

Mandates 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; the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 43/14, 44/10 and 44/13.

In this connection, we would like to bring to the attention of Your Excellency's Government information we have received concerning the **imminent threat of a forced eviction into homelessness of 19 persons living in extreme poverty at Stephenson Street Nr. 15, in Cluj-Napoca, including 9 children and one person with disabilities. We are writing this letter to prevent evictions into homelessness which are strictly prohibited under international human rights law. Forced evictions into homelessness are not only considered as a severe violation of the right to adequate housing under international human rights law, but also pose significant immediate threats to the health and life of the affected persons and thus violate other human rights, such as, *inter alia*, the right to the highest attainable standard of health and the right to life.**

According to information received:

19 persons are currently living under immediate threat of a forced eviction into homelessness from the building where they live, situated on Stephenson street No. 15 in Cluj-Napoca, which consists of five apartments. The families started living there at the end of the 1970s, when the now eldest family members under threat of eviction were employees of the State Trust for Constructions. They lived there first as tenants. After 1990, once buying the apartments became an option, two of the families who had sufficient resources bought apartments at this address.

However, most residents living at Stephenson Street No.15 neither had sufficient income to rent formal housing or buy housing, nor did they have access to social housing. Young and new-founded families had thus no other option but to informally extend their lodgings around the initial house.

In this context, the City Hall of Cluj-Napoca initiated a process of identifying and monitoring the situation and imposed a fine on one of the families in the old house for the illegal construction of an annexed building on 27 September 2010. A few days after, because of the severe health problems and the stressful situation generated by the fine, the head of the concerned household died. This

tragic event prolonged the legal action initiated by the City Hall against those who built annexes without proper authorization (file nr.25071/211/2012). A civil sentence (no. 678/A/2014) requested that the families living in the annex in front of apt. 1 on the western side of the house should demolish their lodgings. However, at the time the affected persons lacked access to alternative housing options, as they continue to do today. Dismantling the informal annex would push them effectively into homelessness.

This situation was known to the local authorities at least since the court ruling, but no alternative solution was offered to the concerned persons over the last seven years. It is furthermore alleged that since 2014 no meaningful consultation took place with the affected individuals living in the informally build annexes to find alternative housing solutions.

On 1 September 2021, seven households living at Stephenson Street No. 15, received a notice to “dismantle the illegal constructions on the western side of the house in Cluj-Napoca, Stephenson street nr. 15, in front of apt. no 1 within two days” (until 3 September 2021), i.e. with a deadline of two days. The notice indicated that in case of non-compliance, a bailiff accompanied by the SMZ IMPEX SRL firm will arrive on 3 September 2021 at the location to “make the technical measurements necessary for implementing the enforceable title contained in the Civil Sentence no. 5173/2014” that had been pronounced by the Cluj-Napoca Courthouse (case 5173/2014). Apart from this document, the affected households did not receive any proposed solution for their housing situation from the City Hall of Cluj-Napoca.

According to information received, the imminent forced eviction would also be in non-compliance with national law and regulations. According to Law No. 151 of 24 July 2019 and Law no. 350/2001 and Order No. 3.494 of 27 July 2020 containing Methodological Norms for the Application of Law no. 350/2001 on urbanism and spatial planning, an informal settlement is defined in Romania as a grouping of minimum three units used for housing purposes, built spontaneously, inhabited by people or families who are part of vulnerable groups as defined by the Law of Social Assistance no. 292/211, and who do not have any legal rights upon the homes they inhabit. The concerned housing units at Stephenson Street no. 15 reportedly fit this definition, and would thus as well have to be considered as informal settlements under the national law of urbanism and spatial planning.

The above-mentioned national law provisions would reportedly require the local authorities of Cluj-Napoca to:

- identify the lands within their territory where informal housing has been built, including on Stephenson Street no. 15;
- create and update a database on the number of persons living in informal settlements, including on Stephenson Street no. 15;
- inform the residents of informal settlements about the provisions of this law and initiate a process of consultation and participatory planning in order to identify solutions tailored to the specifics of the informal

- settlement and to community needs, including Stephenson Street no. 15;
- initiate and coordinate the necessary steps to identify the legal and economic status of the lands occupied by informal settlements and to regulate them
- in case of a partial or total dismantling of an informal settlement (as indicated by the demolition order, no. 678/A/2014) the authorities should ensure the relocation of the inhabitants, either by providing social housing or by supporting the reconstruction of housing on properly equipped land that should be identified and made available by local public administration authorities;
- inform, consult and obtain approval from the residents before the relocation.

Reportedly, none of these required actions under national law have taken place before the order of 1 September 2021 was issued.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern that the planned enforcement of a housing demolition order approved several years ago by a court would result in a forced eviction into homelessness. We wish to recall that evictions into homelessness without provision of alternative housing are strictly prohibited under international human rights law. They are not only considered as a severe violations of the right to adequate housing under international human rights law, but also pose significant immediate threats to the health and life of the affected persons and thus violate other human rights, such as, *inter alia*, the right to the highest attainable standard of health and the right to life.

Besides these more general concerns, we wish to note that providing only two days' notice before carrying out the demolition of several housing units is manifestly insufficient to ensure that affected persons can secure their belongings, find alternative housing or take remedial legal action to prevent that their home is demolished.

We therefore appeal to your Excellency's Government to take all necessary steps to secure the right to an adequate standard of living and housing as defined in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 on the right to adequate housing stressed that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

In this context we would like to refer as well to the Committee on Economic, Social and Cultural Rights' General Comment No. 7 on forced evictions, which stipulates that forced evictions are only permissible under international human rights law in exceptional circumstances and after all procedural protections have been met. This includes, among others, the exploration of all feasible alternatives to avoid evictions, genuine consultation with the affected residents and tenants, adequate and

reasonable notice, adequate compensation for any loss of property, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. Evictions should furthermore not result in individuals being rendered homeless or vulnerable to the violation of other human rights (paragraphs 13, 15 and 16).

We also recall that the Guiding Principles on extreme poverty and human rights, adopted by the Human Rights Council by consensus on 27 September 2012, recommend in particular that States "adopt laws protecting all individuals, groups and communities, including those living in poverty, against forced eviction by State and non-State actors. This should include preventive measures to avoid and/or eliminate the underlying causes of forced evictions, such as speculation in land and real estate" (para. 80, b).

Reference is also made in this context to the Basic Principles and Guidelines on Development-based Evictions and Displacement ([A/HRC/4/18](#), Annex 1) that set out detailed procedural standards that should be met before, during and after any housing demolitions and evictions are planned or carried out.

Evictions into homelessness would furthermore violate article 12 of the ICESCR, as exposing persons into homelessness would undermine their right to the enjoyment of the highest attainable standard of physical and mental health. Furthermore, carrying out such and evictions without providing access to alternative housing would also violate articles 6 and 17 of the International Covenant on Civil, and Political Rights, protecting the right to life, the family and the home.

As clarified by the Human Rights Committee in its General Comment No. 36 on the right to life, States "have the duty take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include [...] homelessness." The Human Rights Committee further specified that "the measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as [...] social housing programmes."

As several of the persons at risk of eviction are children, and one of them is a person with disabilities, the planned housing demolition and eviction would as well raise serious questions relating to its compliance with several provisions of other international human rights instruments, including the Convention on the Rights of the Child (see, among others articles 26 on the right of the child to social protection, and 27 on the right of the child to an adequate standard of living) and the Convention on the Rights of Persons with Disabilities (see, *inter alia*, article 28 on adequate standard of living and social protection, and article 19 (a) on living independently and being included in the community), to both of which Romania is a Party.

Finally, we wish to draw your attention to the report of the previous Special Rapporteur on the right to adequate housing, relating to the human rights obligations

of local governments ([A/HRC/28/62](#)), which highlights the need for local governments to be cognizant of their human rights obligations including in respect to the right to housing. We also wish to note that in his report on the COVID-19 pandemic and its impact on the right to adequate housing ([A/75/148](#)), the current Special Rapporteur reiterated his call for a moratorium on all evictions during the pandemic.¹

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It should be noted that the living conditions and lack of security of tenure of persons living in informal settlements in Cluj-Napoca have already been earlier subject of detailed submissions to the Special Rapporteur on the right to adequate housing and have also been discussed during consultations for his forthcoming report on housing discrimination and spatial segregation.² The submission outlined several systemic issues that require in our view need to be urgently addressed by national and local authorities.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by Your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments. In order to prevent the forced eviction, we would kindly request to bring this urgent appeal to the immediate attention of the Mayor of Cluj-Napoca as well.

As immediate measures, we call upon your Excellency's Government and local authorities to:

1. Immediately halt the planned demolition of the informal buildings by notifying among other notifying the bailiff charged with executing the demolition order;
2. Engage in a meaningful consultation with the affected households and individuals to find alternative housing solutions in accordance with international human rights standards and national law, which could either involve the regularization of informally built housing or their upgrading to meet local building regulations or their relocation to alternative housing in close proximity in consultation with the affected families;
3. address systemic concerns about housing unaffordability, inadequate and unsafe housing conditions in Cluj-Napoca, through the provision of adequate social housing in consultation with the affected communities and households.

¹ See also his statement: "Ban evictions during the COVID-19 pandemic." Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26170&LangID=E>.
See: https://www.ohchr.org/Documents/Issues/Housing/COVID19/CivilSociety/Casi_sociale_ACUM_Social_housing-NOW_Romania.docx and https://www.ohchr.org/EN/Issues/Housing/Pages/CFI_Segregation.aspx

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned concerns and allegations.
2. Please describe if any measures have been taken by the State authorities to avoid the demolition of the homes and the eviction of the affected families.
3. Please indicate what procedures have been in place to ensure adequate notice prior to any forced eviction and the availability of legal aid to assist residents should they wish to challenge the decision.
4. Please describe in detail what measures national and local authorities have taken since the court judgement of 2014 to ensure the right to adequate housing of the persons affected by the ordered housing demolition.
5. Please explain in particular:
 - i. how the procedural safeguards set out in the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/8, Annex 1) will or have be respected;
 - ii. what measures have been taken to ensure that the planned housing delaw and standards, including with regards the right to the highest attainable physical and mental health, the right to life, the protection of the family and home;
 - iii. what measures have or will be taken to ensure that the planned housing demolition affecting children and a person with disabilities, will be in conformity with the norms contained in the Convention of the Rights of the Child and the Convention on the Rights of Persons with Disabilities;
 - iv. what measures have already or will be taken by the responsible authorities to ensure that the planned housing demolition and eviction will be in conformity with national law, including the Law No. 350/2001, Law No. 151 from 24 July 2019 and the Order No. 3.494 from 27 July 2020 containing Methodological Norms for the Application of Law no. 350/2001 on urbanism and spatial planning.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the alleged human rights violations as outlined above.

We may consider to publicly express our concerns as, in our view, the information received is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your

Excellency's Government's to prevent the eviction and clarify the issues in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Balakrishnan Rajagopal
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

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights