases concerned situations where gypsies were either prohibited from placing their trailers and/or caravans on certain spots or they were forcibly removed from certain areas. In the earlier cases the ECtHR did not conclude

11 ECtHR, *Buckley v The United Kingdom*, Application No. 20348/92, Judgment of 25 September 1996, (1997) 23 EHRR 101, paras 76, 80, 84; ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, (2001) 33 EHRR 399, para 96; ECtHR, *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004, (2005) 40 EHRR 189, para 84.

12 660 UNTS 195.

13 ECtHR, *Buckley v The United Kingdom*, Application No. 20348/92, Judgment of 25 September 1996, paras 76, 80.

that the measures taken by the State were discriminatory. In its assessment of Article 14 ECHR on non-discrimination, it argued that the applicants were not being punished or treated unfavourably for trying to follow a traditional gypsy lifestyle. Although the Court reaffirmed that the vulnerable position of gypsies as a minority required a special consideration of their needs and their different lifestyle in regulatory planning, the Court found that gypsies were not treated worse than non-gypsies who wished to live in a caravan. For instance, gypsies who illegally established a caravan site were not treated differently from non-gypsies who did the same. The Court argued that as long as the measures taken by the State were objective and reasonably justified there is no discrimination.¹⁴

In one of the leading cases on this topic, *Chapman v The United Kingdom*, seven judges voted against the majority decision and submitted a joint dissenting opinion in which they expressed disagreement with the reasoning of the Court in relation to Article 14.¹⁵ They argued that the gypsy lifestyle may widen the scope of certain rights, ‘...which would not necessarily be the case for a person who lives in conventional housing, the supply of which is subject to fewer constraints’. They maintained that discrimination may also arise if States fail to treat different situations differently.¹⁶

Indeed the Courts reasoning on non-discrimination in these cases was rather curious and therefore rejected by the dissenting judges with good reason. On the one hand, the Court tried to show increasing European consensus with regard to the treatment of minorities and the special position that these communities may have in policy-making. On the other hand, however, the Court argued that, if gypsies in these cases had been treated differently from other citizens, there would be a problem with Article 14. Case law and doctrine

14 ECtHR, *Buckley v The United Kingdom*, Application No. 20348/92, Judgment of 25 September 1996, para 86–89; ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, paras 95–97, 117–130. The facts of the following cases were similar to the *Chapman case*, and the Court came to the same conclusions, with the same ratio of votes: ECtHR, *Beard v The United Kingdom*, Application No. 24882/94, Judgment of 18 January 2001, (2001) 33 EHRR 442; ECtHR, *Coster v The United Kingdom*, Application No. 24876/94, Judgment of 18 January 2001, (2001) 33 EHRR 479; ECtHR, *Lee v The United Kingdom*, Application No. 25289/94, Judgment of 18 January 2001, (2001) 33 EHRR 677; ECtHR, *Jane Smith v The United Kingdom*, Application No. 25154/94, Judgment of 18 January 2001.

15 ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, Joint dissenting opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Strá Nická, Lorenzen, Fischbach and Casadevall.

16 *Ibid.*, para 8.

have clearly shown that non-discrimination not only implies that equal cases should be treated equally, but also that different situations should be dealt with differently. The situation of gypsies in, for example, planning policies is different from that of other citizens. Therefore, gypsies may need special measures to protect their interests.

This was recognised by the ECtHR in the case of *Yordanova v Bulgaria*. In this case, which concerned the forcibly removal of Roma from municipal land, the Court stated that it was undisputed that Article 14 was applicable. It furthermore maintained that it did not agree with the State's argument that approaches specially tailored to the needs of the Roma community would amount to discrimination against the majority population. The Court found it contradictory that on the one hand the State had special programmes for the inclusion of Roma, based on them being an underprivileged community with specific problems that must be addressed accordingly, and on the other hand arguing that giving Roma "privileged treatment" would lead to discrimination against the majority population.¹⁷ In other words, the argument used by the Court itself in the *Chapman* case was dismissed by the same Court in the *Yordanova* case. Now the Court argued that the specificity of the Roma as a social group and their specific needs must be '...one of the relevant factors in the proportionality assessment' that national authorities are supposed to undertake.¹⁸ The Court did, however, not find it necessary to rule on Article 14, because it had already found a violation of Article 8.¹⁹

In short, since Roma, gypsies and travellers are in a specific and vulnerable position, different from the majority of society, States are required to take special measures to guarantee their equal enjoyment of (housing) rights. Such special measures should be respectful of their traditional lifestyle and specific way of housing. Additionally, housing and lifestyle are protected by specific human rights provisions dealt with below.

3 The Right to Respect for Private Life, Family Life and Home

Most non-discrimination provisions in international human rights treaties, including Article 26 ICCPR and Article 14 ECHR, are not self-standing

17 ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 24 April 2012, para 128 and 146.

18 Ibid, para 129.

19 Ibid, para 149.

provisions, but should be invoked together with another substantive right.²⁰ The provisions used in relation to housing for Roma, gypsies and travellers concern rights related to private life, family life and home as included in Article 17 ICCPR and Article 8 ECHR.

Article 17 ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence...’

Article 8 ECHR is differently formulated and reads as follows:

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

3.1 *The Concept of Home*

Both provisions combine the rights to private life, family life and home. The protection of these three by single provisions reflects their close link. The monitoring bodies of the ICCPR and the ECHR – the Human Rights Committee (HRC) and the ECtHR – have accordingly interpreted ‘home’ in a broader manner than merely including a ‘house’. The HRC has stated that the term home ‘... is to be understood to indicate the place where a person resides or carries out his usual occupation.’²¹ Lawful ownership of the plot of land on which houses are constructed is not necessary to qualify as ‘home’ and fall within the protection of Article 17.²²

The ECtHR also determined in several cases that Article 8 was applicable to situations of gypsies living in caravans, arguing that this provision was not only applicable to a legally established ‘home’ or to premises that are lawfully occupied. Moreover, it is an autonomous concept that does not depend on the

20 Protocol 12 of the European Convention Human Rights protects a self-standing non-discrimination right, but this protocol has not been invoked in relation to housing rights for Roma, gypsies and travellers.

21 Human Rights Committee, *General Comment No. 16 on the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, UN Doc. A/43/40, (1988), para 5.

22 Human Rights Committee, *Liliana Assenova Naidenova et al. v Bulgaria*, Views adopted 30 October 2012, UN Doc. CCPR/C/106/D/2073/2011, (2012) para 14.2.

classification under domestic law.²³ While the Court acknowledged that the traditional gypsy lifestyle of living in caravans and travelling might also concern their 'private life' and 'family life', it did not immediately include these elements in its assessment of cases.²⁴ In later cases, apart from looking at the alleged violation of the right to respect for home, the Court also assessed whether a violation had taken place of their rights to respect for private life and family life. The occupation of a caravan was considered to be an integral part of the identity of the travellers, even if they no longer lived a wholly nomadic life. The measures taken therefore had a wider impact than merely on their home and affected their ability to maintain their identity as gypsies and travellers and to lead their private and family life in accordance with their tradition. Eviction would have serious consequences for their lifestyle and their social and family ties, which is why the Court examined Article 8 in its entirety.²⁵

3.2 *Limitations*

The question is what rights Roma, gypsies and travellers have under these provisions and what (type of) obligations are required from States. As can be seen from their formulation, Article 17 ICCPR and Article 8 ECHR are not absolute rights.

Core of Article 17 ICCPR is the prohibition of 'arbitrary' and 'unlawful' interference. According to the HRC the term 'unlawful' means that State interference can only take place on the basis of law '...which itself must comply with the provisions, aims and objectives of the Covenant.'²⁶ The term 'arbitrariness' is '...intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'²⁷

Article 8 ECHR provides a more explicit or direct right to respect for private life, family life and home than Article 17 ICCPR, but this right can also be interfered with. However, instead of putting interfering measures to the

23 ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 24 April 2012, para 103; ECtHR (Fifth Section), *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013, para 69.

24 ECtHR, *Buckley v The United Kingdom*, Application No. 20348/92, Judgment of 25 September 1996.

25 ECtHR, *Chapman v the United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, paras 71–74; ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, para 105; ECtHR (Fifth Section), *Winterstein v France and Others*, Application No. 27013/07, Judgment of 17 October 2013, paras 70–71.

26 Human Rights Committee, *General Comment No. 16*, supra n. 21, para 3.

27 *Ibid.*, para 4.

general test of 'arbitrariness', Article 8(2) ECHR is more elaborate on the criteria for limiting this right. As with many ECHR rights, these criteria include that measures should be provided by law and pursue a legitimate aim, which for this provision includes the protection of national security, public safety or the economic wellbeing of the country, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. They should furthermore be necessary in a democratic society, there should be a pressing social need and measures should be proportionate to the aim pursued.

3.3 *Margin of Appreciation*

In several cases concerning Roma, gypsies and travellers and their housing situation, the ECtHR has used the margin of appreciation doctrine to take a decision on whether or not the limitation of the rights under Article 8 constituted a violation. The margin of appreciation refers to the room for manoeuvre national authorities have in fulfilling their obligations under international human rights law. It builds on the idea that it should be left to the states parties to implement the rights and that the ECtHR should only intervene if it clearly finds that the state party has failed in that effort. The margin of appreciation doctrine is a means of judicial constraint and deference, because '...state authorities are in principle in a better position than the international judge to give an opinion on...the necessity of a restriction.'²⁸ The below discussed cases show an interesting development whereby the ECtHR narrowed the margin of appreciation in relation to housing rights for Roma, gypsies and travellers under Article 8.

In the case of *Buckley v the United Kingdom*,²⁹ the applicant was a British citizen of gypsy origin, whose planning permission had been refused for mainly two reasons: there were adequate and sufficient provisions for gypsy caravans elsewhere in the area and the planned use of the land would detract from the rural and open quality of the landscape, and would destroy the character and appearance of the countryside.³⁰ The ECtHR argued that the authorities' refusal constituted an interference with Article 8(1) which was in accordance with national law and pursued the legitimate aim of public safety, the preservation of the environment and public health. In assessing the necessity, the Court

28 ECtHR, *Handyside v The United Kingdom*, Application No. 5493/72, Judgment of 12 December 1976, (1979–80) 1 EHRR 737, para 49.

29 ECtHR, *Buckley v The United Kingdom*, Application No. 20348/92, Judgment of 25 September 1996, (1997) 23 EHRR 101.

30 *Ibid*, paras 7–27.

established that national authorities have a wide margin of appreciation in the case of town planning, since they are best situated to evaluate local needs and conditions. The general interest should, however, be properly balanced against the applicant's right to respect for her home.³¹ Comparable to the *Buckley case*, the case of *Chapman v The United Kingdom*³² concerned the refusal of a planning permission for a gypsy family to camp on land owned by them. In its assessment of the necessity of the interference, the Court restated that in cases of site planning the national authorities enjoy a wide margin of appreciation.³³

In the cases of *Connors v UK*, *Yordanova and others v Bulgaria* and *Winterstein v France*, however, the ECtHR narrowed the margin of appreciation under Article 8.³⁴ The case of *Connors* concerned the planned eviction of a gypsy family from a site where they had lived permanently for 13 years on the ground that they had misbehaved and caused nuisance at the site. The case of *Yordanova* concerned the planned eviction of Roma from municipal land on which they had illegally resided for many years. The case of *Winterstein* concerned travellers who owned and occupied land for many years and were also forced to move. The Court in these cases first repeated its *Buckley* and *Chapman* ruling that in planning and housing issues linked to social and economic policies, the State has a wide margin of appreciation. However, the ECtHR argued that this margin may be narrower when the individual's effective enjoyment of fundamental, intimate or key rights are at stake.³⁵ According to the Court, in these cases, Article 8 indeed '...concerns rights of central importance to the individual's identity,

31 Ibid, paras 74–80.

32 ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001.

The *Chapman* case was one of the five cases concerning applications the refusal of the government to provide gypsy families with planning permission. The circumstances in each case differed slightly, but the Court came to the same outcome in each case. The *Chapman* case was considered the 'leading case' and will, as a result, be dealt with in detail.

33 ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, paras 90–91.

34 ECtHR (First Section), *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004; ECtHR (Fourth Section), *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 24 April 2012; ECtHR (Fifth Section), *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013.

35 ECtHR, *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004, para 82; ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 25 April 2012, para 118; ECtHR, *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013, para 76.

self-determination, physical and moral integrity, maintenance of relationships with others and a settled secure place in the community.³⁶

The narrowing of the margin of appreciation seems to be linked to the specific circumstances and measures concerned in the different cases. Whereas in the cases of *Buckley* and *Chapman* the applicants were not allowed to park their trailer or caravan on a specific place, in the cases of *Connors*, *Yordanova* and *Winterstein* the applicants were actually living somewhere, legally or illegally, and were (threatened to be) forcibly removed. Since the impact and consequences of the latter are more serious, the room left to States to take measures was narrowed and a more strict supervision by the Court was found to be necessary. The HRC followed this approach of weighing the impact of the measures, however without referring explicitly to a margin of appreciation.³⁷

3.4 *Rights and State Obligations*

The HRC has only a limited number of cases concerning Roma, gypsies and travellers and their housing rights. In one case against Greece on the forced eviction and demolition of homes of Roma the HRC indicated that these were infringements of their rights to enjoy their way of life as a minority. The HRC concluded that they constituted a violation of their rights under Article 17, because of the significant impact on their family life and the lack of renewed housing.³⁸ The HRC further dealt with two cases against Bulgaria that concerned the housing situation of a Roma community.³⁹ These communities illegally resided on municipal land for decades, a situation that was however *de facto* recognized by the state authorities through the provision of services such as electricity, water etc. These communities were ordered to leave their homes or else would be forcibly evicted. Although the HRC recognised that States are entitled to remove unlawful residents from this land, it found the

36 ECtHR, *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004, para 82; ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 25 April 2012, para 118; ECtHR, *Winterstein and others v France*, Application No. 27013/07, para 76.

37 Human Rights Committee, *Antonios Georgopoulos and others v Greece*, Communication No. 1799/2008, Views adopted 29 July 2010, UN Doc. CCPR/C/99/D/1799/2008 (2010); Human Rights Committee, *Liliana Assenova Naidenova et al. v Bulgaria*, Communication No. 2073/2011, Views adopted 30 October 2012, UN Doc. CCPR/C/106/D/2073/2011 (2012).

38 *Antonios Georgopoulos and others v Greece*, *ibid.*, para 7.3.

39 *Liliana Assenova Naidenova et al. v Bulgaria*, *supra* n. 37, and Human Rights Committee, *S.I.D. et al. v Bulgaria*, Communication No. 1926/2010, Views adopted 21 July 2014, UN Doc. CCPR/C/111/D/1926/2010, (2015). The latter case was declared inadmissible because the authors had not sufficiently substantiated their claim.

reasoning of the State party not to be sufficient and therefore arbitrary. The State had invoked the lack of property rights of the land, but had not given any other urgent reason for the forced eviction. Moreover, the State had not provided for alternative adequate accommodation and had not sufficiently taken into account the possible consequences of the measures, such as homelessness. The HRC did not elaborate on what was meant by “adequate” alternative accommodation, but it did refer to the special circumstances of the Roma community, including “decades-old community life” and the long history of their presence on this land.⁴⁰ The claimants also argued that no meaningful consultation had taken place with them, but the HRC did not refer to that point.

These cases show that in situations of forced evictions, the State has positive obligations to take the specific situation of Roma, gypsies and travellers into account and provide for satisfactory and adequate replacement housing. This line of argument has also been prominent in the cases before the ECtHR, elaborating the positive obligations of States in more detail.

In some cases, such as the *Buckley* case, the ECtHR concluded that indeed the State had sufficiently taken the special needs of the applicant as a gypsy with a traditional lifestyle into account and that there was alternative accommodation available.⁴¹ This accommodation might not be as satisfactory as the home the applicant had now illegally established, but ‘...Article 8 does not necessarily go so far as to allow individuals’ preferences as to their place of residence to override the general interest.’⁴² Moreover the Court alleged that the applicant had not been severely punished, since she had not been forcibly evicted and had to pay only small fines.⁴³

In the *Chapman* case the Court took a broader look at the protection of minorities in Europe. It inserted several relevant regional texts, in particular the Framework Convention on the Protection of National Minorities, observing that: ‘[T]here may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe that recognises the special needs of minorities and the obligation to protect their security, identity and lifestyle...not only for the purpose of safeguarding the interests of the minorities themselves, but to preserve a cultural diversity of value to the whole

40 *Liliana Assenova Naidenova et al. v Bulgaria*, supra n. 37, paras 14.6 and 14.7.

41 ECtHR, *Buckley v The United Kingdom*, Application No. 2348/92, Judgment of 25 September 1996, paras 74–80.

42 *Ibid.*, paras 81–82.

43 ECtHR, *Buckley v The United Kingdom*, Application No. 2348/92, Decision of 25 September 1996, paras 81–85.

community.⁴⁴ However, the Court continued by stating that there was no concrete consensus among States on *which* State action would be desirable in a given situation.⁴⁵

The Court generally noted that the number of places acceptable and affordable to gypsies where they could lawfully place their caravans was inadequate. However, it did not find that ‘...because statistically the number of gypsies is greater than the number of places available in authorised gypsy sites, the decision not to allow the applicant gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8.’⁴⁶ The Court found that Article 8 did not imply a right to be provided with a home. It did not accept the interpretation of Article 8 as involving such far-reaching positive obligations of general social policy.⁴⁷ It concluded that the measures taken were proportionate and held, by 10 votes to 7, that Article 8 had not been violated.⁴⁸

The seven judges who voted against the majority decision submitted a joint dissenting opinion in which they posed several arguments to conclude that the UK *had* violated Article 8.⁴⁹ They asserted *inter alia* that, although the essential purpose of Article 8 was to protect the individual against arbitrary action by public authorities, it could imply positive obligations to make respect for private life, family life and home effective. According to the dissenters, there was an emerging consensus among the Member States of the Council of Europe that the protection of the rights of minorities, including gypsies, required not only State abstention and non-discrimination, but also positive action through legislation or specific programmes.⁵⁰ The dissenters also disagreed with the idea that Article 8 did not constitute a right to be provided with a home. There was nothing in the Court’s case law to imply that a right to be provided with a home would fall totally outside the scope of Article 8.⁵¹ The judges concluded that Article 8 did impose ‘...a positive obligation on the authorities to ensure

44 ECtHR, *Chapman v The United Kingdom*, Application No. 27238/95, Judgment of 18 January 2001, paras 90–93 (quote in para 93).

45 *Ibid.*, para 94. This statement reflects the judicial constraint of the Court, whereby it acts with self-restraint to avoid overstepping its mandate. In such cases, the Court is not likely to be inclined to impose positive obligations on States.

46 *Ibid.*, para 98.

47 *Ibid.*, paras 98–99.

48 *Ibid.*, paras 115–116.

49 *Ibid.*, Joint Dissenting Opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Strá Nická, Lorenzen, Fischbach and Casadevall (Joint dissenting opinion).

50 Joint Dissenting Opinion, *supra* n. 49, paras 1–3.

51 *Ibid.*, paras 4–7.

that gypsies have a practical and effective opportunity to enjoy their rights to home, private and family life, in accordance with their traditional lifestyle...'⁵²

From these cases it can be concluded that also under the ECHR States have a positive obligation under the right to respect for private life, family life and home, linked with equality and non-discrimination, to take the specific needs of Roma, gypsies and travellers into account in their planning policies. However the ECtHR emphasized that the positive obligations under Article 8 do not go as far as proving everyone with a certain home of choice. The dissenters in the Chapman case hinted at more far reaching positive obligations, in order to make the right to respect for private life, family life and home effective. Such more far reaching positive obligations were in later cases indeed accepted by the Court, however in forced eviction cases. The *Buckley* and *Chapman* case did not concern forced evictions, which is why the issue of satisfactory and adequate replacement housing or other positive obligations were not explicitly dealt with.

3.5 Procedural Safeguards

In the cases of *Connors v UK*, *Yordanova and others v Bulgaria* and *Winterstein v France*, which as stated all concerned (planned) forced evictions, the Court found a violation of Article 8, based on another positive obligation, namely to provide sufficient procedural safeguards.⁵³ Linking it to the narrower margin of appreciation, the Court stated that '...the procedural safeguards available to the individual will be especially material in determining whether the respondent state has...remained within its margin of appreciation.'⁵⁴ The Court therefore needed to assess whether the decision-making process was fair and whether in the procedures the rights accorded under Article 8 were sufficiently taken into account while balancing the different interests at stake.

The Court in these cases restated the vulnerable position of gypsies '... which means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.'⁵⁵ In the *Connors* case, the Court argued

⁵² Ibid, paras 8–10.

⁵³ ECtHR (First Section), *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004; ECtHR (Fifth Section); ECtHR (Fourth Section), ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 24 April 2012; ECtHR, *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013.

⁵⁴ Idem.

⁵⁵ ECtHR, *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004, para 84; ECtHR, *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013, paras 76 and 88.

that the case was not so much about issues of general planning or economic policy, but more about the narrower issue of procedural protection for a particular category of persons, namely those gypsies that wanted to remain a nomadic lifestyle, for whom the UK had claimed it needed to reserve places. The Court argued that the majority of gypsies no longer travel for longer periods and, moreover, that in this case it was not convinced that the claimants had to be evicted to clear space for others. The fact that the applicants were accused of anti-social behaviour could also in itself not justify eviction.⁵⁶ At the same time the Court recognized the difficulties State authorities may have ‘...in finding workable accommodation solutions for the gypsy and traveller population...’, mostly because this population ‘...is no longer easy to define in terms of the nomadism which is the *raison d’être* of that special treatment’.⁵⁷ The Court in the end focused on the procedural safeguards, which it considered to be insufficient. It therefore concluded a violation of Article 8.⁵⁸

In the *Yordanova* case, the domestic law in force at the time was found to be problematic, as it did not require to take into account the various interests involved or to consider proportionality. Thereby the State did not have to weigh all different options.⁵⁹ In finding a violation of Article 8, the Court argued that the State had not been able to prove that the land was urgently needed for public interest. Moreover, it had not taken into consideration the fact that the claimants had a long history of undisturbed living at the disputed place, nor had it considered the risk of the removal and possibility of the Roma becoming homeless.⁶⁰

In the case of *Winterstein* the Court also found a violation of Article 8 because of insufficient procedural guarantees. It mainly argued that the local authorities had not sufficiently analysed the proportionality of the eviction measures nor weighed properly the interests of the travellers with the general interest of land use policy. Since loss of one’s home is a most extreme form of interference, proper, fair and independent procedures are required. National judges and courts should carefully examine the cases in detail and provide substantive argumentation. Again, the ECtHR stated that Article 8 does not include a right to be provided with a home. However, the consequences of

56 ECtHR, *Connors v The United Kingdom*, Application No. 66746/01, Judgment of 27 May 2004, paras 86–88.

57 Ibid, para 93.

58 Ibid, para 95.

59 ECtHR, *Yordanova and others v Bulgaria*, Application No. 25446/06, Judgment of 24 April 2012, paras 122–123.

60 Ibid, paras 125–127.

eviction are particularly serious, as it may lead to homelessness. The Court reiterated international instruments according to which in the event of the forced eviction of Roma and travellers, alternative housing should be provided.⁶¹

3.6 *Concluding Remarks*

The above shows that Roma, gypsies and travellers are consistently recognized as minorities and as vulnerable groups in need of special protection. The joint housing and living in a caravan or trailer is an integral part of the cultural and ethnic identity of Roma, gypsies and travellers. This lifestyle is protected by the equality and non-discrimination principles in combination with the rights to respect for private life, family life and home. While States have ample room to plan according to their economic and social policies, this room is not unlimited. The margin of appreciation is generally wide in cases of granting permissions and permits, but it is narrower in cases of evictions, because they affect so-called intimate or key rights.

The rights to respect for private life, family life and home do not only imply negative obligations, but also positive obligations. These obligations do not go as far as providing everyone with a home of choice, but the special needs of Roma, gypsies and travellers should be seriously taken into account and given sufficient weight in the balancing with the general interests. This again is important in general planning policies, but essential in cases of forced evictions. Since the consequences of such evictions may be very serious, strong arguments are needed to justify them, and adequate alternative housing as well as procedural guarantees should be provided.

What seems to be missing here is a positive obligation to consult the persons involved. In one case before the HRC this was brought up by the claimants, but it was not discussed. In the cases before the ECtHR it was not raised at all. This seems odd, because consultation and free, prior and informed consent is a crucial obligation of States in relation to, for instance, land rights for indigenous peoples.⁶² It would be a logic part of the obligations of States in measures affecting the housing of Roma, gypsies and travellers as well.

61 Ibid, paras 130–132; ECtHR, *Winterstein and others v France*, Application No. 27013/07, Judgment of 17 October 2013, paras 87–89, 167.

62 Y Donders, 'The Cultural Dimension of Economic Activities in International Human Rights Jurisprudence', in: V Vadi and B de Witte (eds), *Culture and International Economic Law* (Routledge, 2015) 33–49.

4 The Right to Adequate Housing

Apart from the right to respect for private life, family life and home, international human rights treaties protect a specific right to adequate housing. This right is protected by the International Covenant on Economic, Social and Cultural Rights⁶³ (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination⁶⁴ (ICERD) and in the 1996 Revised European Social Charter⁶⁵ (ESC). Article 11 ICESCR protects the right to adequate housing as part of the right to an adequate standard of living. The ICERD includes in Article 5(e)iii that States parties should prohibit and eliminate racial discrimination and guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights, including the right to housing. Article 31 ESC provides that the effective exercise of the right to housing requires States parties undertake to take measures to promote access to housing of an adequate standard, to prevent and reduce homelessness and to make the price of housing accessible to those without adequate resources.

The difference with Article 17 ICCPR and Article 8 ECHR is that these economic, social and cultural rights are often not directly applicable in the national legal order and that their monitoring at international level is less firmly established: the European Committee on Social Rights (ECSR) has a collective complaints procedure and not an individual one and the Committee on Economic, Social and Cultural Rights (CESCR) can only since 2013 deal with communications submitted by or on behalf of individuals or groups of individuals claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the ICESCR,⁶⁶ including the right to adequate housing.⁶⁷ The Committee on the Elimination of All Forms of Racial Discrimination (CERD) can receive complaints but has a very limited number of cases on housing for Roma, gypsies and travellers.⁶⁸ All Committees cannot submit binding judgments; their opinions or views are not legally binding. However, all three bodies have elaborated on the right to housing in relation to Roma,

63 993 UNTS 3.

64 660 UNTS 195.

65 CETS No. 163.

66 See Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GA res. 63/117 (2008).

67 *IDG v Spain*, Communication No. 2/2014, UN Doc. E/C.12/55/D/2/2014 (13 October 2015).

68 See Committee on the Elimination of Racial Discrimination, <<http://www2.ohchr.org/english/bodies/cerd/>>.

gypsies and travellers. Their approach largely follows the approach as established above under non-discrimination and the right to respect for private life, family life and home.⁶⁹

The CESCR has explicitly recognized the cultural dimension of the right to housing. In its General Comment on the right to adequate housing it has outlined that the implementation of this right should be “culturally adequate”. This means that ‘...the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed...’⁷⁰ The precise obligations related to cultural adequacy have not been further developed by CESCR in its Concluding Observations following the reporting procedure.⁷¹

The CERD has also used the specific concept of culturally appropriate housing for Roma and Gypsies. It has stated in Concluding Observations concerning the UK that it deeply regretted the UK’s insistence on evicting Gypsy and Traveller communities ‘...before identifying and providing alternative culturally appropriate housing for members of these communities and the failure to assist the communities in finding suitable alternative accommodation (art. 5 (e) (iii)).’ The Committee strongly recommended that the UK should provide ‘...alternative culturally appropriate accommodation to these communities before any evictions are carried out’.⁷²

The CESCR further adopted a separate General Comment on forced evictions. The obligations in relation to forced evictions focus on the prevention of homelessness by always providing for alternative housing, as well as genuinely consulting and informing the people involved. Here no direct link is made with cultural adequacy. In the General Comment it is more broadly stated that ‘...prior to carrying out any evictions, and particularly those involving large groups, all feasible alternatives are explored in consultation with the affected

69 The analysis provided is mostly based on the General Comments of the UN Committees as well as cases dealt with by the CERD and the ECSR. Limited research has been done on the Concluding Observations of the UN Committees.

70 CESCR, *General Comment No. 4: The Right to Adequate Housing*, (Art. 11 (1) of the Covenant), 1991, UN Doc. E/1992/23.

71 The Concluding Observations by the CESCR between 2010 and 2015 were analysed. No references to cultural adequacy of housing was found.

72 CERD, *Concluding Observations United Kingdom*, 8 January 2013, UN Doc. CERD/C/GBR/CO/18–20, para 28.

persons.' Furthermore, legal remedies and procedures should be provided to those who are affected by eviction orders."⁷³

The CERD dealt with one case against the Slovak Republic brought by a group of Roma who lived in appalling housing conditions. The municipality first issued a plan to construct low-cost housing for Roma in order to alleviate their housing problems. After protests from other inhabitants the municipality cancelled the plan and adopted weaker measures. The Roma complained that this constituted racial discrimination and a violation of their equal rights to housing. While the Committee recognized that the practical realization of economic, social and cultural rights including the right to housing requires a complex system of policies, it found the revocation of the original positive measure an impairment of the recognition or exercise on an equal basis of the right to housing.⁷⁴

At the European level the ECSR has in several cases concerning Roma and gypsy families firmly established that the ESC in order to obtain real equality may require special protection of and special measures for disadvantaged and vulnerable groups. In most cases therefore, Article 31 on the right to housing is combined with Article 16 on the right of the family to social, legal and economic protection, Article 30 on the right to protection against poverty and social exclusion and Article E on non-discrimination. As stated, the procedure before the ECSR is a collective complaint procedure. This implies that the cases do not concern specific individual complaints, but more generally concern policies of States parties. This does allow the ECSR to assess the situation and State obligations in relation to the housing of Roma, gypsies and travellers in several countries in a more general way, apart from the assessment whether in a particular case the rights of the complainants were violated.

The cases concerned broadly discrimination against Roma, gypsies and travellers when implementing right to housing and the denial of an effective right to housing because of insufficient or inadequate permanent sites, insufficient stopping places and systematic forced evictions, sometimes with the effect of homelessness or residential segregation. In these cases the ECSR clearly indicated that equal treatment of Roma and gypsies in relation to housing does not suffice and that special attention needs to be paid to their vulnerable position, as well as their specific way of life. In the case of the *European Roma Rights Centre v Greece* the ECSR cited the ECtHR in the *Connors* case concerning the

73 CESCR, *General Comment No. 7: The Right to Adequate Housing, (Art. 11 (1) of the Covenant): Forced Evictions*, 1997, UN Doc. E/1998/22, annex IV, paras 13 and 15–16.

74 CERD, *Ms. L.R. et al. v Slovak Republic*, Decision of 7 March 2005, UN Doc. CERD/C/66/D/31/2003, paras 10.6 and 10.7.

positive State obligation to facilitate the gypsy way of life.⁷⁵ In other relevant cases the ECSR consistently stated that the different situation of Roma should be taken into consideration and measures should be introduced specifically aimed at improving their housing conditions in line with their traditions and cultural identity.⁷⁶ Equal treatment implies that States parties should take measures ‘...appropriate to Roma’s particular circumstances to safeguard their right to housing and prevent them, as a vulnerable group, from becoming homeless.’⁷⁷ Or more specifically, ‘...for the integration of an ethnic minority as Roma into mainstream society measures of positive action are required.’⁷⁸ The ECSR is at the same time aware of the fact that a fair balance needs to be struck between the interests of the Roma and general interests in society.⁷⁹

In two cases the ECSR was more specific on the issue of housing or alternative accommodation respectful of the Roma way of life. It noted in the case of the *European Roma Rights Centre v France* that French legislation was not accommodating the specific ways of living of Roma. For instance, caravans were not considered to be housing because they did not require a building permit; living in a caravan, which is still considered to be mobile, did not secure eligibility for housing allowances; and the purchase of caravans did not qualify for housing loans. In other words, the laws were not sufficiently taking into account the caravan lifestyle of travellers.⁸⁰ And in the case of the

75 European Committee on Social Rights, *European Roma Rights Center v Greece*, Complaint No. 15/2003, Decision on the merits, 8 December 2004, para 20.

76 European Committee on Social Rights, *Centre on Housing Rights and Evictions (COHRE) v Italy*, Complaint No. 58/2009, Decision on the merits, para 39; European Committee on Social Rights, *International Federation of Human Rights (FIDH) v Belgium*, Complaint No. 62/2010, Decision on the merits, 21 March 2010, para 135.

77 European Committee on Social Rights, *European Roma Rights Centre v Italy*, Complaint No. 27/2004, Decision on the merits, 7 December 2005, paras 21 and 46; European Committee on Social Rights, *International Movement ATD Fourth World v France*, Complaint No. 33/2006, Decision on the merits, 5 December 2007, para 149; European Committee on Social Rights, *European Federation of National Organisations Working with the Homeless (FEANTSA) v France*, Complaint No. 39/2006, Decision on the merits, 5 December 2007, para 162; European Committee on Social Rights, *International Centre for the Legal Protection of Human Rights (INTERRIGHTS) v Greece*, Complaint No. 49/2008, 11 December 2009, para 40.

78 European Committee on Social Rights, *European Roma Rights Centre v Bulgaria*, Complaint No. 31/2005, decision on the merits, 18 October 2006, paras 41–42.

79 European Committee on Social Rights, *International Federation of Human Rights (FIDH) v Belgium*, Complaint No. 62/2010, Decision on the merits, 21 March 2012, para 135.

80 European Committee on Social Rights, *European Roma Rights Centre (ERRC) v France*, Complaint No. 51/2008, Decision on the merits, 19 October 2009, paras 59–60.

European Roma Rights Centre v Portugal the ECSR maintained that ‘...social housing offered to Roma should be, as far as possible, culturally suited to them. Re-housing of Roma families in apartment blocks has often prevented family and casual gatherings, given that their means of existence as a community and bonds of solidarity are broken.’ It continued by stating that ‘...the main problem raised...related to cultural adequacy of dwellings refers to the fact that the family size is often not taken into account for the purpose of resettlement, which results in inadequately sized dwellings.’⁸¹ In other words, not only the specific housing needs of a particular family need to be considered, but also their broader interest in living their lives in community with other minority members and families.

The above shows that the elaboration of the normative content of the right to housing affirms the approach as indicated in relation to other human rights related to housing, private life and family life. Firstly, the vulnerable position of the Roma, gypsies and travellers is recognized, which implies that unequal treatment including special measures may be required in order to safeguard the effective enjoyment of their rights. Since the housing of these communities is closely related to their cultural identity, these special measures should do more than merely lead to equal enjoyment of rights, but should take into account the specific cultural dimensions of their housing. Specific positive obligations therefore include providing alternative housing in cases of (forced) evictions that is culturally appropriate. Here involvement and consultation of the communities concerned is added as an obligation.

5 Conclusion: Housing as a Cultural Right for Roma, Gypsies and Travellers

Bearing in mind the above, it is unfortunate that the Dutch Court did not at all touch upon the human rights aspects of the case, although they may have played an indirect role in its outcome. Although the Court was not obliged to do so and could base the assessment purely on national tenant law, it would have been an important sign of the awareness of the human rights aspects of this case.

The right to housing is firmly established in international human rights law. It is explicitly protected in treaties on economic, social and cultural rights and it is part of the right to respect for private life, family life and home as

81 European Committee on Social Rights, *European Roma Rights Centre (ERRC) v Portugal*, Complaint No. 61/2010, Decision on the merits, 30 June 2011, paras. 49–50.

included in treaties on civil and political rights. Together with the general principles of equality and non-discrimination they form the legal basis of the protection of the specific way of housing of Roma, gypsies and travellers. As such, it forms a good example of the indivisibility and interdependence of all human rights, irrespective of their nature and no matter to which category they belong.⁸²

Starting from the principles of equality and non-discrimination, Roma, gypsies and travellers are recognized as minorities and vulnerable communities for whom special measures need to be taken in order for them to equally and effectively enjoy their human rights. This is fully in line with these principles, which require also that different situations be given different protection. Consequently, special measures need to be taken in order to ensure that Roma, gypsies and travellers equally and effectively enjoy their housing rights in practice.

Housing for Roma, gypsies and travellers means living in trailers and caravans and preferably in community with others of their community on a camp or park. As such it forms part of their cultural identity. This was also confirmed in The Netherlands by placing the trailer camp culture on the national inventory of intangible cultural heritage. The link with cultural identity implies that apart from special measures in order for them to enjoy their rights equally with others, they are also entitled to special protection of their particular way of housing. This does not mean that Roma, gypsies and travellers have a general right to a home – in their case caravan or trailer – on the spot or in the park that they want. In other words, the housing rights of Roma, gypsies and travellers may be special, but they are not absolute.

States have a large amount of legal and policy freedom, within their margin of appreciation, to decide on planning and permits. At the same time they have a positive obligation to pay particular attention the situation of Roma, gypsies and travellers. Their rights include that their particular way of housing is taken into account in planning policies and that it is properly weighed against general interests of society. Sometimes removal or evictions are necessary and justified. In such cases the positive obligations of States include that alternative housing is provided for, since homelessness should always be avoided. Protection against forced evictions without appropriate alternative housing is considered to be an intimate or key right, because this is closely linked to identity, self-determination and the maintenance of relationships

82 See, also, A Remiche, 'Yordanova and Others v Bulgaria, The Influence of the Social Right to Adequate Housing on the Interpretation of the Civil Right to Respect for Ones' Home', (2012) 12(4) *Human Rights Law Review* 787–800.

with others. This approach reaffirms the relationship between the different elements of the human rights provisions, namely housing and home, family life and privacy.

Part of the positive obligation to provide for alternative housing is that it should be culturally appropriate to the Roma, gypsies and travellers. Culturally appropriate means that it is respectful of the trailer and caravan culture of these communities, including not only the trailer or caravan as a house, but also the collective living places on camps or parks. Most Roma, gypsies and travellers do not move regularly anymore, but their living in trailers and caravans and on trailer/caravan parks reflects the long tradition of these minorities following a travelling lifestyle. It is interesting that international supervisory bodies accept that lifestyle and cultural identity are not static. The ECtHR for instance finds that the protection of Article 8 remains even though, under the pressure of development or by their own choice, many Roma, gypsies and travellers no longer live a wholly nomadic life and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children.⁸³ Legal or illegal housing is thereby not always relevant, as long as the situation has been condoned by the State for a longer period in time.

In cases of (forced) evictions, States have another positive obligation, namely to ensure that proper procedures are in place. Again, since the consequences of such evictions may be very serious, strong and clear arguments should be put forward to justify them, and fair and accessible procedures should be in place for the Roma, gypsies and travellers to be able to contest the decisions by the authorities.

One of the main ways to respect the housing rights for Roma, gypsies and travellers would be to systematically and seriously involve them on issues relating to their housing situation. The right to be consulted and the corresponding State obligation to consult communities involved are recognized as part of the right to adequate housing, but they are not firmly established in relation to the rights to respect for home, family life and privacy. As argued above, in land situations involving indigenous peoples, the right to free, prior and informed consent is a well-established right. Perhaps such free, prior and informed consent would go too far and not be in line with the margin of appreciation left to States in planning policies. However, serious consultation would certainly be in line with the human rights as elaborated above and promotes a human

83 See on this issue P Kabachnik, 'To Choose, Fix or Ignore Culture? The Cultural Politics of Gypsy and Traveler Mobility in England', (2009) 10(4) *Social and Cultural Geography* 461–479.

rights approach to policies affecting the housing of Roma, gypsies and travellers. Consultation would mean that their interests are taken seriously and that these interests are elaborated and determined by and with the persons and communities themselves. In all housing and planning situations, but especially in situations where removals or evictions are unavoidable, meaningful consultation with Roma, gypsy and traveller communities would not only give them a voice, but would also help the State to provide culturally suitable or appropriate alternative housing in line with its human rights obligations.