1. Introduction

On 24 April 2012, the fourth section of the European Court of Human Rights (ECtHR or ‘Court’) handed down a unanimous judgment in the case of Yordanova and Others v Bulgaria, in which it ruled against Bulgaria for its attempt to remove Bulgarian nationals of Roma origin from their homes which had been unlawfully built on municipal land in the neighbourhood of Sofia. In short, the Court found that the enforcement of the removal order would amount to a violation of the applicants’ right to respect for their home guaranteed by Article 8 of the European Convention on Human Rights (ECHR). Even though the eviction order was in accordance with domestic law and pursued legitimate aims, it was not ‘necessary in a democratic society’ as the decision-making procedure not only ‘did not offer safeguards against disproportionate interference [with the right to respect for one’s home] but also
involved a failure to consider the question of “necessity in a democratic society.” 2

The judgment represents the most advanced European jurisprudence to date on the issue of forced evictions. In particular, the Court’s interpretation of the civil right to respect for one’s home was infused by an understanding of the social right to adequate housing, which has been developed by, among others, the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) and the European Committee of Social Rights (ECSR). The ECtHR’s approach highlights how the distinction between the civil and political rights and the socio-economic ones is, at least to a certain extent, artificial.

2. Yordanova and Others v Bulgaria

A. The Relevant Facts

People of Roma origin started to settle in Batalova Vodenitsa, a neighbourhood of Sofia, in the 1960s. The area developed into a Roma settlement that is now home to around two to three hundred people, including the applicants in this case. The applicants built, without authorisation, their homes on State land. The living conditions in the Roma settlement were overwhelmingly deplorable: there was neither sewage nor plumbing. The applicants and their families did not seek to regularise the houses they had built using the available processes of building permits and planning approval. However, it is undisputed that these houses would not have been legalised without substantial improvement. In 1987, the local building plan was amended and construction of new dwellings was envisaged on the land occupied by the applicants. This land became the property of the Sofia municipality in 1996. Until 2005, neither the State nor the Sofia municipality took action to evict the applicants and their families from the land they occupied.

In September 2005, the district mayor took the decision to forcibly remove all residents from the Roma settlement. The eviction order was based on Section 65 of the Municipal Property Act, which authorised the mayor to evict any person unlawfully living on municipal land. There were no procedural safeguards for the evictees apart from the right to judicial appeal. Both the Sofia City Court and the Supreme Administrative Court upheld the mayor’s order as lawful. These courts explicitly rejected the applicants’ claims based on a violation of the ECHR, considering them groundless. The public authorities have nevertheless not proceeded with the eviction, notably due to political pressure from members of the European Parliament. 3

2 Ibid. at para 144.
3 Ibid. at para 40.
they have shown a willingness to take steps to resolve the housing problems of
the Batalova Vodenitsa residents, even if the latter considered their steps to be
‘nothing more than empty promises’.4

B. The Judgment

The applicants alleged that enforcement of the removal order would amount to a
violation of, among others, Article 8 of the ECHR that guarantees everyone the
right to respect for one’s home. The ECtHR acknowledged that ‘the applicants’
houses in Batalova Vodenitsa [were] their “homes” within the meaning of
Article 8’.5 After highlighting that ‘it [was] undisputed that the applicants and
their families have lived for many years in the makeshift houses they . . . built
on . . . municipal land on Batalova Vodenitsa’,6 it recalled that the classification
was ‘a matter of fact, independent of the question of the lawfulness of the occu-
pation under domestic law’.7 Hence, the Strasbourg judges, without explicitly
referring to Gillow v United Kingdom,8 used its main criterion to identify a
‘home’ for the purpose of Article 8, namely the existence of ‘sufficient continu-
ating links’9 between a (group of) person(s) and their house.10

The enforcement of the removal order would undoubtedly amount to an
interference with the right to respect for one’s home as well as with the right
to respect for private and family life.11 The Court accepted without difficulty
that the eviction order was in ‘accordance with domestic law’, as section 65 of
the Municipal Property Act empowered the mayor to regain possession of mu-
unicipal property unlawfully occupied.

With regard to the legitimate aim, the Court noticed that, even though the
eviction order ‘did not contain a statement about its aim’,12 it nevertheless
could be considered as pursuing legitimate aims for the purpose of Article
8(2). The Court, refusing to follow the applicants’ argument, identified two le-
gitimate aims. First, and consistent with existing jurisprudence:13 seeking to
‘regain possession of land from persons who did not have a right to occupy
it’.14 Secondly, by improving the urban environment by replacing inadequate

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4 Yordanova, supra n 1 at para 59.
5 Ibid. at para 103.
6 Ibid. at para 102.
7 Ibid. at para 103.
8 Gillow v United Kingdom A 109 (1986); 11 EHRR 335.
9 Ibid. at para 46.
10 For a useful overview of the case law on the concept of ‘home’, see Buyse, ‘Strings Attached:
The Concept of “home” in the Case Law of the European Court of Human Rights’ (2006) 3
11 Yordanova, supra n 1 at paras 104–105.
12 Ibid. at para 110.
13 See McCann v United Kingdom A 324 (1995); 21 EHRR 97, at para 48; and Connors v United
Kingdom 40 EHRR 189, at para 69.
14 Yordanova, supra n 1 at para 111.
buildings with modern dwellings, the economic well being and the protection of health and rights of others was being pursued.\textsuperscript{15} Avoidance of hazards due to unlawful settlement of makeshift houses lacking sewage and sanitary facilities must be deemed to be a legitimate public interest.\textsuperscript{16} Accordingly, the Court rejected the applicants’ contention according to which the ‘real aim pursued by the authorities was to free the terrain so that it could be leased or sold to a private entrepreneur for development and to “rid” the district of an unwanted Roma “ghetto”’.\textsuperscript{17}

As is usually the case in Article 8 jurisprudence, the bulk of the Court’s reasoning revolved around whether the impugned measure was ‘necessary in a democratic society’ for the legitimate aims it pursued. In spheres involving social and economic policies, such as planning and housing, the ECtHR normally leaves a wide margin of appreciation to the national authorities in the assessment of the necessity of the interference.\textsuperscript{18} However, the Court considered that, on the facts in \textit{Yordanova}, Bulgaria did not enjoy such a wide margin. The Court noted that the margin of appreciation tends to be narrower when ‘the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights’.\textsuperscript{19} It also confirmed that the existence of procedural safeguards were ‘especially material in determining whether the respondent State has remained within its margin of appreciation’.\textsuperscript{20} More precisely, when the interference is of the most extreme form, as was the case for the loss of one’s home,\textsuperscript{21} it is required that ‘any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal’.\textsuperscript{22} Finally, the margin of appreciation, the Court noted, would tend to be narrower when the public authorities ‘have not given any explanation or put forward any argument demonstrating that the applicant’s eviction was necessary’.\textsuperscript{23} Article 8 rights are crucial ‘to the individual’s identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community’.\textsuperscript{24} The Court stressed that the Bulgarian courts had refused to examine the proportionality of the impugned measure. Finally, it emphasised two important issues. The removal order ‘did not contain a statement about its aim’.\textsuperscript{25} In addition, the national authorities had not

\begin{itemize}
\item \textsuperscript{15} Ibid. at para 113.
\item \textsuperscript{16} Ibid. at para 114.
\item \textsuperscript{17} Ibid. at para 86.
\item \textsuperscript{18} See, for instance, \textit{Chapman v United Kingdom} 2001-I; 33 EHRR 399.
\item \textsuperscript{19} \textit{Yordanova}, supra n 1 at para 118.
\item \textsuperscript{20} Ibid.
\item \textsuperscript{21} Ibid.
\item \textsuperscript{22} Ibid.
\item \textsuperscript{23} Ibid.
\item \textsuperscript{24} Ibid.
\item \textsuperscript{25} Ibid. at para 110.
\end{itemize}
demonstrated that the occupied land was necessary for the public purposes put forward.\textsuperscript{26}

The Court recalled that the ‘necessary in a democratic society’ requirement ‘raises a question of procedure as well [as] of substance’.\textsuperscript{27} If the existence of procedural safeguards is determinative with regard to the extent of the margin of appreciation to be afforded to the State, it is also decisive in the assessment of the proportionality of the impugned measure. For the Court to find that an interference is justified under Article 8(2), the Court held that it is essential that an independent and impartial tribunal can establish the proportionality and reasonableness of the removal order. Hence, an eviction may not be solely based on the unlawfulness of the occupation, without the possibility for the individuals to have a domestic court assess its proportionality. As soon as relevant arguments in relation to Article 8 are raised in domestic proceedings, the authorities are bound to ‘examine them in detail and to provide adequate reasons’.\textsuperscript{28} However, in the present case, neither the municipal authorities nor the domestic courts assessed the proportionality of the impugned measure—which led the ECtHR to decide that this approach amounted in itself to a failure to comply with the principle of proportionality required by the second paragraph of Article 8. This conclusion is not surprising. Indeed, in the ECtHR’s case law on evictions the procedural facet of proportionality, in particular the existence of procedural safeguards against disproportionate interference, has become common.\textsuperscript{29}

The Court could have stopped its reasoning here, as it did, for instance, in Connors,\textsuperscript{30} McCann,\textsuperscript{31} Čosić\textsuperscript{32} and Kay.\textsuperscript{33} However, it went further this time and provided guidance on how the proportionality assessment, in its substantive component, should be carried out. First and foremost, the Court made it clear that a proportionality analysis is a contextual one and ought to be anchored in the circumstances of the case. In Yordanova, the Court highlighted at least three elements of context that should have weighed heavily in such a proportionality assessment: (1) the existence of a community life in Batalova Vodenitsa; (2) the non-realisation of the local building plans; and (3) the socially disadvantaged position of the applicants.

The Court noted that the families of the applicants had occupied the municipal land unlawfully for decades without being dislodged by the authorities.

\textsuperscript{26} Ibid. at para 127.
\textsuperscript{27} Ibid. at para 118.
\textsuperscript{28} Ibid.
\textsuperscript{29} See W v United Kingdom 10 EHRR 29 at para 62 (the Court is entitled to have regard to that process to determine whether it has been conducted in a manner that, in all the circumstances, is fair and affords due respect to the interests protected by Article 8). See also Manchester City Council v Pinnock [2010] UKSC 45; [2011] 2 AC 104.
\textsuperscript{30} Connors, supra n 13.
\textsuperscript{31} McCann, supra n 13.
\textsuperscript{32} Čosić v Croatia 52 EHRR 39.
\textsuperscript{33} Kay and Others v United Kingdom 54 EHRR 30.
which accordingly, had tolerated their presence _de facto_. The applicants consequently developed strong links with Batalova Vodenitsa resulting in the creation of a community life. The Court insisted ‘that such situations, where a whole community and a long period are concerned, be treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property’.34 These circumstances required, for instance, that ‘due consideration be given to the consequences of their removal and the risk of being homeless’.35 The State authorities in this case initially failed to consider any such risk and later considered it as ‘irrelevant’.36 The Court indicated that the existence of a community should have led the municipal authorities to envisage alternative methods to the eviction in order to pursue the legitimate aims, including ‘legalising buildings where possible, constructing public sewage and water supply facilities and providing assistance to find alternative housing where eviction is necessary’;37 which they did not. This lack of effort in finding alternatives was deemed by the Court to weaken ‘the Government’s assertion that the applicants’ removal order [was] the appropriate solution’.38 The discussions and programmes initiated by the public authorities after they had issued and reviewed the impugned order with the goal to assist the people it concerned could not bring the Court to conclude otherwise. Although the Court noted the discussions, they were not deemed to ‘provide a basis for a conclusion that its future enforcement would be justified’,39 since they ‘were not part of a formal procedure before a body in which power to modify the impugned order . . . was vested’.40

Another contextual element led the Court to proclaim the unnecessary nature of the impugned measure. Although the Court accepted that ‘plans for urban development’ could be a legitimate aim, which materialised in ‘plans for urban development’ adopted by the Municipality,41 it weighed against the Government that it had not taken steps to implement these plans. Thus, it had not been demonstrated that the land was immediately needed for their realisation. In the absence of movement towards implementation of these plans, ‘the Court [could not] but attach less weight to the alleged importance of the development plans for the land currently occupied by the applicants’.42

Finally, the Court also criticised Bulgaria for failing ‘to recognise the applicants’ situation as an outcast community and one of the socially disadvantaged

34 _Yordanova_, supra n 1 at para 121.
35 Ibid. at para 126.
36 Ibid.
37 Ibid. at para 125.
38 Ibid. at para 124.
39 Ibid. at para 143.
40 Ibid. at para 136.
41 Ibid. at para 109.
42 Ibid. at para 127.
It held that State parties are under positive duties to provide vulnerable groups with assistance to ensure that they effectively enjoy the same rights as the majority of the population. Without going as far as reading into Article 8 ‘a right to be provided with a home’, the Court recognised that ‘an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 of the Convention in exceptional cases’. In particular, ‘the disadvantaged position of the social group to which the applicants belong could and should have been taken into consideration, for example, in assisting them to obtain officially the status of persons in need of housing which would make them eligible for the available social dwellings on the same footing as others.’

It flows from the Court’s decision that both the recognition of the existence of a community life in Batalova Vodenitsa as well as the acknowledgment of their vulnerability generated positive duties upon the State, notably with regard to alternative accommodation. Although the Court did not establish a self-standing right to alternative accommodation, it nevertheless insisted that public authorities must not disregard the consequences of an eviction, especially if it would result in homelessness. As a matter of fact, proportionality would have required the State to consider ‘providing assistance to find alternative housing’ or ‘assisting [the applicants] to obtain officially the status of persons in need of housing which would make them eligible for the available social dwellings’, which it did not. In other words, ‘arrangements for alternative shelter’ was a weighty factor in the proportionality assessment of the removal order, particularly since its enforcement would affect members of a socially underprivileged group.

As already pointed out, the interest of this case lies in the Court’s willingness to combine a procedural and a substantial analysis of the ‘necessary in a democratic society’ requirement, rather than limiting its analysis to the procedural facet of proportionality. The lack of procedural safeguards was indeed sufficient to found a violation of Article 8. However the Court chose to bring its proportionality analysis beyond this procedural aspect and to consider also its substantial facet, which included the existence of a community life and the risk of homelessness. It is in this double-faceted proportionality assessment that the Court’s interpretation of the civil right to respect for one’s home in relation to forced evictions is influenced by the social right to adequate housing. The next section comments upon this.

43 Ibid. at para 129.
44 Ibid. at para 130.
45 Ibid.
46 Ibid. at para 132.
47 Ibid. at para 126.
48 Ibid. at para 125.
49 Ibid. at para 132.
50 Ibid. at para 133.
3. The Civil Right to Respect for One's Home and the Social Right to Adequate Housing in the Context of Forced Evictions: Two Sides of the Same Coin?

For the first time in an eviction case, the ECtHR mentioned the European Social Charter (ESR or ‘Charter’), a European Committee of Social Rights decision on the merits of a complaint against the forced evictions of Roma families, including the Yordanova, from sites unlawfully occupied by them (ERRC v Bulgaria); the UN International Covenant on Economic, Social and Cultural Rights (ICESCR or ‘Covenant’); and the Committee on Economic, Social and Cultural Rights (CESCR)’s General Comment No 7 on forced evictions. These documents were listed as ‘relevant international material’. However, the Court did not explicitly mobilise them in its assessment of the merits of the case. This lack of explicit mobilisation should nevertheless not lead to the conclusion that the principles they encapsulated were disregarded. On the contrary, it is submitted that Yordanova demonstrates that the Article 8 right to respect for one’s home is not interpreted in isolation from the right to adequate housing, protected by the ICESCR and the ESR. Moreover, it is suggested that when the ECtHR assesses the compatibility of an eviction with the civil right to respect for one’s home, it tends to mobilise similar principles as the ones that have been developed by the ECSR and the CESCR in relation to forced evictions. Three elements in the Court’s analysis can be identified to demonstrate this approach. First, the Court’s definition of a ‘home’ shows an overlap between the scope of the civil right to respect for one’s home and of the social right to adequate housing in the context of forced evictions. Secondly, both the ECtHR and the UN and European Committees consider that an unlawful occupation of land is not a sufficient condition to justify an eviction. Thirdly, both the ECtHR and the Committees insist on the need to consider, and take seriously, the risk of homelessness that may result from forced evictions.

A. The Definition of ‘Home’ for the Purpose of Article 8

The Court used the existence of ‘sufficient continuing links’ as the major criterion to classify the applicants’ houses as their ‘homes’ and it also recalled that

52 See CESCR General Comment No 7: The right to adequate housing (art. 11(1)) forced evictions, 20 May 1997, E/1998/22 annex IV; 1-1 IHRR 9 (1994).
53 Yordanova, supra n 1 at paras 73, 74 and 83.
54 It appears that both the UN and the European Committees refer to the right to respect for one’s home while they interpret the right to housing in the context of forced evictions: see, among others, CESCR General Comment No 4: The right to adequate housing (art.11(1)), 13 December 1991, E/1992/23; 5 IHRR 1 (1998) at para 9; ECSR European Federation of National Organisations working with the Homeless (FEANTSA) v France Complaint No 39/2006, 5 December 2007, at para 65.
the lawfulness of occupation under domestic law was irrelevant to whether the Article 8 right to respect for one's home was engaged or not.\textsuperscript{55} This conceptualisation of 'home' is firmly anchored in the Court's case law. Two cases are at its roots: \textit{Gillow v United Kingdom} and \textit{Buckley v United Kingdom}.\textsuperscript{56} The first case, \textit{Gillow}, established the existence of links between the applicant and his/her house as the main criterion for the classification as a 'home'.\textsuperscript{57} Since then, the Court has repeatedly reiterated that 'whether or not a particular habitation constitutes a 'home' which attracts the protection of Article 8(1) will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place.'\textsuperscript{58} The other leading case, is \textit{Buckley v United Kingdom} in which the Court, for the first time, laid down that even though the applicants' residence had not been lawfully established 'similar considerations apply' to determine whether it may be classified as a 'home' for the purpose of Article 8.\textsuperscript{59} The Court's jurisprudence has then been constant: the lawfulness of the occupation under domestic law is irrelevant to determine whether the Article 8 right to respect for one's home constitutes an issue or not.\textsuperscript{60}

This factual approach to the concept of home should come as no surprise. The Convention right to respect for one's home is indeed not meant to protect a 'pecuniary interest' in continuing to live in a given place, which is the purpose of Article 1 of the Protocol No 1.\textsuperscript{61} Rather, Article 8 rights aim to protect at least some of the conditions necessary for 'the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community.'\textsuperscript{62} Thus, the right to respect for one's home protects its social aspect, and particularly with regard to its interrelationship with the core of the right to respect for private and family life.\textsuperscript{63}

\begin{footnotes}
\item[55] Yordanova, supra n 1 at para 103.
\item[56] 1996-IV; 23 EHRR 101.
\item[57] Supra n 8 at para 46.
\item[58] See, among others: Prokopovich v Russia 43 EHRR 10 at para 36; and Orlic v Croatia Application No 48833/07, Merits and Just Satisfaction, 21 June 2011, at para 54.
\item[59] Buckley supra n 56 at para 54.
\item[60] See, for instance, McCann, supra n 13 at para 46; Orlic, supra n 58 and at para 54; Bjedov v Croatia Application No 42150/09, Merits and Just Satisfaction, 29 May 2012, at para 57. If the lawfulness of the occupation is irrelevant to determine whether the house constitutes a home for the purpose of Article 8, the Court has considered that this circumstance was of relevance to determine whether the eviction was proportionate. Cf Chapman, supra n 18 at para 102; and Connors, supra n 13 at para 86. However, in Yordanova, it seems that the Court did not consider the unlawfulness of the occupation to be a weighty factor as to recognise the eviction proportionate.
\item[61] Tuleshov and Others v Russia Application No 32718/02, Merits and Just Satisfaction, 24 May 2007, at para 40.
\item[62] Yordanova, supra n 1 at para 133; Connors, supra n 13 at para 82; and Orlic, supra n 58 at para 63.
\item[63] See, for instance, Connors, ibid. at para 82; Chapman, supra n 18 at paras 73, 74; and Yordanova, ibid. at para 105.
\end{footnotes}
Beyond the interconnectedness of the right to respect for one’s home and private and family life, the CESCR has highlighted that the ‘right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing’64 Thus, the Court’s approach to the right to respect for one’s home as protecting essential interests for ‘[the applicants’] own personal security and well-being’65 echoes the CESCR’s definition of the right to housing as ‘the right to live somewhere in security, peace and dignity’.66 One can conclude, therefore, that the right to respect for one’s home is at the centre of a web that spans the right to private and family life as well as the right to adequate housing.

B. The Right to Property is not Sufficient to Justify an Eviction Order

In Yordanova the Court recalled that if it is legitimate to seek to regain possession of a property unlawfully occupied, the right to peaceful enjoyment of property cannot justify an eviction order per se. In other words, proving an unlawful occupation is not a sufficient condition to uphold an eviction order in light of the right to respect for one’s home. Paradoxically, this state of affairs may be both astonishing and obvious. First, it could potentially astonish since western liberal ideas present the right to property as entitling a ‘landowner . . . to exclusive possession of his or her property’.67 It would consequently seem indisputable that an eviction order should be earned as soon as the owner provides evidence of ownership and the unlawful occupation of the land.68 However, the text of Article 8(2) states that an interference with the right to respect for one’s home is justified only if it ‘is in accordance with the law and is necessary in a democratic society in the interests of [one of the legitimate aims set forth under this paragraph]’. It is therefore unsurprising that the Court in Yordanova recalled that if it was legitimate to seek the eviction of people unlawfully occupying one’s property, their removal would only be regarded as compatible with their right to respect for their home if it may be said to be ‘necessary in a democratic society’, that is, whether it ‘answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued’.69 As discussed above, this latter requirement raises, ‘a question of procedure as well [as] of substance’.70

64 General Comment No 4, supra n 54 at para 9.
65 Gillow, supra n 8 at para 55.
66 General Comment No 4, supra n 54 at para 8.
68 Wilson, ibid.
69 Yordanova, supra n 1 at para 123.
70 Ibid. at para 118.
This approach to the admissibility of forced evictions echoes both the UN and the European Committees' understanding of the conditions under which forcibly removing people from an unlawfully occupied land is regarded as justified. Both Committees accept that evictions may be justifiable, in particular when a land or a dwellings is unlawfully occupied. But, as with the ECtHR, neither Committee considers this element to be a sufficient condition. In the words of the CESCR, ‘[i]n cases where eviction is considered to be justified, it should be carried out...in accordance with general principles of reasonableness and proportionality.’

Besides this proportionality requirement, the UN Committee also insists upon the existence of procedures as an essential safeguard against human rights violations. In the context of forced evictions, the CESCR stated that: ‘[a]ppropriate procedural protection and due process...are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognised in both the International Covenants on Human Rights.’ This approach is also followed by the ECSR. For example, in ERRC v Bulgaria (mentioned by the European Court in Yordanova) the Committee admitted that if ‘illegal occupation of a site or dwelling may justify the eviction of the illegal occupants’, the latter ‘should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned.’

In conclusion, two points may be highlighted. First, although the right to property is fundamental and ought to be respected, it is not without qualification. A balance ought to be struck between this right and other rights and interests. Secondly, independent of whether the issue of forced evictions is dealt with under the right to respect for one’s home or the right to adequate housing, other questions need to be asked: are the procedural safeguards sufficient to protect the rights and interests at stake against disproportionate interference, and is the forced eviction proportionate to the legitimate aims pursued?

C. Taking the Risk of Homelessness Seriously

The Court made it clear that, as part of the proportionality assessment, public authorities ought to have considered, and taken seriously, the risk of homelessness before issuing the impugned eviction order, especially ‘in the specific

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71 General Comment No 7, supra n 52 at para 11; and ECSR, European Roma Rights Centre (ERRC) v Bulgaria, supra n 51 at para 51.
72 General Comment No 7, ibid. at para 14.
73 Ibid.
74 ERRC v Bulgaria, supra n 51 at para 51 [footnote omitted; emphasis added].
75 Immobiliare Saffi v Italy 1999-V; 30 EHRR 756; A.O. v Italy 29 EHRR CD92; Lunari v Italy Application No 21463/93, Merits and Just Satisfaction, 11 January 2001; Tanganelli v Italy Application No 23424/94, Merits and Just Satisfaction, 11 January 2001; and Prodan v Moldova 2004-III; 46 EHRR 52.
circumstances of the present case, in view, in particular, of the long history of undisturbed presence of the applicants’ families and the community they had formed.\textsuperscript{76} According to the ECtHR, the national authorities ought to have considered the risk of homelessness, at least, at two different moments in the decision-making process. First, Bulgaria should have seriously considered whether the legitimate aims pursued could have been achieved through an alternative measure to evictions, which apparently it did not. Secondly, if national authorities were to consider, after examination, evictions as the most appropriate means, they should have weighed the existence of alternative accommodation against the ‘necessity’ of the eviction order, which again they did not.\textsuperscript{77}

\textit{Yordanova} is not the first judgment to mention the existence, or lack of, alternative accommodation as one of the factors to be taken into account in the proportionality assessment. This case rather illustrates an emerging trend in the Court’s case law with regards to alternative accommodation. If forcibly removed persons do not have a self-standing right to be re-housed, they nevertheless have the right to have the State consider their risk of becoming homeless as well as their possibilities to be re-housed, potentially with the State’s support. In three previous decisions, \textit{Tuleshov and Others v Russia},\textsuperscript{78} \textit{Stankova v Slovakia},\textsuperscript{79} and \textit{Gladysheva v Russia},\textsuperscript{80} the Court indeed considered the lack of alternative housing to be a crucial factor counting against the proportionality of the removal of the applicants from their home, eventually leading to a violation of Article 8. However, this should not overshadow the fact that the Court acknowledged in \textit{Chapman}, and repeated in \textit{Yordanova}, that ‘Article 8 does not . . . recognise a right to be provided with a home.’\textsuperscript{81}

\textsuperscript{76} \textit{Yordanova}, supra n 1 at para 126.
\textsuperscript{77} Ibid. at paras 125 and 132.
\textsuperscript{78} Supra n 61 at para 53 (The applicants were only offered accommodation ‘more than two years after the eviction order was issued and one month after it had been enforced . . . Their possibility for private rental or purchase of accommodation was limited due to the fact that the compensation awarded to them was insufficient . . . and in any event was paid with a delay of about three years, which meant that the applicants received it more than a year after they were evicted.’)
\textsuperscript{79} Application No 7205/02, Merits and Just Satisfaction, 9 October 2007, at para 60 (Decision ordering S to leave social housing without being provided with alternative accommodation produced effects which were incompatible with her right to respect for her private and family life and for her home).
\textsuperscript{80} Application No 7097/10, Merits and Just Satisfaction, 6 December 2011, at para 96 (G was not made eligible for substitute housing, and no goodwill had been shown by the Moscow Housing Department in that it would not provide her with permanent, or even temporary, accommodation when she had to move out. The Government’s suggestion that the applicant move in with her parents aside, the authorities made it clear that they would not contribute to a solution of her housing need . . . [G’s Article 8 rights] were entirely left out of the equation when it came to balancing her individual rights against the interests of the City of Moscow.’)
\textsuperscript{81} \textit{Chapman}, supra n 18 at para 99; and \textit{Yordanova}, supra n 1 at para 130.
All in all, if the right to respect for one’s home cannot yet be interpreted as requiring the State to provide alternative accommodation to persons who have been forcibly removed, the Court has construed it as imposing on national authorities an obligation to consider ‘arrangements for alternative shelter.’ In other words, the Court does not impose an unqualified duty on national authorities to provide evicted people with alternative housing but it obliges them to demonstrate that the risk of homelessness which may flow from an eviction order and, if necessary, arrangements for alternative housing, were duly considered and weighed. The Court, however, did not specify the content of the duty to take into consideration the risk of homelessness. Does it go beyond a mere procedural requirement? One may indeed wonder whether it is sufficient for national authorities to show that they have, in the procedure leading to the adoption of an eviction order, touched upon the risk of homelessness—no matter how—or whether Article 8 requires the State to address this issue more substantially. Moreover, whereas the question of resources appears to be central in the realisation of rights with a socio-economic component, the Court has not (yet?) specified the extent to which financial constraints could be invoked to justify the absence of alternative accommodation.

Even though questions remain in relation to the duty to take into consideration the risk of homelessness, the importance given by the Court to the need to consider both alternatives to eviction and, in cases where evictions are nevertheless carried out, alternative housing highlights that the ECHR is not interpreted as having an impermeable separation between the sphere of socio-economic rights, in general, and the right to housing, in particular. As a matter of fact, interpreting the right to housing and its correlative duties in the context of forced evictions, both the CESC R and the ECSR insisted on the need to avoid rendering homeless those affected by the removal order. For instance, in \textit{ERCC v Bulgaria}, cited by the ECtHR, the ECSR judged that a balance ought to be struck between ‘the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless.’

In its General Comment No 7, also cited by the ECtHR, the CESC R urged States to take seriously the risk of homelessness, pointing out that the right to adequate housing imposes on States an obligation to avoid carrying out evictions that would ‘result in individuals being rendered homeless or vulnerable to the violation of other human rights.’ States are therefore, first, under a duty to explore ‘prior to carrying out any evictions, and particularly those

82 See the partly concurring, partly dissenting opinion of Judge Pinto de Albuquerque in \textit{Konstantin Markin v Russia} Application No 30078/06, Merits and Just Satisfaction, 22 March 2012, in which he suggested that Article 8 does indeed include a positive and stand alone ‘minimum core’ social right, in this case the right to parental leave.

83 \textit{Yordanova}, supra n 1 at para 133.

84 \textit{ERCC v Bulgaria}, supra n 71 at para 54.

85 General Comment No 7, supra n 52 at para 16.
involving large groups... all feasible alternatives... in consultation with the affected persons. Secondly, if an eviction is nevertheless carried out, public authorities are bound to: 'take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.' The right to adequate housing enjoins States to provide to forcibly removed people, who are unable to provide for themselves, with alternative housing. However, this duty is not expressed in absolute terms: the Committee, faithful to the text of the ICESCR, indeed acknowledges the finitude of resources as a temporary limit to the realisation of the right to alternative accommodation.

4. Conclusion

In *Yordanova* the Court insisted, first, on the importance of the interests protected through Article 8 rights. Secondly, it confirmed once again its jurisprudence regarding the importance to be granted to the existence of procedural safeguards. Thirdly, the Court highlighted that Article 8 requires national authorities to carefully assess the proportionality of an eviction order in light of all the factual circumstances of the case, in particular, the risk of homelessness that may result from it. This approach to the proportionality analysis highlights how the issue of forced evictions is at the heart of a web of fundamental rights, from both the so-called first and second generation rights, mainly the civil right to respect for one's home and the social right to adequate housing. *Yordanova* illustrates the ECtHR's willingness to stand by its promise to interpret the Convention rights 'in the light of the present-day conditions' in order 'to safeguard the individual in a real and practical way' even if it involves blurring the distinction between what has been termed civil and political rights and economic, social and cultural rights. The Court's analysis mirrors the approach followed by both the CESCR and the ECSR, despite the fact that the former is centred on the civil right to respect for one's home while the latter is underpinned by the social right to adequate housing. The ECtHR's case law on forced evictions in general, and in *Yordanova* in particular, reveals the central role that can be played by judges in the concrete and effective protection of rights, including rights having 'implications of [a] social or economic nature.'

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86 Ibid. at para 13.
87 Ibid. at para 16.
88 *Airey v Ireland* A 32 (1979); 2 EHR 305 at para 26.
89 Ibid.
90 Ibid.