With the Housing and ESC Rights Law Quarterly, the COHRE ESC Rights Litigation Programme aims to present advocates and other interested persons with information on national and international legal developments related to housing and ESC rights.

TOWARDS A RIGHT TO ALTERNATIVE ACCOMMODATION?
SOUTH AFRICA’S CONSTITUTIONAL JURISPRUDENCE ON EVICTIONS

By Prof. Sandra Liebenberg

Introduction
The eviction of people from their homes and the demolition of those homes undermine a range of human rights, including the rights to human dignity, security of the person, privacy, health, and access to housing. As General Comment No. 7 on Forced Evictions [UN Committee on Economic, Social and Cultural Rights] indicates, eviction also disproportionately affects vulnerable individuals and groups, including women, people living with disabilities, the elderly and children. Frequently, forced evictions are a reflection of unjust socio-economic circumstances in which communities experience widespread homelessness and there are deep inequalities in access to land and housing. This is particularly so in the South African context, in which apartheid legislation and practices systematically deprived the majority of the population of land, and forced evictions and demolitions were a major tool of apartheid policy. The legal situation was aggravated by strong private-law property rights, in terms of which the rights of owners to vindicate their property rights through eviction were not balanced against a consideration of occupiers’ needs and circumstances. The effect was to legitimise the unjust and racially-based distribution of land and housing.

South Africa’s post-apartheid Constitution of 1996 expressly confers a right on people not to “be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances.” (Sect. 26(3)). This section goes on to provide that, “[n]o legislation may permit arbitrary evictions.” It clearly protects key procedural rights in relation to demolitions and evictions, as do other provisions in the Bill of Rights, including the right to just administrative action (Sect. 33) and the right of access to courts (Sect. 34). Apartheid legislation such as the Prevention of Illegal Squatting Act 52 of 1951, which allowed landowners to demolish structures on their land and to evict people without a court order, was obviously in conflict with Sect. 26(3). But to what

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1 Chair in Human Rights Law, Stellenbosch University. E-mail: sliebenb@sun.ac.za
3 Port Elizabeth Municipality v. Various Occupiers 2004 (12) BCLR 1268 (CC), para. 10.
4 See, for example: Despatch Municipality v. Sunridge Estate & Development Corporation (Pty) Ltd 1997 (4) SA 596 (SE).
EDITORIAL

This edition opens with an article by Professor Sandra Liebenberg of Stellenbosch University, focusing on the extent to which South African constitutional rights that relate to evictions and demolitions include a substantive right to alternative accommodation in eviction situations. In the next piece, COHRE researcher Mayra Gómez discusses the Principles on Housing and Property Restitution for Refugees and Other Displaced Persons that were recently endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights. This is followed by a detailed summary of a European Committee of Social Rights’ decision on the right to housing of Roma in Greece. Finally, there is a round-up of other recent judgments and admissibility decisions in ESC rights cases, and a note on a ‘case to watch’ in South Africa.

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» extent does the Constitution include a substantive right to alternative accommodation in eviction situations? This article briefly reviews key developments in South Africa’s constitutional jurisprudence relating to this question.

PIE

Much of the jurisprudence has directly or indirectly concerned the interpretation of key legislation enacted to give effect to Sect. 26(3), particularly the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). In addition to procedural protections such as adequate notice of pending eviction proceedings, PIE requires that, before granting an eviction order, the courts must be of the opinion “that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.” Where the occupier has occupied the land in question for more than six months, the Act specifies that the court must consider “whether land has been available or can reasonably be made available by a municipality or other organ of state or other land owner for the relocation of the unlawful occupier.” This is also expressly included as a factor to be taken into account when an organ of State institutes eviction proceedings in respect of land falling within its area of jurisdiction. Also of significance are the provisions in PIE that provide for the mediation of disputes relating to land occupation. The provisions of PIE modify the absolute common law rights of an owner to evict unlawful occupiers, providing for both procedural and substantive protections. The courts now have discretion in relation to the granting of an eviction order. In exercising this discretion, the courts must take into account the needs and circumstances of the occupiers in question.

The Grootboom case

The protection against evictions and demolitions in Sect. 26(3) must be viewed in the context of a general right of access to adequate housing. Sect. 26(1) confers on everyone “the right to have access to adequate housing.” Sect. 26(2) provides: “[T]he state must take reasonable legislative and other measures, with its available resources, to achieve the progressive realisation of this right.” In its early, groundbreaking decision of Government of the RSA & Ors. v. Grootboom & Ors. (Grootboom) the Constitutional Court held that Sect. 26(1) imposes, at the very least, a negative obligation “upon the State and all other entities and persons to desist from preventing or impairing the right of access to adequate housing.” In addition, the State has a duty to take reasonable, positive measures to ensure that people

5 PIE repealed the old Prevention of Illegal Squatting Act 52 of 1951 referred to above. Another key piece of legislation giving effect to Sect. 26(3) is the Extension of Security of Tenure Act 62 of 1997 (ESTA). Most evictions of people from their homes will fall under either PIE or ESTA, or be governed by other legislation protecting security of tenure; for example, the Informal Protection of Land Rights Act 31 of 1996.
6 See, for example: Cape Kilnairney Property Investments (Pty) Ltd v. Mahamba & Ors. 2001 (4) SA 1222 (SCA).
7 PIE, Sect. 4(6).
8 Ibid., Sect. 4(7).
9 Ibid., Sect. 4(3)(c).
10 Ibid., Sect. 7.
11 Ndlovu v. Mjosenj, Bekker v. Jika 2003 (1) SA 113 (SCA), para. 16: “Some may deem it unfortunate that the Legislature, somewhat imperceptibly and indirectly, disposed of common law rights in promoting social rights. Others will point out that social rights do tend to impinge or impact upon common-law rights, sometimes dramatically.”
12 2000 (11) BCLR 1169 (CC).
13 Grootboom, para. 34. [Emphasis added.]
gain access to adequate housing. This duty entails providing short-term relief for people living in crisis situations or intolerable conditions such as those experienced by the Grootboom community. It will be recalled that the Grootboom community had been evicted from private land to which they had moved in order to escape the intolerable conditions in the informal settlement in which they had previously been living. When they brought their court application they had nowhere to go and were camped under rudimentary shelter on a sports field in the area. Although their actual eviction had not been challenged, the Court noted that the failure to respond to unmet housing needs and the “consequent pressure on existing settlements inevitably results in land invasions by the desperate.”

This, in turn, gives rise to evictions with their attendant social consequences. The Grootboom case demonstrates the way in which negative and positive duties are intertwined in eviction cases. It also illustrates the social and political fact that the most common factor giving rise to evictions is a lack of tenure security and decent housing conditions.

The Rudolph case

This intertwining of negative and positive duties in eviction matters is further exemplified by the case of City of Cape Town v. Rudolph & Ors. The City had brought an application in the Cape High Court for the eviction of a community occupying a structure in a park owned by the City in the suburb known as Valhalla Park. As in the Grootboom case, this community’s housing situation was desperate given both their poverty and the huge backlog in the supply of housing. Many members had been on housing waiting lists for more than a decade. The application for eviction was based in the first instance on the common law, and only alternatively on the provisions governing urgent eviction proceedings under PIE. The City also sought an alternative order declaring PIE unconstitutional in that it infringed “the fundamental rights of property owners.” The community filed a counter-application for an order declaring that the Council’s housing programme did not comply with its obligations as laid down in Grootboom to make short-term provision for people in Valhalla Park who were in crises or desperate situations. The Court held that the provisions of PIE were applicable to the eviction, and dismissed the challenge to that act’s constitutional validity. It held that PIE did not amount to an arbitrary deprivation of property rights, and was enacted pursuant to the constitutional duty to protect the rights of occupiers. Furthermore, the circumstances did not warrant the granting of an urgent interim eviction order in terms of Sect. 5 of PIE. The Court thus dismissed the City’s application for the eviction of the community.

Turning to the counter-application, the Court found that the local authority had still not implemented the requisite programme to provide for people in urgent need. The Court referred to “a direct causal link” between “the deliberate and sustained failure by the Council to make any provision for people in the applicants’ situation, and their occupation of the park.”

The Court’s order included a supervisory component, requiring the Council to report back to it on the steps it was taking to comply with its constitutional obligations to make short-term provision for people in Valhalla Park who were in a crisis or a desperate situation. This included giving “adequate priority and resources” to the needs of people in the area “who have no access to a place where they may lawfully live.”

The Port Elizabeth Municipality case

Port Elizabeth Municipality v. Various Occupiers is the leading decision on how PIE must be interpreted to promote the purposes and values underlying Sect. 26(3). The case concerned an eviction application by the Port Elizabeth Municipality against some 68 people who were occupying shacks erected on privately owned land within the Municipality’s jurisdiction. Most had moved onto the undeveloped land after being evicted from other land. In making the application, the Municipality was responding to a neighbourhood petition requesting the Municipality to move the occupiers. The Constitutional Court observed that Sect. 26(3) expressly acknowledges that “eviction of people living in informal settlements may take place, even if it results in loss of a home.”

However, it went on to affirm that generally “a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.” Thus, in order to satisfy a court that is “just and equitable” to evict people from their homes, organs of State will have to show that serious consideration has been given to the possibility of providing alternative accommodation to the occupiers. The Court also indicated that, in the absence of special circumstances, “it would not ordinarily be just and equitable to order eviction if proper discussions, and where appropriate, mediation, have not been attempted.”

The critical point that Sachs J makes in his judgment is that, in the clash between property rights and “the genuine despair of
people in dire need of accommodation", the courts should not automatically privilege property rights. Instead, their role is to find a just and equitable solution in the context of the specific factors that are relevant in each particular case. **PE Municipality** certainly envisages circumstances in which people may be evicted from their homes. These might include, for example, situations where people deliberately invade land with the purpose of disrupting an organised housing programme and placing themselves at the front of the queue. While the provision of suitable alternative accommodation is not an absolute requirement, it is nonetheless a weighty consideration in the assessment of whether an eviction order is "just and equitable" in the circumstances.

### The Jaftha case

The Constitutional Court decision in **Jaftha v. Schoeman & Ors.** v. **Van Rooyen v. Stoltz & Ors.** [31] ("Jaftha") reinforces the constitutional protection of poor people against the loss of their homes. This case involved a challenge to the constitutionality of provisions of the Magistrates’ Court Act that permitted the sale in execution of people's homes in order to satisfy (sometimes trifling) debts. The effect of such sales in execution would be the eviction of people from their homes. The two applicants, both women of meagre means, owned homes that had been acquired through the assistance of State subsidies. When they fell in arrears in respect of very minor debts (for example, the purchase of vegetables), a judgment was obtained against them and their homes were ultimately sold in execution. It was common cause that, if the applicants were evicted, they would have no suitable alternative accommodation. [32]

The High Court had held that the loss of the applicants' right to occupy their homes was not caused by the execution process authorised by the Magistrate's Court Act. The High Court stated that if the judgment debtor elected to "hold over" (remain in occupation after the sale in execution), PIE would be applicable to the eviction proceedings brought by the purchaser. The execution process, though it brings the ownership of the judgment debtor to an end, does not violate Sect. 26, as this provision does not entitle anyone to ownership of a specific home or occupation of a specific residential unit. The Constitutional Court accepted the applicants' arguments that legislation that permits a person to be deprived of existing access to housing constitutes a violation of the negative aspect of the right of access to housing, which is protected in Sect. 26(1). Any justification offered by the State for the violation must comply with the strict requirements of the general limitations clause (Sect. 36) in the Bill of Rights. [34]

The Court found no justification for the overbroad provisions of the Magistrate's Court Act. [35] As a remedy, it "read in" provisions to the Act requiring judicial oversight of evictions against debtors' immovable property, taking into consideration "all relevant circumstances". [36] One of the guiding factors relevant to the exercise of this judicial oversight is whether an order authorising the sale in execution would be "grossly disproportionate":

This would be so if the interests of the judgment creditor in obtaining payment are significantly less than the interests of the judgment debtor or in security of tenure in his or her home, particularly if the sale of the home is likely to render the judgment debtor and his or her family completely homeless. [37]

Another consideration for the courts will be "the availability of alternatives which might allow for the recovery of debt but do not require the sale in execution of the debtor's home". [38] According to the Constitutional Court, every effort should be made to find "creative alternatives" which allow for debt recovery but use execution against the debtor's home "only as a last resort." [39] Jaftha implies that the eviction of people from their home is a violation of the negative aspect of the right of access to adequate housing which requires justification.

### The Modderklip case

The recent decision of President of the Republic of South Africa and Anor. v. Modderklip Boerdery (Pty) Ltd [40] ("Modderklip") concerned a private landowner's efforts to execute an eviction order (granted in terms of PIE) against a community of approximately 40 000 people. The owner was confronted with a demand from the High Court sheriff for a deposit of 1.8 million rand (approx. US$ 270 000 at the current exchange rate) to secure the costs of the eviction, an amount exceeding the value of the land. The owner, having failed to get various organs of State to assist him in enforcing the eviction order, applied to the High Court for an order obliging the State to assist him in vindicating his property rights in terms of the Constitution. The Constitutional Court did not consider it necessary to resolve the case on the basis of the landowner’s property rights (in terms of Sect. 25) or the occupiers’ housing rights (Sect. 26). [41] Instead, it held that the State’s failure to take reasonable steps to assist the landowner in vindicating his property, and, at the same time, to avoid the large-scale social disruption caused by the eviction of a large number of people, was a violation of the negative aspect of the right of access to adequate housing which requires justification.

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28 **PE Municipality**, para. 23.
29 Ibid. para. 26.
30 Ibid. para. 38.
31 2005 (1) BCLR 78 (CC).
32 Jaftha, para. 12.
33 The applicants subsequently appealed the High Court’s decision to the Constitutional Court. Therefore, for the purposes of that decision they were “appellants”.
34 Jaftha, para. 34. In terms of Sect. 36, limitations may only be imposed in terms of “law of general application” and must be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.” The limitation must also be proportional (Sect. 36(6)).
35 Ibid. para. 35-49.
36 Ibid. paras. 52-67.
37 Ibid. para. 56.
38 Ibid. para. 59.
39 Ibid.
40 Case CCT 20/04, 13 May 2005.
41 Modderklip, para. 26.
community with nowhere to go, was a violation of the principle of the rule of law in Sect. 1(c) as well as the right of access to courts or other independent fora in Sect. 34 of the Constitution.\textsuperscript{42} The Court held that the progressive realisation of the right of access to housing or land for the homeless requires “careful planning”, “fair procedures” and “[o]rdinary and predictable processes”.\textsuperscript{43} Land invasions should always be discouraged.\textsuperscript{44} At the same time, such measures will not be deemed reasonable if they leave “no scope whatsoever for relatively marginal adjustments in the light of evolving reality.”\textsuperscript{45} The remedy granted by the Court was to require the State to compensate the landowner for the unlawful occupation of his property. Significantly, the order expressly declared “that the residents are entitled to occupy the land until alternative land has been made available to them by the state or the provincial or local authority.”\textsuperscript{46}

**Conclusion**

Access to adequate housing and security of tenure is vital to the flourishing of South Africa’s constitutional democracy. In the Jaftha decision, the Constitutional Court said the following in relation to the right of access to adequate housing set out in Sect. 26:

> The indignity suffered as a result of evictions from homes, forced removals and the relocation to land often wholly inadequate for housing needs has to be replaced with a system in which the State must strive to provide access to adequate housing for all and, where that exists, refrain from permitting people to be removed unless it can be justified.\textsuperscript{47}

The jurisprudence reviewed above indicates that the courts regard the provision of suitable alternative accommodation as a weighty factor in determining whether the eviction of people from their homes can be justified. It also illustrates that, in the context of housing, property rights are no longer automatically privileged. The housing needs of those who are poor and vulnerable to homelessness are now highly relevant considerations in eviction cases.

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\textsuperscript{42} Modderklip, paras. 43-51.
\textsuperscript{43} Ibid. para. 49.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid. para. 58. Order, para. 3(c).
\textsuperscript{47} Jaftha, para. 29.

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**UNITED NATIONS EXPERT BODY ENDORSES PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION**

*By Mayra Gómez\textsuperscript{48}*

On 11 August 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights endorsed the Principles on Housing and Property Restitution for Refugees and Other Displaced Persons and encouraged their application and implementation by States, intergovernmental organisations, and other relevant actors. The Principles on Housing and Property Restitution are contained in the Final Report of the Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro, to the Sub-Commission this year.\textsuperscript{49}

The loss of land, housing and property is an all-too-common reality for refugees and displaced persons in all parts of the world. For them, returning home in safety and dignity is often seen as the most desired, sustainable and dignified solution to displacement. In recent years, various international human rights bodies have reaffirmed the right of all refugees and displaced persons to return freely to their countries and to have housing and property of which they were deprived during the course of displacement restored to them, or to be compensated for any property that cannot be restored.

In August 2005, the United Nations Sub-Commission on the Promotion and Protection of Human Rights took a major step towards facilitating this right with its endorsement of Principles on Housing and Property Restitution for Refugees and Other Displaced Persons. The Principles are a significant advancement in the field of remedies, and provide important guidance to all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, property or places of habitual residence.

In particular, the Principles recognise the right of all refugees and displaced persons to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to

\textsuperscript{48} COHRE Research & Policy Officer. E-mail: mayra@cohre.org
For more on the need for such principles and the process leading up to their endorsement by the Sub-Commission, see: M. Gómez, ‘New Draft Principles on Housing and Property Restitution before the UN Sub-Commission for the Promotion and Protection of Human Rights’ Housing and ESC Rights Law Quarterly, Vol. 1, No. 3 [Dec. 2004].
The Principles also stipulate that: ‘States shall demonstrably prioritise the right to restitution as the preferred remedy to displacement and as a key element of restorative justice,’ and that “[t]he right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.” 51

The Principles articulate a ‘good governance’ approach to the question of restitution, while underscoring several key rights which should serve as the foundation for housing and property restitution programmes at all times. These foundational rights include the right to non-discrimination,52 the right to equality between men and women,53 the right to be protected from displacement,54 the right to privacy and respect for the home,55 the right to peaceful enjoyment of possessions,56 the right to adequate housing,57 the right to equality between men and property restitution in practice,10 the right to voluntary return and safety and dignity.29

The real advancement for practitioners, however, lies in the articulation of concrete standards related to legal, policy, procedural and institutional mechanisms for implementing restitution. Thus, the Principles provide specific guidance regarding how best to ensure the right to housing, land and property restitution in practice. The Principles are based, in part, on an understanding of some of the most common obstacles to restitution programmes, including secondary occupation, loss or destruction of property, ineffectual institutions and discriminatory restitution programmes. The Principles also recognise that where restitution has been attempted in post-conflict situations, effective and competent national institutions have been the cornerstone of successful restitution programmes. Emphasis on promoting institutional capacity and fairness is, therefore, at the heart of the Principles, including a focus on proper enforcement mechanisms for housing, land and property restitution decisions and judgments. Among other issues that are critical to the creation and implementation of just and effective restitution programmes, the Principles contain extensive provisions on ‘National Procedures, Institutions and Mechanisms’; ‘Accessibility of Restitution Claims Procedures’; ‘Adequate Consultation and Participation in Decision-making’; ‘Housing, Land and Property Records and Documentation’; the ‘Rights of Tenants and Other Non-owners’; and ‘Secondary Occupants’.

The Principles also note that States should ensure that the right of refugees and displaced persons to housing, land and property restitution is recognised as an essential component of the rule of law.60 States should assure the right to housing, land and property restitution through all necessary means, including through the adoption, amendment, reform, or repeal of relevant laws, regulations and/or practices.61 States should also develop a legal framework for protecting the right to housing, land and property restitution that is clear, consistent and, where necessary, consolidated in a single law.62 Likewise, States should ensure that all relevant laws clearly delineate every person and/or affected group that is legally entitled to the restitution of their housing, land and property.63 Subsidiary claimants should similarly be recognised, including resident family members at the time of displacement, spouses, domestic partners, dependents, legal heirs and others who should be entitled to claim on the same basis as primary claimants.64

The endorsement of the Principles represented the end of a four-year process of intensive study by the Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro. Before the Principles were finalised, an Expert Consultation on the Draft Principles on Housing and Property Restitution was held at Brown University in Providence, Rhode Island (USA) from 21-22 April 2005. The Expert Consultation enabled participants to discuss the development of the Principles in partnership with a broad range of international experts.

The Expert Consultation helped to ensure that the final articulation of the Principles addresses, as clearly and concisely as possible, real-world obstacles that may be experienced during the implementation of restitution programs.65 As such, the Principles incorporate a forward-looking and holistic approach to housing, land and property restitution under international law.66 The Principles are also rooted in the lessons learned by experts in the field, and in the ‘best practices’ that have emerged in previous post-conflict situations where restitution has been seen as a key component of restorative justice.67 As such, the Principles incorporate some of the most useful provisions from various pre-existing national restitution policies and programs, including those developed for Bosnia and Herzegovina, Burundi, Cambodia, Cyprus, Guatemala, Kosovo, Rwanda and South Africa.

The Principles are an important contribution to the protection of the rights of refugees and displaced persons throughout the world. Undeniably, conflict and disaster situations have led, and continue to lead, to humanitarian crises that can only be adequately repaired through the application of just remedies.

50 Principle 2.1.
51 Principle 2.2.
52 Principle 3.
53 Principle 4.
54 Principle 5.
56 Principle 7.
57 Principle 8.
58 Principle 9.
59 Principle 10.
60 Principle 18.1.
61 Ibid.
62 Ibid.
63 Principle 18.2.
64 Ibid.
65 Final Report of the Special Rapporteur [n. 49 above], para. 4.
66 Ibid. para. 6.
67 Ibid.
68 Ibid.
A RECENT EUROPEAN HOUSING RIGHTS CASE

European Roma Rights Centre v. Greece 46
European Committee of Social Rights

Housing rights – eviction – Roma – equality

Facts
This collective complaint, made by the European Roma Rights Centre (ERRC), alleged that Roma in Greece were denied an effective right to housing. The Committee focused on three aspects of the claims made in the complaint: (i) the insufficient number of permanent dwellings of an acceptable quality to meet the needs of settled Roma; (ii) the insufficient number of stopping places for Roma who choose to follow an itinerant lifestyle or who are forced to do so; and (iii) the systematic eviction of Roma from sites or dwellings considered to be unlawfully occupied by them. The complainants alleged that these facts constituted a violation of Article 16, 70 or Article 16 in light of the Preamble, 71 of the European Social Charter.

Decision
The European Committee of Social Rights noted that the right to housing permits the exercise of many other rights (cultural as well as economic, social and political) and is of central importance to the family. The Committee recalled its previous case law to the effect that, in order to satisfy Article 16, States must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing is of an adequate standard and includes essential services. In addition, ‘adequate housing’ requires a dwelling of suitable size. Furthermore, the obligation to promote and provide housing extends to security from unlawful eviction.

The Committee held that the implementation of Article 16 with regard to nomadic groups, including itinerant Roma, implies that adequate stopping places should be provided. The Committee stated that, in this respect, Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights.

Regarding the first aspect of the complaint, (i), the Committee found that Greece had failed to take sufficient measures to improve the living conditions of Roma and that those measures taken had not yet achieved what is required by the Charter (notably, because there were insufficient means for constraining or sanctioning local authorities). On the evidence submitted, the Committee found that a significant number of Roma were living in conditions that failed to meet minimum standards. Therefore, the situation was in breach of the obligation to promote the right of families to adequate housing laid down in Article 16. In light of the excessive numbers of Roma living in substandard housing conditions, “even taking into account that Article 16 imposes obligations of conduct and not always of results and noting [that] the overarching aim of the Charter is to achieve social inclusion”, 72 the Committee held that the situation was in violation of Article 16 of the Charter.

In relation to the second aspect of the complaint, (ii), the Committee noted that the law set out extremely strict conditions for temporary encampment and amenities and that, due to the local authorities’ lack of diligence in selecting appropriate sites, as well as their reluctance to carry out the necessary works to provide the appropriate infrastructure, Roma had an insufficient supply of appropriate camping sites. This situation constituted a violation of Article 16 of the Charter. With regard to the third aspect, (iii), the Committee stated that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considered that the situation at issue was not satisfactory on these three grounds.

The Council of Europe Committee of Ministers subsequently adopted a resolution 73 in which they noted, inter alia, the extension and revision of the housing loans programme for Greek Roma and the fact that a commission for the social integration of Greek Roma had been established. The Committee of Ministers therefore decided not to accede to the request for reimbursement of costs incurred by the ERRC in preparing the complaint, which had been transmitted to it by the European Committee of Social Rights.

Prepared by Aoife Nolan

70 Art. 16 provides for the right of the family to social, legal and economic protection, including the undertaking of States Parties to promote the economic, legal and social protection of family life by means including the provision of family housing.
71 The Preamble states that the enjoyment of social rights should be secured without discrimination on the grounds of, inter alia, race.
72 Para. 43.
A CASE TO WATCH

A prisoner has filed an application in the High Court of South Africa (Cape of Good Hope Provincial Division) asking the Court, inter alia, to declare that overcrowding in prisons is unlawful and violates the constitutional rights of prisoners. The South African Catholic Church’s Prison Care and Support Network has joined as a party to the application. The prison population in South Africa currently stands at 155,000, while the prisons only have room for 114,000 prisoners. The plaintiffs want the High Court to rule that overcrowding violates prisoners’ rights to life, human dignity, and freedom from all forms of violence, their right not to be treated or punished in a cruel, inhuman or degrading way, and their right to medical treatment, all of which are guaranteed under the Constitution. In the application, the High Court is being asked to order the Government of South Africa to take all necessary steps to reasonably address overcrowding in prisons, and to order the Government to provide the Court with a report as to the implementation of the order sought, including a timetable, within four months of that order being granted.