

## Difference and Indifference: Bringing Czech Roma Ghettoes to Europe's Court

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*Many Roma in the Czech Republic live in appalling housing conditions, often as a direct result of public authority decisions. But can they approach the European Court for redress?*

The European Convention on Human Rights (ECHR) does not contain a right to adequate housing - a fundamental right stipulated in the European Social Charter. As a result victims do not appear to have access to the European Court of Human Rights. However, as I will argue, housing conditions are sufficiently fundamental to the dignity and well-being of the individual that certain minimum standards can be viewed rather as a "civil/political" right -protected under the ECHR - rather than an "economic/social" right, which are not.

The emergence of Roma ghettoes has become an acute problem in the Czech Republic. [1] Several factors lie behind this phenomenon: the general economic vulnerability of many Roma communities; discrimination against Roma by private and municipal landlords; the unavailability of legal assistance; and the denial, between 1993 and 1999, of citizenship to thousands of Roma resident on Czech land following the split with Slovakia. [2] In many areas where Roma families are concentrated, essential services are inadequate. In addition, many Roma live in housing owned by municipalities and are consequently subject to terms and conditions that are established simply by municipal measures or decrees. [3]

Dependence on municipal housing and a general lack of adequate public housing also render many Roma vulnerable to being removed to so-called "*holobyty*" - recently developed apartment block institutions for "socially unadaptable" residents. Ostensibly last resort housing for those unwilling or unable to meet their rent obligations, or otherwise problematic tenants, *holobyty* are primarily used to segregate Roma families from the non-Roma population. Roma, who represent approximately 3% of the total Czech population, are vastly over-represented in *holobyty*: a survey of several *holobyty* in June and July 2000 indicated that Roma represented between 60% and 100% of residents. [4] Nor is the rent on *Holobyty* cheap. [5]

Conditions in *holobyty* are deplorable. Many have no heating or hot water, bathrooms and other facilities are shared and their use is charged or otherwise restricted. [6] Residents also lose basic tenancy rights: in some facilities, residents are not allowed to receive visitors; others require residents to allow authorities unrestricted access to their homes. The inhabitants of *holobyty* are willing to suffer this behaviour because they are dependant on the low standard and unreasonably expensive housing. If tenants raise objections to their contracts or housing codes, they are told that if they are unhappy, they are free to leave (and end up on the street). The situation in *holobyty* is starkly illustrated by the events that followed serious flooding in 1997 in Northern Moravia. [7] The Hrušov area of Slezská Ostrava was particularly badly affected by the floods, and residents of the area were evacuated to emergency shelters. In October 1997, the area was condemned as the foundations of flooded buildings were eroded, and it was eventually decided that the area could not be reoccupied. However, some houses in the flooded area were preserved. While non-Roma residents of the flooded area were resettled elsewhere, only these flooded apartments were made available to Roma residents. The apartments were in severe disrepair and clearly uninhabitable: they were often the only accessible apartments in otherwise destroyed blocks, stagnant floodwater remained, basements were filled with sludge, ceilings incomplete, and the apartments badly affected by mould. The condition of the housing is well-documented: according to the Regional Hygiene Office, circumstances in the area constitute a health hazard; [8] a structural engineer, registered as an expert with Czech courts, declared the buildings irrecoverably saturated and irreparable; [9] standing water and sewerage

remain and there is permanent and increasing contamination of the buildings by mould; water, sewerage, and electricity still do not function in the area. [\[10\]](#)

Despite the uninhabitable condition of the apartments, they were considered appropriate by local authorities and were the only dwellings offered by the city to Roma residents. Denying that there was a problem "in general," administrators did concede that individual apartments might be substandard. [\[11\]](#) Although evidently aware of conditions in the area - the building had, as mentioned above, been condemned - local authorities maintained either that they had no plans to provide other housing for Roma families or that they had received no formal complaints about housing in the area and so were unaware of any problems. However, in an express acknowledgment of conditions in the area, the municipality offered residents a 30% reduction in rent. [\[12\]](#) Other responses were even more insulting: authorities confirmed that they had no plans to provide alternative housing for the Roma, claiming that the residents are in arrears in rent or, in some cases, that they are themselves responsible for the condition of the apartments. [\[13\]](#)

The health hazards are well illustrated in the case of David Ž., a 14 year-old resident of the Hrušov area. After the floods, David Ž. returned with his family to Hrušov, accepting the apartment offered by the city. After their return, David Ž. developed bronchial complaints, asthma, and skin allergies. A doctor who examined David Ž., also a court-registered expert, identified a direct causal relationship between David Ž.'s condition and the environment in Hrušov. She further suggested that continued exposure to such conditions would exacerbate David Ž.'s condition and could lead to increasingly serious medical problems. One of many examples, David Ž.'s case highlights the extent to which housing can be particularly fraught with issues of civil and political rights. [\[14\]](#)

The European Convention lacks a provision addressing a person's right to adequate housing or to healthy living conditions. At the time of its adoption, it did not undertake to protect all the rights then understood as human rights. For instance, it contains no provisions relating to many of the rights enumerated in the 1948 Universal Declaration of Human Rights. [\[15\]](#) Instead, the European Convention "covers mainly those rights which were to be referred to, in the later elaboration of the Universal Declaration in the two Covenants, as 'civil and political rights', and not even all of those." [\[16\]](#) The rationale for the inclusion of certain rights and the exclusion of others was expressed by the rapporteur of the Legal Committee that drafted the first version of the Convention for the Consultative Assembly of the Council of Europe: "The Committee considered that, for the moment, it is preferable to limit the collective guarantee to those rights and essential freedoms which are practised, after long usage and experience, in all the democratic countries. While they are the first triumph of democratic regimes, they are also the necessary condition under which they operate."

Despite this lack, the ECHR does open possibilities for individual complaints of broader nature. What constitutes "inhuman or degrading treatment or punishment" within Article 3, for example? Is it confined to the excesses of Auschwitz and Birkenau? Is it to be measured by the standards of 1950? For that matter, what is meant by the right to respect for private and family life within article 8(1)? Is it the right to be safe from police hammering at the door in the middle of the night, or is it to be interpreted in light of our more developed sense of privacy in the 21st century? [\[17\]](#) Whether a particular treatment is "inhuman" largely depends on the opinion of the time. Applicants have even complained that a prohibition to look at television would be inhuman treatment. Fifty years ago such a complaint could not have been brought. Similarly, the activities of a government that violate the cultural inheritance of particular people may well be considered inhuman treatment soon, in the same way that corporal punishment in British public schools is

considered inhuman treatment today. Convictions change. The power of the European Convention is that it offers a machinery to adapt to such changes.

I believe the denial of adequate housing to David Ž. and the resulting harm to his health constitute a violation of Article 3 of the Convention. The term "degrading treatment" in this context indicates the general purpose of the provision, which is to prevent interference of a particularly serious nature to an individual's dignity. It follows that an action which lowers a person in rank, position, reputation or character can only be regarded as "degrading treatment" in the sense of Article 3, once it reaches a certain level of severity sufficient to affect the individual's life and health directly. [\[18\]](#)

Severe discrimination may also amount to "degrading treatment". In the *East African Asians* case, the European Commission on Human Rights held that racially discriminatory legislation, which prevented Asian residents in Kenya and Uganda and who had retained their United Kingdom citizenship from entering the United Kingdom for the purpose of settlement, constituted, inter alia, "degrading treatment" within the meaning of Article 3. The Commission attached special importance to racial discrimination suggesting that distinctions based on other grounds might not be sufficient to constitute "degrading treatment." [\[19\]](#)

In *Abdulaziz, Cabales and Balkandali v. United Kingdom*, the Court rejected the proposition that family reunion immigration rules violated Article 3 by allegedly discriminating on the ground of nationality because "the difference of treatment complained of did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase but was intended solely to achieve" legitimate immigration measures. [\[20\]](#) However, this argument does not necessarily preclude discrimination based on nationality from constituting degrading treatment under certain extreme circumstances, which could include economic and social deprivation deliberately sanctioned by the state. [\[21\]](#)

Similar arguments to these may be applied to the situation of David Ž., given the acts of municipal authorities. Subjection to such treatment cannot be considered a simple matter of local authorities' discretion. Given its severity and extent, this level of mistreatment constitutes a systematic degradation of the Roma people as individuals. It is the severity and frequency of this treatment that constitutes "degrading treatment" understood under Article 3.

Another possible litigation option for situations that are harmful to human health is Article 8, obliging States to respect individuals' private lives. When it was drafted in 1950, it was not clear that people's living environment was protected by Article 8. Today, cases at the Court include complaints about air pollution and noise pollution brought under the right to privacy. The European Commission of Human Rights has recognised a close association between the right to respect for family life and the right to adequate housing by stating that, even though there is no obligation in the ECHR to provide housing, the Convention did not "discount the possibility that the right to respect for family life [can] be violated in a case where the authorities impose intolerable living conditions on a person or his family." [\[22\]](#) Affirming this position in *Lopez Ostra v. Spain* [\[23\]](#) and *Guerra and others v. Italy*, [\[24\]](#) the court found states to have violated Article 8 by failing to take the necessary steps to prevent severe environmental pollution which had affected the well-being of local residents, posing a risk to their health and preventing them from enjoying their homes in a way that adversely affected their private and family life.

These environmental claims demonstrate an excellent potential for testing the usefulness of the ECHR as a tool for housing protection in cases where living conditions are so bad as to be effectively harmful. Today's post-industrial Europe must contend not only with acts of violence but also with less obvious threats to life and health, especially in the context of racial discrimination.



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## Footnotes

- [1] See e.g. Centre for Citizenship/Civil and Political Rights, *Comments on the Report of the Czech Republic on the Implementation of the International Covenant on Civil and Political Rights*. Online here: [http://www.poradna-prava.cz/eng\\_frame.html](http://www.poradna-prava.cz/eng_frame.html) . (hereafter "CC/CPR")
- [2] See Zoon, I., *On the Margins*, OSI, 2001, pp.166-182.
- [3] As private legal entities, many municipal administrations claim that tenant agreements are essentially private contracts. In practice, however, municipalities enjoy far greater power than private landlords as they are authorised to issue generally binding decrees regarding tenancy terms and conditions. Although such decrees are necessarily subordinate to state legislation, the legal and practical possibilities of challenging municipal decrees are extremely limited.
- [4] CC/CPR.
- [5] In the Chomutov *holobyty*, clients are asked to pay CZK 4,500 (c. € 150) a month for accommodation and services. The "accommodation fee" in *holobyty* for mothers and children, run by the Prague 5 District Council, reaches CZK 2,500 to 3,000 (€ 80-100) per month per "unit" (1 room), depending on the unit size.
- [6] CC/CPR. For example, the housing code at one municipal-owned "dormitory" at 392, Ouvalová Street, Slaný, provides for bathroom access for two hours only on Mondays, Fridays and Saturdays.
- [7] *Ibid.*
- [8] Statement by MUDr. Volf, Director of Regional Hygiene Office, July 26, 2001.
- [9] Evaluation of Structural Condition of Ostrava-Hrusov, April 26, 2001, conducted by Milan Lehky, court registered expert in construction.
- [10] *Evaluation of the Environment Contaminated by Mould*, Protocol No. 1310, May 15, 2001, conducted by Chemila Chemical and Microbiological Laboratories, SRO, accredited by Czech Institute for Accreditation.
- [11] Having stated that there were health risks in the area, the Regional Hygiene Office nonetheless concluded that the area "in general" was stable.
- [12] Prior to the reduction, rents in the apartments had been comparable to those charged before the floods.
- [13] According to the deputy mayor of Ostrava.
- [14] *Expert Opinion in the Matter of the Examination of the Health of Minor D.Z.*, April 22, 2001, conducted by MUDr. Irena Krčmová, CSc, court registered expert in allergenic and clinical immunology.
- [15] See Van Dijk, P. and Van Hoof, G.J.H., *Theory and Practice of the European Convention on Human Rights*, 1990, p.213.
- [16] *Ibid.*
- [17] See e.g. *Hatton and Others v UK*, App. No. 36022/97, where the court ruled that night flights from Heathrow airport violated the applicant's right to privacy by causing sleep deprivation.
- [18] *East African Asians* at 55.
- [19] *East African Asians*, at 62.
- [20] *Abdulaziz v. United Kingdom*. See also Jacobs, F.G. and White, R.C., *The European Convention on Human Rights*, 1996, p. 66.
- [21] Jacobs and White recognise that the "tenor of the judgment [in *Abdulaziz, Cabales and Balkandali*] is such that, if the difference of treatment did indicate contempt or lack of respect for the personality of the applicants, that may meet the level of severity necessary to constitute

degrading treatment." Jacobs and White, p. 66. It has also been suggested that "general socio-economic conditions" is an area to which the ECHR organs might in future explore the possibility of applying Article 3 ECHR. Antonio Cassese, "Prohibition of Torture and Inhuman or Degrading Treatment or Punishment", in *The European System for the Protection of Human Rights* p. 225, 260.

[22] *Guzzardi v. Italy*, App. No. 7367/76.

[23] *Lopez Ostra v. Spain*, App. No. 16798/90. In this decision, the Court ruled that locating a waste treatment facility a few metres from a home violated the occupant's right to private and family life under Article 8.

[24] *Guerra v. Italy*, App. No. 14967/89. In this decision, the Court held that Italy violated Article 8 by not providing essential information which would have enabled the applicants to assess the environmental risks of living in proximity to a chemical factory.