

18 December 2012

TO:

Košice Municipality Office, MUDr. Richard Raši, PhD., MPH, Mayor  
The Office of Ombudsman, JUDr. Jana Dubovcová, Ombudsman

### **Demolition of houses in Nižné Kapustníky**

The European Roma Rights Centre (ERRC) is writing to express concern about recent forced evictions and demolitions of houses in Romani settlement in the district of Nižné Kapustníky (Kosice) on 30 October 2012.<sup>1</sup> Media reports indicate that 156 people, including 63 minors, were evicted. It was reported that the eviction was based on environmental law and that the homes in question have been treated as a communal waste site.<sup>2</sup>

The ERRC sent an official request to the municipality of Košice to provide further details of the eviction on 9 November 2012. In response, the Košice municipality stated that it had undertaken the evictions to protect the lives and health of citizens living in or next to illegal dumps.<sup>3</sup> However, the reply did not mention any specific laws that served as grounds for the municipality's actions merely stating that it ordered to remove dangerous and other waste in line with the valid legislation. In response to the ERRC's inquiry on what had happened to those evicted, the municipality said that the Head Office of Labour, Social Issues and Family had immediately taken steps to secure proper care for children from Nižné Kapustníky. The municipality further declared that its eviction activities were not based on ethnic, racial or religious profiling.

The ERRC reiterates its deepest concerns that neither Slovak nor international law seems to have been respected in Košice. The municipality did not provide ERRC with any information on relevant legislation that served as the ground for evictions and for the demolition of the settlement. However, the available suggest that the settlement of Nižné Kapustníky was treated as an illegal dump and respective houses as waste, and that environmental law, particularly the Act on Waste (Act no. 223/2001 Coll.) was the ground for evictions.

The Slovak Building Act (Act no. 50/1976 Coll.) defines "building" as a construction steadily fixed to the land surface or a construction whose fixing requires modification of the sub-base. If a construction fulfils the criteria set forth by law, it becomes a building and it falls within the ambit of the Building Act. Even if buildings are built without building permission, they can be demolished only through a process that is in conformity with the Building Act – demolition proceedings. The municipality of Kosice has not provided any evidence to prove that the houses demolished had not fulfilled the criteria to be considered to be buildings and that the Building Act was not applicable in this case.

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<sup>1</sup> See Miroslav Sambor, "Košice zlikvidovali nelegálnu osadu pri teplárni", *Košický korzár*, 30 October 2012, available at: <http://kosice.korzar.sme.sk/c/6587108/kosice-zlikvidovali-nelegalnu-osadu-pri-teplarni.html>.

<sup>2</sup> See Jaroslav Vrábel, "Košice chcú „rozbiť“ osady", *Košický korzár*, 17 February 2012, available at: <http://kosice.korzar.sme.sk/c/6263077/kosice-chcu-rozbit-osady.html>.

<sup>3</sup> Letter from Košice Municipality: 28 November 2012.

Even if the dwellings located in Nižné Kapustníky had not fulfilled the criteria to be qualified as buildings, they still enjoy protection as they served as homes for those living in the settlement. The right to protection of one's home is one of the fundamental rights protected by the Constitution of the Slovak Republic (Act no. 460/1992 Coll.) and various international human rights treaties whose provisions are binding for the Slovak Republic and its authorities.

The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments including the Universal Declaration of Human Rights (ECHR), the International Covenant on Economic, Social and Cultural Rights (Art. 11(1)), the European Convention on Human Rights (Art. 8), the Convention on the Rights of the Child (Art. 27(3)). The fact that the evictees are Roma also engages the non-discrimination provisions found in Article 14 of the ECHR and Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination. According to Article 7(5) of the Slovak Constitution, international treaties duly ratified by the Slovak Republic take precedence over national law.<sup>4</sup> International human rights law requires that public authorities must ensure that forced evictions do not result in human rights violations.

According to the General Comment No. 7 of the UN Committee on Economic Social and Cultural Rights requires for any eviction: to be legal, it must be conducted with the following procedural protections: *"[A]n opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; [...] evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise [...] Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."*<sup>5</sup> The requirement not to carry out forced evictions in bad weather is especially important in the current period of year. People from Nižné Kapustníky were evicted at the end of autumn when the temperatures at night were below zero degrees.<sup>6</sup> Among others it is also due to this fact that we regard the eviction that took place in Nižné Kapustníky to be in direct conflict with the above-quoted General Comment No. 7.

The ERRC is also concerned about what happened to those evicted. The municipality stated<sup>7</sup> that everyone except four people had a place to stay and that those four persons were accommodated in a lodging-house in the village of Bernatovce. However, media reports indicate that people from the settlement became homeless as result of the eviction. The municipality of Košice sent evicted people to the place of their alleged residence by bus.<sup>8</sup> For example, one group of 17 people was transported to the village of Rakúsy where they could not stay, as they were not permanently registered in the village and did not have relatives there. As a consequence they moved into an abandoned house in the centre of the village lacking basic amenities. As none of the evicted Roma were registered in the village, the Mayor of Rakúsy

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<sup>4</sup> See Article 7(5) of the Constitution of the Slovak Republic

<sup>5</sup> See: Article 166 CESCR, General Comment No. 7, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50?Opendocument>.

<sup>6</sup> See SHMU, SHMÚ: "Dnes bude chladno, popoludní menej oblačnosti", 30 October 2012, available at: <http://www.aktuality.sk/clanok/216818/shmu-predpoved-pocasia-na-dnes/>

<sup>7</sup> Supra, note 3.

<sup>8</sup> See Adéla Gálová, "Starosta Rakús: v prípade košických Romů se měří dvojmětr", romea.cz, 27 November 2012, available at: <http://www.romea.cz/cz/zpravodajstvi/zahranicni/starosta-rakus-v-pripadu-kosicky-romu-se-meri-dvojm-metrem>.

ordered them to clear the premises and return to Košice.<sup>9</sup> The ERRC has no information about their current whereabouts, or what happened to the other Romani people who were transported away from the city.

This most recent eviction seems to follow a pattern of evictions targeted Romani neighbourhoods and houses exclusively. For example in May 2011, the municipality demolished a Roma settlement in Demeter neighbourhood. About 80 people lost their homes.<sup>10</sup> The eviction and demolition in Demeter were, similarly to Nižné Kapustníky, based on environmental law.<sup>11</sup> In October 2012, about 300 Roma were evicted when a block of flats was demolished in the Lunik IX segregated Roma neighbourhood<sup>12</sup> and another demolition was announced soon after.<sup>13</sup>

The ERRC is calling on the Košice municipality to act immediately and to:

- Urgently address the situation of the evicted inhabitants of Nižné Kapustníky with adequate and sustainable housing solutions in cooperation with those evicted;
- Explain the legal and factual basis of the evictions in Nižné Kapustníky;
- Provide information on what steps were/are being taken in order to provide alternative housing for the Romani families evicted from Nižné Kapustníky; and
- Stop any further forced evictions of Roma that are not in line with with international standards,

Sincerely,

Dezideriu Gergely  
Executive Director

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<sup>9</sup> See Marek Nemeč, "Košice poslali osadníkov do Rakús, obec ich vrátila", Popradský korzár, 26 November 2012, available at: <http://poprad.korzar.sme.sk/c/6616027/kosice-poslali-osadnikov-do-rakus-obec-ich-vratila.html>.

<sup>10</sup> See Jozef Kačmáry, „AUTENTICKÉ VIDEO: Buldozéry zrovnali so zemou celú rómsku osadu“, Noviny.sk, available at: <http://udalosti.noviny.sk/z-domova/16-05-2011/prva-sprava-do-romskej-osady-vrhli-tazkoodenci.html>.

<sup>11</sup> See [www.spravy.pravda.sk](http://www.spravy.pravda.sk), "Rómsku osadu dal Hagyarí zrúcať pod rúškom tmy, 25 October 2012, available at: [http://spravy.pravda.sk/romsku-osadu-dal-hagyari-zrucat-pod-ruskom-tmy-fl4-/sk\\_domace.asp?c=A121025\\_110213\\_sk\\_domace\\_p77#ixzz2FUQ40Bus](http://spravy.pravda.sk/romsku-osadu-dal-hagyari-zrucat-pod-ruskom-tmy-fl4-/sk_domace.asp?c=A121025_110213_sk_domace_p77#ixzz2FUQ40Bus).

<sup>12</sup> See SITA, "Video: Na Luníku IX zbúrali panelák, ďalšie budú chatrče", 8 October 2012, available at: <http://www.webnoviny.sk/slovensko/video-na-luniku-ix-zburali-panelak/554297-clanok.html> or [topky.sk](http://topky.sk), "Na Luníku IX. prišlo o domov 300 Rómov: Búraníu bagrom sa prizerali aj malé deti!", 8 October 2012, available at: <http://www.topky.sk/cl/10/1326978/Na-Luniku-IX--prislo-o-domov-300-Romov--Buraniu-bagrom-sa-prizerali-aj-male-deti->.

<sup>13</sup> See [www.cas.sk](http://www.cas.sk), "Na Luníku IX zbúrajú ďalší dom: Vystahovať sa musí 20 rodín!", 10 November 2012, available at: <http://www.cas.sk/clanok/236161/na-luniku-ix-zburaju-dalsi-dom-vystahovat-sa-musi-20-rodin.html>.

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The Office of Ombudsman, JUDr. Jana Dubovcová, Ombudsman

CC

European Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding  
Council of Europe Commissioner for Human Rights, Nils Muiznieks  
OSCE/ODIHR Senior Advisor on Roma and Sinti Issues, Andrzej Mirga  
European Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding  
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