



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CALDARAR AND OTHERS v. POLAND

(Application no. 6142/16)

JUDGMENT

Art 8 • Private and family life • Enforcement of orders for the demolition of an unlawfully built encampment occupied by the applicants of Roma origin, without ensuring their participation in the proceedings leading to the issuance of the orders or examining the proportionality of those orders • Authorities' failure to ensure the compliance of the decision-making process with the Convention standards • Lack of safeguards against disproportionate interference

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2025

FINAL

06/05/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Caldarar and Others v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić, *President*,

Alena Poláčková,

Krzysztof Wojtyczek,

Erik Wennerström,

Frédéric Krenc,

Alain Chablais,

Artūrs Kučs, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 6142/16) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by sixteen Romanian nationals whose names are listed in the appendix (“the applicants”), on 22 January 2016;

the decision to give notice of the application to the Polish Government (“the Government”);

the decision that the Government of the applicants’ home State, Romania, be notified of the application under Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of the Court and the absence on their part of any indication that they wished to intervene;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by European Roma Rights Centre, which was granted leave to intervene as a third party by the President of the Section;

the Government’s objection to having the application examined by a Committee of three judges;

Having deliberated in private on 12 November and 3 December 2024,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the demolition of an unlawfully built encampment occupied by persons of Roma origin, without their being able to participate in the related administrative proceedings. It raises issues under Article 8 and 13 of the Convention.

THE FACTS

2. A list of the applicants is set out in the appendix.

3. The applicants are Romanian nationals of Roma origin. They are five families comprising, at the material time, nine adults and seven children. They were represented before the Court by Ms S. Gregorczyk-Abram, a lawyer practising in Warsaw, and by Ms D. Pudzianowska, from the Helsinki Foundation for Human Rights.

4. The Government were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

5. At the material time, one of the minor children of the first applicant – his daughter R. – was in the care of the State’s child welfare services. The custody proceedings were ongoing. It appears that the child’s parents had contact rights and that the child, with the acquiescence of the family court, visited her parents at Paprotna Street (see paragraph 42 below). No other details of those proceedings are known to the Court.

6. On an unspecified date after the application to the Court, the eighth applicant died.

I. THE APPLICANTS’ OCCUPATION OF THE SITE IN PAPROTNA STREET

7. On an unspecified date – in the applicants’ submission around 15 November 2009 and in the Government’s submission some time in 2013 – the applicants started occupying a plot of land at Paprotna Street in the city of Wrocław. No construction was permitted on that site. The land in question was owned at the material time by the Wrocław Municipality (*gmina*).

8. The Government submitted that the applicants had “from the very beginning” been informed that their stay on the land was illegal and they had been asked to leave.

9. On 7 May 2013 the municipal guards served formal administrative orders dated 23 April 2013 on thirteen people of Roma and Polish origin who were then living on the municipal land at Paprotna Street, requiring them to vacate and to clean up the property within fourteen days. Service of the order was acknowledged by the first, third, sixth, eighth, twelfth and fifteenth applicants, who signed a copy of it. Given the discrepancies in the personal data, it is not certain, but it can be presumed, that the thirteenth applicant was also served with the order. The order contained a notice that in the event of the irregular occupants not obeying the orders, they would face court proceedings and charges of a minor criminal offence.

10. When served with the order in question, the above-mentioned applicants indicated various addresses in Romania as their places of permanent residence.

11. The applicants did not vacate the land.

12. The applicants submitted that, in 2009, they had erected five structures made of wood and various recycled plastic and textile materials. Four of the

structures served as dwellings. The fifth was used for storing power generators and fuel. The Government submitted that it was between September 2013 and November 2014 that six such structures had been built by the applicants, without planning permission.

13. On 27 May 2013 an *in-situ* inspection was conducted by the District Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego* – “the district inspector”). The inspector established that there were five cabins on the site that had been erected two years earlier and were occupied by Romanians of Roma origin and one cabin that had been erected twelve years earlier and was occupied by a Polish person. It was noted that during the visit, the inspector had obtained statements from a certain C. de A., who had come forward as a so-called “investor” (a person who had carried out the construction, see paragraph 61 below) and who said that he was in charge of the five cabins occupied by the applicants. He had stated that the cabins had been built approximately three years earlier and gave a Polish correspondence address. The applicants did not come into contact with the inspector.

14. The inspector established that the applicants’ five structures and the sixth, separate cabin were all unstable and had been built using inflammable scrap materials; they were essentially made of scrap wood or plastic boards of various sorts tied together and covered with rugs. The inspector considered that there was a real risk of fire breaking out on the site, given that some of the cabins were equipped with slow-burning stoves; they were cramped and badly ventilated. An *ad hoc* electric installation that had been put together by the site’s occupants did not comply with any safety standards. It was concluded that the six structures were uninhabitable as they posed risks of fire, asphyxiation, electrocution and collapse.

15. A separate set of administrative proceedings was instituted in respect of each cabin. Two “investors” were sent formal notifications about each procedural step, including the decisions to commence the proceedings and to have the structures demolished.

16. On 3, 10 and 11 September 2013 the district inspector issued separate decisions authorising the demolition of the applicants’ five cabins (and also the sixth one). The decisions stated that the applicants’ structures had been erected three years earlier and that they were inhabited by Romanians of Roma origin. The grounds given for the demolition were that the cabins had been built illegally and that they did not comply with any construction or safety standards. The decisions also stated that the cabins were a fire hazard; they were likely to collapse; they had no sewerage system; and they did not comply with the requirements as to the height of buildings. These decisions were addressed to the Wrocław Municipality as the owner of the land. The persons who had come forward as “investors” could not be considered parties to the proceedings as they had not had any legal title to the property.

17. The Wrocław Municipality appealed against those decisions. The Court has not been provided with copies of the appeal.

18. On 25 November 2013 the Regional Inspector of Construction Supervision (*Wojewódzki Inspektor Nadzoru Budowlanego* – “the regional inspector”) confirmed the decisions of the district inspector.

19. The Government submitted that on unspecified dates in February and March 2014 the Wrocław Regional Administrative Court rejected appeals against the regional inspector’s decisions. It is unknown which entities lodged these appeals.

20. On 5 and on 21 August 2014 fires broke out at the applicants’ site, destroying four of their structures. Nobody was present on the site at that time. The Government submitted that after the fire the site had been unoccupied for some time. A criminal investigation into allegations of property damage was discontinued on 25 September 2014 on the grounds that no criminal offence had been committed.

21. On 17 November 2014 and on 27 February 2015 the district inspector carried out further visits to the site in Paprotna Street. It was concluded that one of the applicants’ original cabins had remained in place despite the fire and that three new structures had been erected. The inhabitants of the site were not present at the time of the inspections. The district inspector’s conclusions as to safety at the site were the same as those drawn after the first visit in May 2013 (see paragraph 14 above).

22. On 18 May 2015 the district inspector issued three administrative decisions ordering the Wrocław Municipality to demolish the applicants’ new cabins, given that they had been built without planning permission and so constituted unlawful constructions (*samowola budowlana*). The decisions stated that the site inspection of 27 February 2015 had revealed that the four structures – which were inhabited by persons of Roma origin and Romanian nationality – did not have any foundations; were not sturdy; were easily inflammable; and were not connected to the sewerage system. The decisions also stated that it had been impossible to find the “investor” responsible for the site. Lastly, they stated that no demolition order could be addressed to the residents because they were not the owners of the land in question, and they were therefore not a party to the administrative proceedings.

23. The decisions were served on the Wrocław Municipality and other municipal entities.

24. On 29 May 2015 the Wrocław Municipality appealed. No copies of the appeals were submitted to the Court. On 3 June 2015 a similar appeal was lodged by the Board of Municipal Green Spaces (*Zarząd Zieleni Miejskiej*), jointly with the manager of the land (*zarządcą*).

25. On 16 July 2015 those institutions withdrew their appeals.

26. Meanwhile, on 18 March 2015 the district inspector fined the Wrocław Municipality 20,000 Polish zlotys (PLN – approximately 5,000 euros (EUR)) for failure to enforce the outstanding demolition order

concerning the applicants' one original structure that was still standing after the 2014 fire.

27. On 22 July 2015, at an unspecified time, the Wrocław Municipality demolished all four structures used by the applicants.

28. The applicants submitted that they had not been aware of the demolition plans and that they had not been at the site when the demolition had taken place. According to the Government, the persons occupying the site had not been present during the demolition, but several of them had appeared at the end of this process. The applicants also claimed that belongings of theirs which had been stored on the site, such as household appliances, electricity generators, heaters, furniture, rugs, kitchen utensils, bicycles, spare parts for cars, clothes, toys, documents, medicines and personal items, had been either destroyed or taken away to a nearby waste site. The applicants had not been told where their goods were being taken to and had been able to retrieve very little. They also submitted that their animals (these were not specified) had been taken to animal shelters.

29. In the proceedings before the Court, two written statements were submitted, dated 24 and 25 February 2018. They had been made by a worker from a non-governmental organisation (NGO), the Nomada Association for Multicultural Integration ("Nomada"), who had witnessed the demolition. The NGO worker stated that the applicants had clearly felt distress, hysteria and helplessness when they were ignored by those carrying out the demolition and had not been allowed to retrieve their belongings, which, at that point, still remained on the site. The worker also observed that a social worker from the municipal Support Centre had arrived at the scene and had scribbled on a slip of paper the Support Centre's address where the applicants could seek help. In the Nomada worker's view, the heightened tension at the scene and the distrust that had built up between the applicants and the local authorities had not allowed for efficient communication or decision-making. The Nomada worker had then called the police, to whom the applicants had reported the removal of their belongings. The police officers, who knew the applicants, had reassured them that their goods had surely been secured and could be claimed back on the following day. Several Roma residents of the site had then been picked up by journalists and followed a truck loaded with their remaining belongings, only to discover that those belongings were broken and dumped in a landfill.

30. On 29 July 2015 the regional inspector, acting as the appellate authority, issued three decisions, discontinuing the appeals against the district inspector's decisions of 18 May 2015 (see paragraph 22 above), given their withdrawal by the Wrocław Municipality and by the Board of Municipal Green Spaces (see paragraph 25 above).

31. The regional inspector noted that, pursuant to Article 137 of the Code of Administrative Procedure (*Kodeks postępowania administracyjnego* – "the CAP"), having taken note of the fact that the two appellants had withdrawn

their appeals (see paragraph 25 above), he had to first examine whether or not the contested decisions were in breach of the law or against the public interest. If that had been the case, the withdrawal of the appeals would not be considered valid. It was also noted that the aim of the above-mentioned provisions was the protection of the legal order (*porządek prawny*).

32. The regional inspector held that the disputed decisions were not in breach of the law or against the public interest. He observed that a construction that had been erected without a building permit did not have to be demolished if it complied with the local development plan and the construction regulations. In such a case, structures could be legalised by a separate procedure under sections 48 and 49 of the Building Act (see paragraphs 52 and 53 below). In the circumstances of the case, the authority established that, given the local development plan and the technical specifications of the cabins, there had been no possibility of the unauthorised structures in question being legalised. In particular, the local development plan had designated the area for the future development of an open-air market, an airport, a park or a road. The plan did not feature any residential buildings or any constructions with a roof. Moreover, the structures in question had been built of inflammable materials. They also had no foundations, did not meet the height requirements and were not connected to the energy or water supply or the sewerage system. The structures therefore did not comply with the basic construction regulations. The regional inspector concluded that the three demolition orders were lawful and that the appeals had validly been withdrawn.

33. The regional inspector explained that the duty to carry out the orders at its own expense was on the Wrocław Municipality as the land's owner. Such a duty would have primarily burdened an "investor" in an unlawful site, but only if the "investor" had had title to the land.

34. The decisions were served on the Wrocław Municipality, the Board of Municipal Green Spaces and the district inspector. The parties had a right to appeal to the Regional Administrative Court (*Sąd Okręgowy*) within thirty days. It appears that no appeal was pursued.

II. CRIMINAL INVESTIGATION INTO THE DEMOLITION OF THE SITE AT PAPROTNA STREET

35. On 23 July 2015 the first applicant filed a criminal complaint because he had lost two power generators, PLN 2,000 (EUR 500) in cash, two television sets, two television decoders and clothes as a result of the demolition of the site at Paprotna Street. He calculated his material loss at PLN 3,260 (EUR 815). The first applicant explained to the police that he did not know whether the property had been taken away together with the debris from the demolished structures or had been stolen by third parties.

36. A criminal investigation was opened. The first applicant was granted the status of an injured party and was represented by an NGO.

37. The police obtained witness testimony from employees of the Municipal Green Spaces, city gendarmes, social workers who had been on the site during the demolition, and an employee of the demolition company. All the witnesses testified that they had not noticed any valuable objects during the demolition.

38. On 20 October 2015 the police discontinued the investigation because no perpetrator had been found.

39. The first applicant received instructions on how to appeal against the prosecutor's decision. He did not pursue any such appeal.

III. SOCIAL ASSISTANCE OFFERED PRIOR TO THE DEMOLITION OF THE SITE AT PAPROTNA STREET

40. The Government submitted that the applicants' situation had been monitored throughout their time in Paprotna Street by local authorities and the social services, in particular the Municipal Social Aid Centre (*Miejski Ośrodek Pomocy Społecznej*), whose staff had visited the applicants on the site up to twice daily. The applicants had been offered substitute accommodation, namely places in night shelters for the homeless or in municipal hostels. In May 2015 the Caldazar family were offered monitoring and aid by the newly set up municipal Support Centre (*Ośrodek Wsparcia*) for the homeless, for people in crisis situations and for single mothers. Despite being warned by the centre's social workers about the forthcoming demolition of their site, the applicants had repeatedly – including on the day of the final demolition of the site – refused to move into the Support Centre.

41. The Government also submitted that municipal social workers had made attempts to help the applicants register with the labour exchange as unemployed and to enrol them, free of charge, in a Polish language course. Without providing further details, the Government stated that the applicants had rejected all those forms of help and had only accepted financial aid.

42. In this connection, the Government submitted a document dated 23 October 2017 and signed by a certain I.T., a coordinator from the municipal Support Centre. The document describes welfare support provided in respect of the Caldazar family and the monitoring of their situation. The document contains the following information, in so far as relevant. The first site visit was carried out on 7 May 2015; nobody was present on the site. During a visit on 25 May 2015 the Caldazar family were offered welfare accommodation at the Support Centre; they said that they would come to an information meeting the following day. On 26 May 2015 the family were reminded about the meeting (over the telephone and in person, during a visit). They told the coordinator that they would not be able to attend the meeting because they had to take their youngest child to hospital, and the first

applicant's daughter R. (the sixth applicant – see paragraph 5 above) was visiting her family. During a further site visit on 27 May 2015 the first applicant was again offered subsidised accommodation at the Support Centre and invited to come and see it; he was also warned that the site could, at any moment, be demolished. The first applicant declined the offer, explaining that the mayor and the police had assured him that the family could stay at Paprotna Street for another three years; he also stated that if the site was demolished, the family would go back to Romania. On 28 May 2015 the Caldarars visited the Support Centre and inspected the room which had been designated for them; they were again warned about the possible demolition of the site that they were occupying. The Caldarars did not want to accept the offer, stating that as soon as they retrieved custody of their daughter R., they would be moving back to Romania. During a visit on 3 June 2015 the first applicant categorically refused to move with his family to the Support Centre. On 3 July a visit was carried out at a similar site at Kamińskiego Street, approximately two kilometres from Paprotna Street. The first applicant (who for unknown reasons was present at the site at Kamińskiego Street) “informed the social worker that, together with his family, they were living very well, they were not suffering any shortages and they did not expect any help”. During a visit carried out at Paprotna Street at 11 a.m. on 22 July (the day the site was demolished – see paragraph 27 above), the first applicant was again invited to accept the subsidised accommodation offered by the city; he categorically declined. After the demolition of the site at Paprotna Street, the first applicant and his family moved to the site at Kamińskiego Street.

43. According to two written statements made on 24 and 25 February 2018 by a Nomada worker (see paragraph 29 above), on 22 July 2015 the worker had telephoned the Caldarar family to inform them that their encampment was being demolished. The Nomada worker had learned about the situation from journalists. In her statement, she said that the applicants appeared to have no knowledge of the unfolding situation and not to have prepared for it. The worker explained that the applicants had been warned of the imminent demolition of their encampment many times throughout the six years during which they had lived at Paprotna Street. No such demolition had ever materialised in the past. The applicants therefore had not attached any importance to the warnings received shortly before the actual demolition. They had also considered that the offer of alternative accommodation made by the municipal welfare office had not been at all serious.

IV. THE APPLICANTS' LIVING SITUATION AFTER THE FINAL DEMOLITION OF THE SITE AT PAPROTNA STREET

44. The applicants submitted that following the final demolition of their encampment, they had lived on the streets. They had later erected several structures on another site at Kamińskiego Street, without planning

permission. They claimed that they had been living there at the time when notice of the present application was given, in conditions which did not ensure their safety.

45. According to I.T. in the document of 23 October 2017 (see paragraph 42 above), after the demolition of the site at Paprotna Street the first applicant and his family settled on the site at Kamińskiego Street. They did not communicate any need for welfare assistance. Two of the first applicant's children were enrolled in school; one child, who had special needs, attended individual classes in the first year. The children received school materials and clothes. The first and second applicants were helped with making an online registration with the unemployment centre. They later completed the procedure on their own. The first and second applicants were seen by a social worker who repeatedly invited them to move to the Support Centre, explaining that that would open up the possibility of enrolling them into the Individual Integration Programme, which aimed to regularise the immigration status of foreigners living in Poland and offered aid in gaining professional qualifications and financial independence, and educational assistance for children. The first and second applicants declared in writing that they would attend Polish language classes offered free of charge. They ultimately did not follow that programme. On 21 March 2017 the Caldarar family received a one-time payment of a total of PLN 300 (EUR 75).

46. The Government submitted that one applicant (presumably with her family) continued living in the settlement at Kamińskiego Street, while two other applicants – together with other family members (twenty persons in total) – had moved into a home run by a not-for-profit foundation called the House of Peace Foundation (*Fundacja Dom Pokoju*).

47. The applicants' lawyers confirmed that the applicants were living in accommodation provided by the House of Peace Foundation. They also submitted that, given their precarious situation, the applicants received regular welfare and child benefits, as well as assistance from the Social Welfare Office.

48. As reported in the Polish media, in 2018 the House of Peace Foundation facilitated the relocation of 180 Roma from the site at Kamińskiego Street to twenty apartments located throughout the city of Wrocław. The relocation was a part of a two-year integration programme co-financed by the municipality, the House of Peace Foundation and the Roma families.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Regulations regarding the demolition and the *ex post facto* legalisation of illegal buildings and other structures

1. Building Act

49. In Poland, construction is regulated by the 1994 Building Act (*Prawo budowlane*), which has been the subject of numerous amendments. This law applies to buildings (*budynki*, structures that are permanently connected to the ground) and also to constructions (*obiekty budowlane*). The latter category included, at the material time, structures without foundations that formed “a technical and functional whole” (section 3 of the Building Act).

50. Under section 48 of the Building Act as in force at the material time, a designated authority had the power to order the demolition of any building structure or part of one that had been erected without a building permit.

51. Under the current version of section 48 of the Building Act, prior to making a demolition order, the authority must first order the cessation of any continuing unlawful construction process and inform the parties of the procedure allowing for *ex post facto* legalisation.

52. *Ex post facto* legalisation of an unlawful structure was and is possible under the applicable law. The conditions and procedure were set out in section 48(2) and 49 of the Building Act as in force at the material time, and are now in sections 48(a)-49(i) of the current version of the Act. Under these provisions, an application for *ex post facto* legalisation can be made by an “investor” in or owner or manager of the structure in question. The legalisation requires compliance with a series of conditions, such as that the building structure must be in line with the local development plan and the building regulations (*przepisy techniczno-budowlane*), and that all applications and documentation must be filed within certain statutory deadlines.

53. Under the law in force at the material time and currently, demolition can be ordered where the unlawful structure does not meet the statutory conditions for *ex post facto* legalisation (see the following Regional Administrative Court judgments: Poznan, 28 January 2011, case no. II SA/Po 571/10; and Cracow, 8 May 2017, case no. II SA/Kr 155/17).

54. The relevant authority is under an obligation to order demolition where the interested party fails to meet the conditions for *ex post facto* legalisation of an unlawful building structure within the prescribed period. That obligation is absolute. In particular, the authority has no discretion to revoke a demolition order on the basis of, for example, principles of social coexistence.

55. The relevant authority must also order demolition where an “investor” cannot objectively meet the statutory conditions for *ex post facto* legalisation because he or she is not the owner of the land on which the unlawful structure is situated.

2. Rulings of the Constitutional Court regarding section 48 of the Building Act

56. On two occasions the Polish Constitutional Court declared section 48 of the Building Act to be in compliance with the principle of proportionality, that is to say, with the prohibition of excessive interference in the sphere of the rights and freedoms of the individual (Article 31 § 3 of the Constitution), when examined in the context of the right to property. The Constitutional Court made the following observations in so far as relevant (see the reasoning of the judgment of 12 January 1999, case no. P 2/98 and of the judgment of 26 March 2002, case no. SK 2/01).

57. Section 48 of the Building Act required conditions to be met to ensure the appropriate development of land and the high quality of construction work, taking into account considerations of spatial development, architectural and aesthetic conditions, durability, and safety. Those were in the general interest of, for example, inhabitants of and visitors to neighbouring areas. Unlawful construction was a wrongful action that called for the effective restoration of the plot to the state it had been in prior to the breach of the law. The legal framework that had existed prior to the 1994 Building Act had contained various discretionary clauses (*pojęcia ocenne*) and had, in effect, encouraged unlawful construction. A more radical and rigorous approach had been taken by the legislature in drafting the 1994 Building Act in order to eradicate that effect, because it had become quite common in practice for unlawful construction to be legalised later. The new law had significantly curbed the amount of unlawful construction.

58. The Constitutional Court took note of the criticism that section 48, by providing for a strictly formalistic and automatic assessment, firstly ran counter to the rule of law, and secondly put an excessive burden on individuals in the enjoyment of their fundamental rights. The Constitutional Court disagreed with these arguments, stressing that section 48 was to be interpreted strictly and could only be relied on where numerous statutory conditions were all met, based on the evidence and circumstances in each case. Concluding that section 48 was not used automatically or formalistically, the Constitutional Court stressed the deterrent and restorative, rather than punitive, nature of that provision.

59. The Constitutional Court also considered whether section 48 was necessary in a democratic society within the meaning of Article 31 of the Polish Constitution regarding the right of ownership and other property rights. The court focused its examination on the following issues: (i) whether the disputed regulation was capable of achieving its aims; (ii) whether the

regulation was required for the protection of the general interest; and (iii) whether the consequences of the disputed regulation were proportionate to the burden they placed on the individual. In this context, the Constitutional Court observed that the aim of the disputed provision was to ensure that construction “investors” complied with construction law. That, in turn, would ensure respect for general interests, such as public safety, protection of the environment and cultural heritage, or protection of the rights and freedoms of others. The disputed regulation also ensured the equal treatment of everyone who had carried out unlawful construction, since it was applied strictly in all cases. A demolition order did not affect the essence of property rights, in that the owner remained free to use the property within the limits of the law and to apply for a building permit. The Constitutional Court considered that while the legislature had discretion in the choice of policies and actions, the legal framework had to be continuously tested against the dynamics of the economy and of society. In the event that the disputed regulation succeeded in achieving its goals, it should be possible to replace its highly restrictive provisions with ones that would be less burdensome. Having said that, people who had construction works carried out in breach of the law should be aware of the possibility that they might be required to have the previous, lawful, situation restored. Put differently, the principle of proportionality could not protect interests that had resulted from a breach of the law (*nemo audiatur propriam turpitudinem allegans*).

60. The two judgments of the Constitutional Court are referred to further in the Court’s inadmissibility decision in *Szczypiński v. Poland* ((dec.), no. 67607/17, §§ 43-44, 18 January 2022).

B. Parties and participants in administrative proceedings

1. Investor

61. The term “investor” is not defined in the Building Act. The jurisprudence has established that the term means: a natural or legal person making investments, that is to say, financial inputs aimed at creating new assets or expanding existing ones (see the judgment of the Supreme Administrative Court of 8 November 2017, case no. II OSK 2870/16) or, essentially, the person who has erected an unlawful structure (see the judgment of the Supreme Administrative Court of 23 July 2009, case no. II OSK 1234/08). The “investor” should in principle be the owner of the land on which the structure has been erected. Exceptionally, the “investor” may also be a long-term lease holder (*dzierżawca*) or a person with use rights (*użytkownik*), whether or not he or she is in good or bad faith (see the judgment of the Supreme Administrative Court of 12 June 2002, case no. II SA/Gd 1862/01).

62. Under section 28(2) of the Building Act, an “investor” should be made a party to any proceedings regarding a construction permit, along with the

owner, anyone with perpetual use rights (*użytkownik wieczysty*), and any manager of immovable property which may be affected by the construction. This provision constitutes *lex specialis* to Article 28 of the Code of Administrative Procedure (*Kodeks postępowania administracyjnego* – “the CAP”), under which the parties to administrative proceedings are anyone who has a legal interest or legal obligation that is the subject of the proceedings (see also section 32 of the 2002 Administrative Courts Act, *Prawo o postępowaniu przed sądami administracyjnymi*).

63. The Building Act as applicable at the material time provided that an “investor”, owner or manager could be ordered to dismantle an unlawful structure at his or her own expense (section 52, in force until 2020). In the wording of the current version of section 52 of the Building Act, the obligation to comply with a demolition order is imposed on the “investor” unless the construction works have been completed or it is impossible for the “investor” to implement the order, in which case the obligation falls on the owner or manager of the unlawful structure.

64. In the light of the well-established case-law of the administrative courts, a demolition order must first be notified to the “investor” as the entity that commissioned the unlawful structure (see, for example, the judgments of the Supreme Administrative Court of 23 July 2009, case no. II OSK 1234/08 and of 11 April 2000, case no. II SA/Ka 2059/98).

65. If the “investor” is not the owner of the land on which the unlawful structure has been erected, the “investor” must be notified of the demolition order and must comply with it if the owner of the land had not been aware of or had not agreed to the unlawful construction or where there is doubt as to who the owner is (see the judgments of the Supreme Administrative Court of: 21 November 2001, case no. SA/Rz 597/00 and of 23 July 2009, case no. II OSK 1234/03; and the following Regional Administrative Court judgments: Olsztyn, of 21 October 2008, case no. II SA/Ol 583/08; Gdańsk, of 9 November 2010, case no. II SA/Gd 468/10; and Cracow, of 30 May 2017, case no. II SA/Kr 368/17 and of 21 November 2017, case no. II SA/Kr 921/17). The above-mentioned principle is based on the premise that the imposition of a demolition order on the property owner would be an unjustified burden on him or her, as it would expose him or her to a cumbersome process and would entail expense, and it would also constitute an unjustified release of the “investor” from the adverse consequences of the demolition of his unlawful structure (see the judgment of the Supreme Administrative Court of 23 July 2009, case no. II OSK 1234/03).

66. At the same time, however, a demolition order can only be addressed to an “investor” who, at the time when the demolition is ordered, is legally in a position to perform all the actions necessary to carry out the order, that is to say, the “investor” must own the land or be lawfully in possession of it (see judgments of the Supreme Administrative Court of 21 February 2002, case no. II SA/Gd 1705/99 and of 23 July 2009, case no. II OSK 1234/08; and the following

Regional Administrative Court judgments: Gdańsk, of 24 July 2008, case no. II SA/Gd 425/08 and of 9 May 2010, case no. II SA/Gd 468/10; Kielce, of 15 December 2010, case no. II SA/Ke 667/10; and Rzeszow, of 11 May 2011, case no. II SA/Rz 51/11). An “investor” who is the lawful user of the land (*użytkownik*) but not its owner or co-owner does not receive notification of the demolition order or information regarding *ex post facto* legalisation (see judgments of the Rzeszow Regional Administrative Court of 13 June 2017, case no. II SA/Rz 292/17; and of the Cracow Regional Administrative Court of 8 November 2017, case no. II SA/Kr 1034/17).

2. Participant

67. The status of a “participant” in administrative proceedings can be granted by the administrative court to anyone who has a legal interest that will be affected by the outcome of those proceedings and who has not previously taken part in them (section 33(2) of the 2002 Administrative Courts Act). Under the well-established case-law of the Polish courts, a “legal interest” requires a substantive relationship between the relevant regulation and the legal situation of a specific entity. Having a legal interest means the same as establishing a provision of the general law, on the basis of which one can ask an authority to take actions to satisfy some need, or to abandon or restrict its actions where they are impinging on the needs of a particular person. A legal interest understood in this way should be distinguished from a factual interest, that is, where a legal or natural person is directly interested in the resolution of the case, but cannot support this interest with the provisions of the general law (see judgments of the Supreme Administrative Court of 23 April 2013, case no. I OZ 265/13, and of 25 January 2023, case no. II OZ 27/23; and decision of the Rzeszow Regional Administrative Court, 24 November 2020, case no. II SA/Rz 1119/20).

68. A community organisation (*organizacja społeczna*) such as an association, but not a foundation, acting in defence of a third-party interests can also have party status if the case concerns the organisation’s registered purpose (section 33(2) of the 2002 Administrative Courts Act). Importantly, to be granted the status of a participant, it is necessary to notify the court that one wishes to participate before the completion of the proceedings (see judgment of the Cracow Regional Administrative Court of 21 November 2017, case no. II SA/KR 921/17).

3. Party

69. Lastly, a “party” to administrative proceedings is defined, pursuant to Article 28 of the CAP, as anyone with a legal interest or obligation at stake (see also section 32 of the 2002 Administrative Courts Act, *Prawo o postępowaniu przed sądami administracyjnymi*).

C. Judicial review of a demolition order and exceptional administrative remedies

1. Judicial review of a demolition order

70. Any party may appeal against a demolition order within fourteen days from the service of the order (Article 129 § 2 of the CAP).

71. Any appeal or review of a demolition order or, currently, an order to cease unlawful construction, including judicial review by an administrative court, is limited to the assessment of whether the requirements of the Building Act had been met within the statutory deadlines (see the judgments of the Supreme Administrative Court of 14 May 2007, case no. II OSK 757/06; of 1 February 2008, case no. II OSK 1989/06; and of 11 May 2023, case no. II OSK 1614/20). In particular, the authority has no discretion to take into account, for example, the family situation of the “investor”, the reasons for erecting the unlawful construction, or the damage that would be caused by its demolition (see the judgment of the Warsaw Regional Administrative Court of 4 August 2009, case no. VII SA/Wa 2081/08).

2. Exceptional quashing or amending of a final decision issued in accordance with the law

72. Article 161 § 1 of the CAP allows a party to seek the exceptional quashing or amending of a final decision issued in accordance with the law, for urgent reasons of necessity (*w stanie nagłej konieczności*). According to well-established domestic practice, this remedy requires objective evidence that execution of the decision in question would pose a real risk to human life or health (see judgments of the Supreme Administrative Court issued on 26 March 1987 – case no. II SA 1553/86; 16 May 2006 – case no. I OSK 889/05; 22 June 2022 – case no. II OSK 1095/21; and of 16 November 2022 – case no. II OSK 1764/21). The burden of proof is on the claimant (see the judgment of the Supreme Administrative Court of 26 April 2022 – case no. II OSK 1088/19). In such proceedings, the authority (a minister or governor) does not re-examine the elements of the main case that had led to the final decision in question but assesses whether that decision poses a real threat to the protected interests that can only be eliminated by quashing or amending the decision and not by any alternative legal means (see judgment of the Supreme Administrative Court of 4 December 2019, case no. I OSK 3353/17). In accordance with the domestic case-law, the loss of a place of residence does not automatically constitute a threat to life or health within the meaning of Article 161 § 1 of the CAP. The risk of homelessness may, however, be a reason for postponing the demolition order (see the judgment of the Supreme Administrative Court of 26 April 2022 – case no. II OSK 1088/19).

3. *Reopening of administrative proceedings*

73. Under Article 145 § 1(4) of the CAP, administrative proceedings can be reopened where an entity with a legal interest within the meaning of Article 28 of the CAP (see paragraph 69 above) has not participated in the proceedings through no fault of its own (see judgments of the Supreme Administrative Court of 25 July 2017, case no. II OSK 2920/15; and of the Cracow Regional Administrative Court of 8 November 2017, case no. II SA/Kr 1034/17; contrast, *mutatis mutandis*, judgment of the Supreme Administrative Court of 22 February 2023, case no. II OSK 2757/22).

74. Such proceedings could lead to a declaration that the impugned administrative decision had been issued contrary to the law, without the decision in question being necessarily revoked (for example, where the decision replacing the decision revoked would be essentially the same) (see Articles 146 and 151 of the CAP).

75. The Court has not been furnished with examples of any cases which have been reopened, pursuant to the procedure in question, for breach of the Convention rights.

4. *Declaring an administrative decision null and void*

76. Under Article 156 § 1 of the CAP, a final administrative decision can be declared null and void under the following conditions:

- “1) it has been issued in breach of the rules governing competence;
- 2) it has been issued without a legal basis or in flagrant breach of the law;
- 3) concerns a case already decided by means of another final decision;
- 4) it has been addressed to a person who is not a party to the case;
- 5) it was unenforceable on the date of its issuance and its unenforceability is of a permanent nature;
- 6) it would give rise to a punishable offence in the event that it has been enforced;
- 7) it has a flaw making it null and void by the force of law.”

77. Even if certain grounds listed in Article 156 § 1 of the CAP exist, where ten years have elapsed or the contested decision has produced irreversible legal effects, the authority shall declare that the contested decision has been issued contrary to the law, without declaring it null and void (Article 158 of the CAP).

78. Obtaining the declaration that the original administrative decision is “null and void” or “issued contrary to the law” enables the addressee to claim compensation under Article 417¹ § 2 of the Civil Code (see paragraph 83 below).

D. Liability for infringement of personal rights under the Civil Code

79. Article 23 of the Civil Code contains a non-exhaustive list of so-called “personal rights” (*dobra osobiste*). This provision states:

“The personal rights of an individual, such as, in particular, ... the inviolability of the home ..., shall be protected by the civil law regardless of any protection laid down in other legal provisions.”

80. Article 24, paragraph 1, of the Civil Code provides:

“A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek financial compensation or may ask the court to award an adequate sum to an entity that pursues a specified public interest.”

81. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. The relevant part of that provision reads:

“The court may grant an adequate sum as financial compensation for non-pecuniary damage (*krzywda*) to anyone whose personal rights have been infringed ...”

82. Articles 417 et seq. of the Polish Civil Code provide for the State’s liability in tort. Article 417 § 1 of the Civil Code (as amended) provides:

“The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission [committed] in connection with the exercise of public authority.”

83. Article 417¹ § 2 of the Civil Code reads as follows:

“Where damage has been caused by the delivery of a final ruling or a final decision, redress for such damage may be sought after the unlawfulness [of the ruling or decision] has been established in appropriate proceedings, except where otherwise provided for by law.”

E. Compensation under the Equal Treatment Act

84. On 3 December 2010 the Equal Treatment Act (*Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*; “the Equal Treatment Act”) was enacted in Poland to give effect to seven European Union directives regarding equal treatment in various sectors. The Act sets out areas of concern and methods of counteracting violations of the equal treatment rule on the grounds of sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation (section 1). It applies in the following fields: (i) professional education; (ii) business and employment; (iii) trade unions; and (iv) access to and use of: labour market mechanisms and services, social security, health care,

education, and services, including residential services and energy utilities, if they are offered by the public authorities (sections 4 and 6). The sphere of private and family life and legal actions linked with this sphere is explicitly excluded from the scope of this Act (section 5(1)).

85. Under section 13 of the Equal Treatment Act, everyone who suffers unequal treatment within the meaning of the Act is entitled to compensation. This provision is a *sui generis* basis for claiming compensation. The plaintiff is therefore not required to prove that the discriminatory treatment has also infringed his or her personal rights (see judgment of the Supreme Court of 6 April 2022, case no. I NSNc 578/21).

II. INTERNATIONAL LAW AND PRACTICE

A. Committee of Ministers of the Council of Europe

86. In Recommendation CM/Rec(2017)10 to member States on improving access to justice for Roma and Travellers in Europe (adopted on 17 October 2017), the Committee of Ministers of the Council of Europe recognises that Roma face widespread and enduring anti-Gypsyism, which entails, *inter alia*, widespread discrimination and other violations of their rights, while at the same time creating barriers which prevent them from accessing justice (see the Preamble to the Recommendation). It also notes that people from disadvantaged communities such as Roma are more vulnerable to violence, discrimination and exclusion, contrary to their legal rights, and that it is therefore important to take all necessary steps with a view to eliminating discriminatory obstacles to legal proceedings, particularly anti-Gypsyism, and that the existence of appropriate systems of legal aid will contribute to the achievement of this aim (see the Preamble). The Committee of Ministers recommends that governments of member States, with due regard for their constitutional systems and, where appropriate, to their respective national, regional, and local circumstances, should facilitate equal access to court and ensure the effectiveness of judicial remedies for Roma by, among other things, ensuring that organisations such as associations (but not foundations), bodies for the promotion of equal treatment and other legal entities which have, according to criteria laid down by national law, a legitimate interest in combating racism and racial discrimination, may engage either on behalf of or in support of Roma, with their approval, in any judicial and/or administrative procedure provided for the enforcement of anti-discrimination provisions, or intervene in such procedures, and considering allowing such organisations to bring complaints on behalf of Roma, including criminal complaints, without prejudice to national rules of procedure concerning representation and defence before the courts (paragraph 5c).

B. Advisory Committee on the Framework Convention for the Protection of National Minorities

87. The Framework Convention for the Protection of National Minorities (Framework Convention) is a legally binding multilateral instrument devoted to the protection of national minorities worldwide. It was adopted on 10 November 1994 by the Committee of Ministers of the Council of Europe and it entered into force on 1 February 1998. It is now in force in thirty-nine states, including Poland, where it has been in force since 1 April 2001. Its implementation is monitored by the Advisory Committee on the Framework Convention for the Protection of National Minorities (“the ACFC”).

88. In its Third Opinion on Poland, adopted on 28 November 2013 (“Third Opinion”, ACFC/OP/III(2013)004), the ACFC noted that the situation of immigrant Roma was a matter of concern:

“For example, the planned eviction by local authorities of 100 Roma of Romanian origin from an illegal settlement at Kamińskiego Street in Wrocław is indicative of the lack of social integration strategies and discrimination.” (Third Opinion, § 70)

C. European Commission against Racism and Intolerance

89. The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against, among other things, discrimination on grounds of “race”, ethnic/national origin, colour, citizenship, xenophobia and intolerance.

90. In its Fifth Report on Poland adopted on 20 March 2015 (“Fifth Report”), ECRI commented on the illegal settlement at Kamińskiego Street in Wrocław, to which several applicants in the present case had moved after the demolition of their encampment at Paprotna Street. In paragraph 72 of the Fifth Report, ECRI made the following findings:

“... various groups of Roma of Romanian origin settled on land belonging to the municipality of Wrocław as from the 1990s. ... According to NGOs, for some twenty years the authorities ignored the existence of this community and there was no social debate on the issue. However, ECRI understands that this Roma settlement was made up of successive groups and, therefore, it took some time for the authorities to structure their response, particularly since the legislation applicable changed with the accession of Romania and Poland to the European Union.”

91. In the same report, ECRI recommended that the authorities assess the idea of setting up a group of experts to study the situation of Roma communities in Wrocław and to identify structural and systemic responses at the national level which could be incorporated into Poland’s integration programme for the Roma community 2014-2020 (Fifth Report, § 78).

92. In its most recent report on Poland, the Sixth Report adopted on 27 June 2023 (“Sixth Report”), ECRI concluded that as a result of the above-mentioned recommendation, several expert groups had been

established and the situation related to the unlawful Roma settlement in Wrocław had been analysed, and the housing situation had been solved to everybody's satisfaction, in part thanks to a local programme funded by the Wrocław Municipality to offer Roma assistance with social adaptation, housing, vocational training and language courses (Sixth Report, § 89, footnote 97). In ECRI's view, the "constructive co-operation" between NGOs, academics and municipal representatives that enabled the voluntary resettlement of Roma from Kamińskiego Street to regulated and better-quality housing constituted "good practice" (Sixth Report, § 89).

THE LAW

I. PRELIMINARY MATTERS

93. The eighth applicant died while the proceedings before the Court were ongoing. The thirteenth applicant, who claimed to be his widow, asked for compensation for the violation of her late husband's rights to be awarded to her in his stead. She informed the Court that she was not in possession of any formal document confirming that she was the deceased applicant's legal successor.

94. The Court considers that the thirteenth applicant essentially expressed a wish to pursue the application on behalf of her late husband as well as herself. It is not contested that she has not submitted any proof of her formal status as his successor. However, this in itself is not decisive where someone can reasonably claim to be a deceased applicant's next of kin (see, *mutatis mutandis*, *Burlya and Others v. Ukraine*, no. 3289/10, § 69, 6 November 2018). Moreover, it has never been contested that the thirteenth applicant was the eighth applicant's life partner or wife at the time of his death (compare, *mutatis mutandis*, *Lăcătuș and Others v. Romania*, no. 12694/04, § 63, 13 November 2012). The Court therefore considers that the eighth applicant's widow can claim a legitimate interest in the case and has standing to pursue the proceedings before the Court in his stead.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION, READ ALONE AND TOGETHER WITH ARTICLE 14 OF THE CONVENTION

95. The applicants complained, relying on Articles 3 and 8 of the Convention, read alone and together with Article 14 of the Convention, about the 2015 demolition of their four cabins at Paprotna Street, which they considered to be their homes, and about the demolition's consequences for their private and family life. In particular, the applicants complained that the authorities had failed to provide them with an adequate alternative solution which would have respected their way of life and their family and

neighbourly bonds, and which would have levelled off the inequality of their marginalised group.

96. The provisions in question read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

97. The Court notes at the outset that the present case concerns the decision-making process resulting in the demolition order, the measures taken by the authorities leading to the actual demolition, and the manner in which the demolition of the applicants’ illegal structures was carried out. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Paketova and Others v. Bulgaria*, nos. 17808/19 and 36972/19, § 107, 4 October 2022), the Court finds that the above-mentioned elements of the complaint fall to be cumulatively examined under Article 8 of the Convention, read alone and together with Article 14 of the Convention.

A. Admissibility

1. Preliminary remarks regarding the Government’s objections on admissibility

98. The Court notes that the Government raised a series of preliminary objections regarding the admissibility of the applicants’ complaints under Article 8 and 14 of the Convention.

99. They argued that the applicants could not claim to be the victim of a violation of their rights within the meaning of Article 34 of the Convention

because they did not have legal title to the land or to any property at the site at Paprotna Street in Wrocław that they had occupied unlawfully.

100. The Government also argued that the applicants had not brought their grievances to the attention of the domestic authorities and therefore had not exhausted the domestic remedies available as required by Article 35 § 1 of the Convention.

101. The Court also notes that the parties are in dispute as to whether or not the applicants' settlement at Paprotna Street qualified as a "home" within the meaning of Article 8 of the Convention. The Court observes that the issue of the applicants' victim status is inseparably linked with the assessment of whether Articles 8 and 14 are applicable to the present case. The Court will therefore first assess, at the admissibility stage, whether it has jurisdiction *ratione materiae* to examine the complaint (see, *mutatis mutandis*, *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92-94, 25 September 2018). It will then rule on the issue of compatibility *ratione personae* within the meaning of Article 34 of the Convention and lastly, on the requirement to exhaust domestic remedies.

2. Jurisdiction *ratione materiae*

(a) Submissions of the parties

(i) The Government

102. The Government argued that any links that the applicants might have had with the site at Paprotna Street had only been temporary and therefore did not lead to that site qualifying as their "home" within the meaning of the Convention. The applicants had their permanent residence in Romania and their structures at Paprotna Street had been unlawful and at risk of collapse. The applicants had always known about the risk of eviction from the site. They had never come forward as "investors" in the site in question, or formally registered their stay in Poland, or sought to regularise their situation. The Government also clarified that even if it were to be accepted that the original structures had been erected approximately three years prior to the first inspection of the site, that did not mean that the applicants, and not other Roma persons, had initially occupied the site.

103. In the Government's view, neither Article 8 nor Article 14 of the Convention were therefore applicable in the context of the present case.

(ii) The applicants

104. The applicants maintained that they had started occupying the site at Paprotna Street in November 2009. Although they had no legal title to the property, they considered themselves to be "investors". They had at first been represented by Mr C. de A., to whom the authorities had sent all correspondence regarding the first set of demolition proceedings, prior to the fire (see paragraphs 13 and 15 above). The applicants stressed that in the

second set of the proceedings in 2015, the authorities had not sought to contact them. In the applicants' opinion, their status of "investor" within the meaning of section 17 of the Building Act resulted from the fact that they had erected the cabins and had been the site's factual occupants. In their opinion, they should therefore have been recognised as a party to the proceedings concerning the demolition of the site by virtue of section 28 of the Building Act. The applicants were accordingly victims within the meaning of Article 34 of the Convention, because their homes had been demolished without any prior notice and without their being able to participate in the administrative proceedings leading to that event.

(b) The Court's assessment

(i) The general principles

(α) As to Article 8 of the Convention

105. The Court has broadly defined "home" as the place, the physically defined area, where private and family life develops (see *Giacomelli v. Italy*, no. 59909/00, § 76, ECHR 2006-XII). The concept is not limited to premises which are lawfully occupied, or which have been lawfully established. It is an autonomous concept which does not depend on classification under domestic law (see *Yordanova and Others v. Bulgaria*, no. 25446/06, § 103, 24 April 2012; *Yevgeniy Zakharov v. Russia*, no. 66610/10, § 30, 14 March 2017; *Ahmadova v. Azerbaijan*, no. 9437/12, § 41, 18 November 2021; and *Paketova and Others*, cited above, § 153).

106. Whether or not a particular premises constitutes a "home" which attracts the protection of Article 8 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (see, for example, *Buckley v. the United Kingdom*, 25 September 1996, §§ 52-54, *Reports of Judgments and Decisions* 1996-IV, and Commission's report of 11 January 1995, § 63; and *Winterstein and Others v. France*, no. 27013/07, § 141, 17 October 2013).

107. Given these principles, the essential test in the Court's assessment of the notion of the right to respect for one's home in cases concerning unlawful structures has been the applicants' long and continuous occupation of the site.

108. By way of example, the Court has accepted that applicants had sufficiently close and continuous links with the place they occupied where they had lived there for a period of approximately one year (see *Simonova v. Bulgaria*, no. 30782/16, § 31, 11 April 2023); for four years (see *Faulkner and MacDonagh v. Ireland* (dec.), nos. 30391/18 and 30416/18, § 91, 8 March 2022); for between five and thirty years (see *Winterstein and Others*, cited above, § 141); for approximately six years (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, §§ 8, 11 and 56, 21 April 2016); or for several decades (see *Yordanova and Others*, cited above, § 102, and *Brežec v. Croatia*, no. 7177/10, § 36, 18 July 2013). In contrast, a sufficient and

continuous link with the place was not established, for the purposes of the right to respect for one's home, where the applicants had only occupied a site for six months prior to their eviction (see *Hirtu and Others v. France*, no. 24720/13, § 65, 14 May 2020).

109. The Court has never attached importance to the technical aspects of the dwellings in question, whether those were caravans, cabins, bungalows, makeshift houses or apartment rooms (see *Winterstein and Others*, cited above, § 141; *Yordanova and Others*, cited above, § 102; and *Yevgeniy Zakharov*, cited above, §§ 30-32). It has also not been decisive for the Court that the dwellings in issue did not correspond to the officially registered home address of the applicants or that the applicants were the owners of properties located elsewhere (see *Bagdonavicius and Others v. Russia*, no. 19841/06, § 89, 11 October 2016).

110. Leaving aside the notion of a "home", the Court has considered that where the case concerns the expulsion of applicants as part of a larger community and the measure could have repercussions on the applicants' lifestyle and social and family ties, it may be considered that the interference would affect their "private and family life", either in addition to the right to respect for one's home (see *Yordanova and Others*, cited above, §§ 104-05, and *Winterstein and Others*, cited above, §§ 142-43), or instead of it (see *Hirtu and Others*, cited above, § 66).

(β) As to Article 14 of the Convention

111. For Article 14 of the Convention to be applicable, it is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010).

(ii) *Application of these principles to the facts of the present case*

112. In assessing how long the applicants occupied the relevant place in the present case, the Court notes that there is a dispute between the parties as to whether the applicants first started living on the site at Paprotna Street in 2009 or only in 2013 (see paragraphs 7 and 12 above). The Court notes in this connection that the official documents from various inspectors, as well as the administrative decisions concerning the site, acknowledge that the cabins had been erected and inhabited by "Romanians of Roma origin" two or three years before the first inspection in May 2013 (see paragraphs 13 and 16 above). Neither party furnished any detail or document that would unequivocally support their opposing arguments as to the date when the actual applicant families started occupying the cabins in question. The Court observes that while this is not certain, the possibility that the applicants or at least some of them had arrived in Paprotna Street before 2013 cannot be excluded. What is uncontested is that in May 2013 they were already well settled in their

encampment. The Court thus concludes that the applicants must have started occupying their makeshift dwellings at Paprotna Street more than two years prior to the demolition in July 2015.

113. Regarding the assessment of how continuous the applicants' occupation was, the Court notes that for an unspecified period between August and November 2014 the site was unoccupied after a fire had destroyed four out of five of the applicants' structures (see paragraphs 20 and 21 above). The applicants then rebuilt their cabins and resumed their life on the site (see paragraph 21 above). The Court observes that although their occupation of the site was effectively interrupted by the fire, it was resumed after a relatively short time (see, *mutatis mutandis*, *Yordanova and Others*, cited above, § 102), during which the applicants did not establish any other home elsewhere (see, *mutatis mutandis*, *Prokopovich v. Russia*, no. 58255/00, § 38, 18 November 2004).

114. In assessing whether the occupation was continuous, the Court must also consider the following elements of the case. In May 2013 the authorities formally informed the applicants of the illegal nature of their occupation of the site and asked them to vacate the land under the threat of court proceedings and criminal charges (see paragraph 9 above). No criminal charges were brought, however, but administrative proceedings were indeed instituted, and a site inspection was carried out (see paragraph 13 above). The authorities communicated information about the progress and the outcome of those proceedings to the person they considered to be the "investor" in relation to the applicants' cabins. In September 2013 the local authorities ordered the demolition of the cabins (paragraph 16 above), but no action was taken to carry that order out, even after appeals against it had been rejected by the courts in February and March 2014 (see paragraph 19 above). The outstanding demolition order concerning the one cabin that was still in place after the 2014 fire was only enforced in 2015, when the applicants' three more recent structures were also dismantled by the municipal authorities pursuant to separate demolition orders from 2015. In the several months leading up to the demolition that took place on 22 July 2015 (see paragraph 27 above), inspectors and social workers made repeated visits to the site, informing the applicants of the illegal and hazardous nature of their occupation and warning them that ultimately the structures on the site would be dismantled (see paragraphs 40-43 above).

115. Overall, the Court cannot unequivocally conclude that the applicants had established sufficient and continuous links with the site at Paprotna Street for it to be considered their "home" within the meaning of Article 8 of the Convention.

116. Given the applicants' community lifestyle, however, the Court observes that the present case brings into play the applicants' right to respect for their private and family life. The applicants, who are of Roma origin, maintain their ethnic and cultural identity even where they no longer live a

wholly nomadic existence (see, *mutatis mutandis*, *Winterstein and Others*, cited above, § 146, and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 73, ECHR 2001-I). There is no doubt that the demolition of the site where the applicants' community and family units lived had serious repercussions on their lifestyle and social and family ties (see *Winterstein and Others*, cited above, §§ 142-43; *Yordanova and Others*, cited above, §§ 104-05; and *Hirtu and Others*, cited above, § 66). In particular, the community was broken up because some units moved to another site whereas others took up offers of welfare housing (see paragraphs 44-46 above). The Court will therefore examine the applicants' complaint from the angle of their right to respect for their private and family life (see *Hirtu and Others*, cited above, § 66).

117. Given that discrimination is alleged in relation to the applicants' right to respect for their private and family life – issues falling within the ambit of Article 8 – the Court observes that Article 14 applies in the present case (see, for example, *E.B. v. France* [GC], no. 43546/02, § 47, 22 January 2008; *Larkos v. Cyprus* [GC], no. 29515/95, § 28, ECHR 1999-I; and *Yordanova and Others*, cited above, § 146).

(iii) *Conclusion as to the Court's jurisdiction ratione materiae*

118. It follows that the Court has jurisdiction *ratione materiae* to examine the applicants' complaints under Article 8 of the Convention, read alone and in conjunction with Article 14 of the Convention.

3. *The applicants' victim status*

119. The Court reiterates that it interprets the concept of "victim" autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act, although it should have regard to the fact that an applicant was a party to the domestic proceedings (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 52, ECHR 2012, and *Micallef v. Malta* [GC], no. 17056/06, § 48, ECHR 2009).

120. Following its reasoning and conclusions on the applicability *ratione materiae* of the complaint (see paragraph 118 above), the Court finds that the applicants can claim to be victims of violations of their rights under Article 8 of the Convention, read alone and together with Article 14 of the Convention, on account of the demolition of their unlawful settlement in 2015.

4. *Non-exhaustion of domestic remedies*

(a) **Submissions of the parties**

(i) *The Government*

121. The Government argued that the applicants had not given the public authorities any opportunity to "address" and "potentially prevent" the alleged

violations of their Convention rights. To this end, they made a general claim that “a range of legal remedies” had been available to the applicants.

122. The Government did not indicate any specific remedies of preventive character that would have been capable of postponing or revoking the demolition. In respect of the complaints examined in this part of the application, the Government listed four compensatory remedies, arguing that those could have offered *ex post facto* redress.

123. The Government firstly submitted that the applicants could have lodged an application for the reopening of the administrative proceedings under Article 145 § 1(4) of the CAP, on the grounds that they had been excluded from the demolition proceedings through no fault of their own (see paragraph 73 above). The authorities would then have had to examine whether the applicants’ procedural rights as guaranteed by Polish administrative law had been breached by not giving them party status in the proceedings.

124. Secondly, in the Government’s view, the applicants could have applied to have the disputed demolition decisions declared void, either under Article 156 § 1 (2) of the CAP if it had been found that the contested decisions had involved a manifest error of law, or under Article 158 of the CAP if it had been found that the decisions in question had been unlawful (see paragraph 74 *in fine* above). In support of that argument, the Government submitted that the fact that the demolition had already taken place – and the practical effects of the contested administrative decisions were therefore irreversible – was not a legal obstacle to having the disputed decisions declared retroactively void.

125. Obtaining a declaration that the demolition decisions had been issued contrary to the law or null and void, pursuant to one of the above-mentioned procedures, would have enabled the applicants to seek compensation under Article 417¹ § 2 of the Civil Code (see paragraph 83 above).

126. Thirdly, in so far as the applicants complained of having been discriminated against, they could have sought the compensatory remedy provided for by the Equal Treatment Act (section 13, see paragraph 85 above).

127. Fourthly, the applicants could have sought compensation for infringement of their personal rights under the general provisions of the civil law (Articles 23 and 24 of the Civil Code, (see paragraphs 79 and 80 above).

(ii) *The applicants*

128. The applicants argued that the remedies suggested by the Government would not have been effective in the circumstances of the present case, essentially because they would not have prevented or halted the demolition of the site. Moreover, practically speaking, those remedies had not been available to the applicants as they had not been given notice of the demolition orders. Only the main administrative proceedings – had the applicants had party status in them – could qualify as an effective remedy, in

so far as an appeal against a demolition order would have had a suspensive effect.

129. In addition, the applicants submitted that the administrative-law remedies allowing for the *ex post facto* reopening of the disputed proceedings or for the annulment of the contested demolition decisions were of an exceptional and discretionary character. As such, they did not have to be exhausted. Moreover, in order to receive any redress, the applicants would have had to follow up with an application for compensation. In their view, the Court should not require them to have pursued such a complex two-tier combination of remedies.

130. Lastly the applicants submitted, referring to the Court's case-law concerning minorities, that in view of the applicants' personal circumstances, as well as the social context in which they lived – engendering their marginalisation – the civil and other remedies listed by the Government had in fact been beyond their reach. In particular, the applicants would not have been able to afford to institute civil proceedings for compensation. In any event, the applicants did not view any *ex post facto* compensation for infringement of their personal rights (under the general civil law) or for discrimination (under the Equal Treatment Act) as adequate redress. They also considered that their situation fell outside the scope of the equal treatment legislation, and pointed to general difficulties with the implementation of the Equal Treatment Act.

(b) The Court's assessment

(i) The general principles

131. The general principles regarding the requirement to exhaust domestic remedies are summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014 and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-45, 27 November 2023). In particular, the existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (*ibid.*, § 71). To be effective, a remedy must be capable of directly remedying the impugned state of affairs and must offer reasonable prospects of success (*ibid.*, § 74 and cases cited therein).

132. It is therefore incumbent on a Government claiming non-exhaustion to satisfy the Court that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Bistieva and Others v. Poland*, no. 75157/14, § 53, 10 April 2018; and *Kennedy v. the United Kingdom*, no. 26839/05, § 109, 18 May 2010). It is for the Government to submit to the Court any pertinent examples of domestic case-law that demonstrate the scope of a newly established remedy and its application in practice (see *Bistieva and Others*,

cited above, § 54; and *Melnītis v. Latvia*, no. 30779/05, § 50, 28 February 2012).

133. Once this evidential burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case (see *Bistiēva and Others*, cited above, § 55; and *Betteridge v. the United Kingdom*, no. 1497/10, § 48, 29 January 2013).

(ii) *Application of these principles to the facts of the present case*

134. The applicants complained that the public authorities had demolished their encampment following administrative proceedings to which the applicants had not been a party and of which they had not been formally informed (see paragraphs 16 and 22 above).

135. The Court notes that while the Government seemed to argue that the alleged violations could have been prevented if the applicants had brought their situation to the attention of the authorities, they did not indicate any specific remedy that would have been capable of suspending or revoking the demolition.

136. As to the effectiveness of the ex-post facto remedies, the Court observes that the Government relied on several one- or two-tier remedies which, in their view, could have led to findings that the contested decisions had been unlawful and to the payment of compensation.

137. In this context, the Court observes that under Article 145 § 1(4) of the CAP, administrative proceedings can be reopened where a person with an interest in the proceedings has not participated in them through no fault of their own (see paragraph 73 above). If successful, this remedy could lead to a declaration that the disputed administrative decision had been wrong in law (see paragraph 74 above). Under Article 156 § 1 of the CAP, a final administrative decision can also be declared null and void (see paragraph 76 above). A person who obtains a declaration that an administrative decision was “null and void” or “issued contrary to the law” can make a claim for compensation under Article 417¹ § 2 of the Civil Code (see paragraphs 78 and 83 below).

138. The Court reiterates that according to its established case-law, a request for the reopening of proceedings does not, as a rule, constitute an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Sobczyk v. Poland* (dec.), no. 73446/10, § 40, 25 August 2015). However, it has held that applicants should have pursued extraordinary remedies, for example, where the quashing of a judgment that has legal force is the only means by which the respondent State can put matters right through its own legal system. Similarly, the Court has held that a request for reopening of proceedings could, in certain specific circumstances, be the only means whereby a particular complaint could be raised in the domestic courts and in such circumstances, it would constitute an effective remedy (see *Dinchev*

v. Bulgaria (dec.), no. 17220/09, § 28, 21 November 2017, with further references). However, the Court observes that the Government failed to present any case-law confirming the availability of the reopening of administrative proceedings under article 145 § 1 of the CAP. More importantly, the Government failed to present any case-law confirming that the applicants could have invoked the direct applicability of the European Convention of Human Rights in the domestic legal order and obtain the effective protection of their interests recognised under the Convention and, in particular, to obtain the declaration that the administrative decision was null void because it was not Convention-compliant.

(iii) Conclusion as to the preliminary objection regarding the exhaustion of domestic remedies

139. In the light of the foregoing, the Court considers that the applications cannot be rejected in respect of any of the applicants for failure to exhaust domestic remedies. The Government's objection must therefore be dismissed.

5. The Court's overall conclusion as to admissibility

140. The Court finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties and third-party interveners

(a) The applicants

141. The applicants argued that the demolition had been unlawful because they had not been granted legal standing in the administrative proceedings leading to it. They also contended that the demolition had been unjustified and disproportionate, given their vulnerability as a marginalised ethnic minority of foreigners living in extreme poverty. Moreover, the demolition had led to serious negative consequences on their community lifestyle and, overall, on the quality of their life.

142. The applicants stressed that the Polish authorities had not considered the risk that, as a result of the demolition, they would become homeless. In support of that, they submitted that living in extreme poverty made it impossible for the Romanian Roma people to comply with the Polish income requirement for residence and social security. They were discriminated against on the job and housing markets. The applicants also submitted that the toleration of their subsequent residence on a similar site in Wrocław showed that the real goal of the demolition had not been to ensure their safety.

143. Lastly, the applicants complained that, in view of the above-mentioned elements, the unannounced demolition of their homes and

the destruction of their movable property had been discriminatory and constituted a form of persecution. In this context, they submitted that the authorities had never served them with a demolition order, making it impossible for them to prepare for their eviction. The applicants stressed that the residents of the settlement had included young children, elderly people, and persons with disabilities. They had received no medical attention, welfare support or accommodation following the destruction of their homes.

(b) The Government

144. The Government reiterated that there had been no interference in the present case because the applicants had not established any sufficient link with the site of their settlement. Alternatively, they essentially argued that the interference had been lawful and justified within the meaning of Article 8 § 2 of the Convention. To this end, they stressed that the applicants' encampment had been illegal and unsafe.

(c) Third-party interveners

145. The European Roma Rights Centre ("the ERRC") described various forms of discrimination against the Roma population, including widespread forced evictions across Europe, as "anti-Gypsyism" that had led to the group's social exclusion and poverty. In the ERRC's opinion, the living conditions of the Roma should be viewed as a direct result of a long history of exclusion and not, as it was often treated, as a stereotypical feature of Roma lifestyle and culture that were incompatible with that of the majority population. The forced evictions of the Roma should be distinguished from other evictions without an ethnic element and should be examined under Article 14 of the Convention. In such cases due consideration should be given to the element of racial harassment; the burden of disproving discrimination should shift to the Government; it should be required that people facing eviction must have access to remedies with an automatic suspensive effect; and the decision-making process leading to eviction must meet certain minimum criteria, including that the nationality or residence status of those evicted should be considered irrelevant.

2. The Court's assessment

(a) Article 8 of the Convention

(i) General principles

146. The general principles applicable to the present case are set out in the judgments of *Winterstein and Others* (cited above, §§ 147-48), *Yordanova and Others* (cited above, §§ 117-18), and *Hirtu and Others* (cited above, § 70).

(ii) *Application of these principles to the present case*

147. Reiterating its observations and conclusions regarding the applicability *ratione materiae* of Article 8 of the Convention (see paragraph 116 above), the Court finds that the demolition of the applicants' unlawful settlement at Paprotna Street by the local authorities on 22 July 2015 amounted to an interference with their right to respect for private and family life (see, *mutatis mutandis*, *Hirtu and Others*, cited above, § 66).

148. The Court is satisfied that the demolition had a valid legal basis in domestic law, namely section 48 of the Building Act (see paragraph 50 above).

149. It is undisputed that the Paprotna Street settlement comprised structures which did not meet the relevant safety, sanitation or building requirements. In particular, the encampment was a fire hazard, and two fires have indeed broken out there in 2014 (see paragraphs 14, 16, 20 and 22 above). While the applicants alleged that the authorities had not considered these issues from the point of view of the needs of those most concerned – the applicants – it must be acknowledged that there is a legitimate public interest in taking measures to cope with hazards such as those that may arise from an unlawful settlement of makeshift dwellings powered by unsecured generators and lacking sewerage and sanitary facilities (see, *mutatis mutandis*, *Yordanova and Others*, cited above, § 114, and *Hirtu and Others*, cited above, § 69). The Court therefore accepts that the demolition orders pursued the legitimate aims of ensuring firstly public order, in the sense of ensuring compliance with urban planning and combating unlawful construction, and the protection of the rights of others, in the sense of ensuring the personal safety of all those present on and in the vicinity of the site (see, *mutatis mutandis*, *Connors*, cited above, § 69).

150. It remains to be established whether the interference was “necessary in a democratic society” within the meaning of Article 8 § 2. The Court reiterates that this requirement raises a question of procedure as well as of substance (see *Yordanova and Others*, cited above, § 118). As to procedure, the safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation when fixing the regulatory framework. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, § 76; *Chapman*, cited above, § 92; *Connors*, cited above, § 83; *Winterstein and Others*, cited above, § 148; and *Hirtu and Others*, cited above, § 75). The Court has recognised that the vulnerable position of Roma people as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Connors*, cited above, § 84).

151. The Court observes that the present case concerns the decision-making process resulting in the demolition orders, the measures taken by the authorities leading to the actual demolition, the manner in which the demolition itself was carried out, and the consequences of the demolition for the applicants.

152. As to the decision-making process, it is not disputed that the applicants have not been granted the status of party to the domestic proceedings, had not been informed about the decisions taken in their respect and were deprived of the possibility of claiming their rights and using the ordinary remedies against the measures taken.

153. The Court cannot exclude that had the applicants been granted party status in the proceedings and had they had a possibility of directly relying on the argument that the demolition might affect their Convention-protected rights, the administrative courts would have nevertheless been able to clearly identify the aims pursued by the demolition orders, the individuals affected by them and the measures taken to secure the proportionality of the measure (compare *Yordanova and Others*, cited above, § 166). However, owing to the fact that the applicants were not in a position to try any such recourse as they had not been notified of the upcoming demolition, the Court concludes that the applicant could not seek to have the administrative authorities or courts make a proportionality assessment before ordering the demolition of the applicants' unlawful settlement. As a result, the applicants could not have their arguments about the risks of homelessness and its repercussions on the applicants' private and family life effectively considered by the authorities for the purposes of any proportionality assessment.

154. Another significant question in the present case is whether the authorities mitigated the effects of the measure they ordered. This question, in turn, goes both to the manner in which the demolition was planned and carried out, and to the possibility of relocating the applicants beforehand.

155. As to how the demolition was planned, the Court finds that having the applicants participate in the proceedings concerning the unlawful construction could have enabled them to ensure that the demolition was scheduled in a way to give them a reasonable amount of time to pack up their settlement and move elsewhere. It would have also meant that the applicants could have been given formal and timely warning of the demolition date. That, again, would have given them an opportunity to prepare for the demolition, alleviating tensions and minimising material losses. The Court observes that although the municipal and NGO workers had informed the applicants of the proceedings and the resulting demolition orders (see paragraphs 40 and 42 above), it does not appear that any formal or written notification of the proposed demolition was provided to them. The informal and undocumented character of the communication with the applicants in 2015, coupled with the record of the authorities' inaction, could have been expected to result, as indeed it did, in the applicants disregarding

those warnings as not serious. As a result, the demolition came as something of a surprise to the applicants, causing them anxiety and a further feeling of marginalisation. In addition, as to the way the demolition was carried out, the Court notes that, according to the applicants' submissions which have not been contested by the Government, the applicants' personal belongings, pets, and objects of material value or necessity (such as medicines) were destroyed or taken to a location of which the applicants had not been notified.

156. As to the possibility of relocating the applicants, the Court is satisfied that they received timely offers of alternative and apparently adequate accommodation (see paragraph 40 and 41 above) and financial aid (see paragraph 44 above). The applicants were given general assistance and encouraged to ameliorate their social conditions by taking up language classes and registering at the unemployment centre (see paragraph 41 above). The Court therefore considers that the applicants' reluctance to take advantage of those offers contributed to their homelessness immediately after the demolition. It also notes that several applicants at least did ultimately opt to benefit from a long-term housing programme set up through a collaboration between local authorities and NGOs (see paragraphs 46, 47 and 92 above).

157. Summing up, the Court considers that the authorities in the present case failed to ensure the decision-making process was compliant with the Convention standards.

(iii) Conclusion as regards Article 8

158. The above considerations are sufficient for the Court to reach the conclusion that there has been a violation of Article 8 regarding their right to respect for their private and family life, on account on the enforcement of demolition orders without ensuring the applicants' participation in the process leading to the making of the orders or examining the proportionality of the proposed orders, with the end result being, a decision-making procedure which did not offer safeguards against disproportionate interference.

(b) Article 14 in conjunction with Article 8

159. In so far as the applicants complained that the destruction of their settlement and movable property had been discriminatory, the Court has given consideration to the applicants' status as members of a vulnerable minority in the context of proportionality under Article 8 (see paragraph 150 *in fine* above).

160. In these circumstances, the Court finds that no separate issue arises under Article 14 with regard to the demolition of the applicants' settlement at Paprotna Street (see, *mutatis mutandis*, *Winterstein and Others*, cited above, § 179, and *Yordanova and Others*, cited above, § 149).

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

161. The applicants complained of a breach of Article 13 in conjunction with Article 8 of the Convention.

162. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

163. The Court finds that this complaint is closely linked to the one examined above under Article 8 and must therefore likewise be declared admissible. Nevertheless, having regard to the reasons that led the Court to its finding of a violation of Article 8 of the Convention (see paragraphs 153, 157 and 158 above), the Court considers that it is not necessary to examine the complaint under Article 13 separately (see *Paketova and Others*, cited above, § 170).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION AND PROTOCOLS

164. The applicants complained that the destruction of their belongings by the persons who had carried out the demolition of their settlement had breached their property rights within the meaning of Article 1 of Protocol No. 1 to the Convention, read alone and together with Article 14 of the Convention.

165. The Government raised a preliminary objection as to the non-exhaustion of domestic remedies regarding this complaint, arguing that the applicants could have pursued a criminal remedy against the persons who had authorised or carried out the demolition. Only the first applicant had filed a criminal complaint, but he had not appealed against the decision to discontinue the investigation. The remaining applicants had not embarked on that path.

166. The applicants did not make any comments regarding the assertion that they could have pursued a criminal remedy.

167. The Court observes that even assuming that the destruction of the applicants' belongings had been attributable to the authorities, the first applicant did not appeal against the decision to discontinue the investigation despite being instructed about this possibility (see paragraph 39 above) and that the other applicants did not lodge any criminal complaint. It follows that this complaint must be rejected for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention (see, *mutatis mutandis*, *Winterstein and Others*, cited above § 183).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

169. The applicants claimed 4,000 euros (EUR) each in respect of non-pecuniary damage.

170. In addition, the applicants claimed various sums of money in respect of pecuniary damage comprising the value of the lost dwellings, cars, household items, personal belongings and cash, as well as the expenses incurred in setting up a new settlement or obtaining replacement ID documents.

171. The Government asked the Court to reject the applicants’ claims as exorbitant and undocumented.

172. The Court considers that the applicants must have suffered non-pecuniary damage on account of the violation found (see, *mutatis mutandis*, *Hirtu and Others*, cited above, § 97; and *Paketova and Others*, cited above, § 176. Ruling on an equitable basis, it awards EUR 5,000 under this head to each of the five households, namely, household no. 1, comprising the first, second, third, fourth and seventh applicants; no. 2, comprising the tenth, eleventh, twelfth, fourteenth and fifteenth applicants; no. 3, comprising the sixth and ninth applicants; no. 4, comprising the fifth and sixteenth applicants; and household no. 5, comprising the eighth and thirteenth applicants. Regard being had to the fact that the applicants’ complaint under Article 8 of the Convention concerns the right to respect for private and family life only (see paragraph 158 above), and that their complaint under Article 1 of Protocol No. 1 to the Convention was declared inadmissible (see paragraphs 164-167 above), the Court dismisses the applicants’ claims in respect of pecuniary damage.

B. Costs and expenses

173. The applicants also claimed a total amount of EUR 7,836 for unspecified “costs incurred by [each] family”. The applicants also claimed EUR 3,570 for the costs of legal representation before the Court.

174. The Government submitted that the applicants’ claims for costs were not supported by any documentation. They also argued that the lawyer working for the Helsinki Foundation for Human Rights should not claim any fees since that organisation was not for profit.

175. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and owing to the absence of any invoice or other document confirming the costs claimed, the Court rejects the applicants' claim under this head.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, that the eighth applicant's widow (the thirteenth applicant) has standing to pursue the present proceedings in his stead;
2. *Declares*, unanimously, *inadmissible* the complaint under Article 1 of Protocol No. 1 to the Convention, read alone and together with Article 14 of the Convention;
3. *Declares*, by five votes to two, *admissible* all remaining complaints;
4. *Holds*, by five votes to two, that there has been a violation of Article 8 of the Convention;
5. *Holds*, unanimously, that there is no need to examine the complaints under Article 13 or under Article 14 in conjunction with Article 8 of the Convention;
6. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay each of the five applicant households composed as listed in paragraph 172 above within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

CALDARAR AND OTHERS v. POLAND JUDGMENT

Done in English, and notified in writing on 6 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek and Judge Poláček is annexed to this judgment:

JOINT DISSENTING OPINION OF JUDGES
WOJTYCZEK AND POLÁČKOVÁ

1. We respectfully disagree with the view that the instant application is admissible because, in our view, the applicants failed to exhaust the available remedies. Furthermore, we disagree with the finding that there has been a violation of Article 8.

2. We fully agree with the majority that – under the Convention – the applicants should have been heard in the demolition proceedings. The domestic procedure was indeed deficient in this respect. In our view, however, this deficiency could have been remedied *ex post facto* at the domestic level.

We note in this connection that the respondent Government indicated several possible *post facto* remedies which would, *prima facie*, appear to have been effective in the instant case. However, the applicants remained passive and failed to avail themselves of any of these remedies. At the same time, the applicants did not argue that there were any legal obstacles to using the remedies indicated by the Government and pointed instead to the practical difficulties they entailed.

We observe that under Article 145 § 1(4) of the Code of Administrative Procedure, administrative proceedings can be reopened where a person with an interest in the proceedings has not participated in them through no fault of their own. If successful, this remedy could have led to a fresh assessment of the applicants' situation and would have enabled them to assert their rights under the Convention by requesting its direct application. Under Article 156 § 1 of the Code of Administrative Procedure a final administrative decision can also be declared null and void. A person who obtains a declaration to the effect that an administrative decision is “null and void” or was “issued contrary to the law” can seek compensation under Article 417¹ § 2 of the Civil Code (see paragraphs 67 and 73).

It is true that according to the Court's established case-law a request for the reopening of proceedings does not, as a rule, constitute an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Sobczyk v. Poland* (dec.), no. 73446/10, § 40, 25 August 2015). However, the Court has held that applicants should have pursued extraordinary remedies, for example, where the quashing of a judgment that has legal force is the only means by which the respondent State can put matters right through its own legal system. Similarly, the Court has held that a request for reopening of proceedings could, in certain specific circumstances, be the only means whereby a particular complaint could be raised in the domestic courts and, in such circumstances, would constitute an effective remedy (see *Dinchev v. Bulgaria* (dec.), no. 17220/09, § 28, 21 November 2017, with further references). In our view, a request for the reopening of administrative

proceedings is the ordinary remedy for applicants who could not participate in previous proceedings.

While the Government did not present any examples of domestic case-law regarding situations similar to that of the applicants, we note that such situations do not occur frequently and most probably have not yet been brought to the attention of the courts. Nor did the applicants demonstrate the existence of case-law rendering the remedies ineffective. In any event, we observe that – under the Court’s case-law – mere doubts as to the success of a given remedy do not absolve the applicants from availing themselves of it (see, *mutatis mutandis*, *Pikielny and Others v. Poland* (dec.), no. 3524/05, § 57, 18 September 2012).

As regards anti-discrimination proceedings under the Equal Treatment Act, we observe that such proceedings could have dealt with the discrimination alleged in the present case. The applicants did not demonstrate any objective obstacle to their bringing discrimination proceedings and pursuing them fully, with the assistance of legal representatives.

Lastly, we note that there is nothing in the Court’s case-law which would have absolved the applicants in a case like this one from exhausting *ex post facto* remedies in the absence of effective *ex ante* remedies. We also note that proceedings before the Court are themselves instances of an *ex post facto* international remedy which does not afford better protection than the *ex post facto* remedies available at the domestic level.

We therefore consider that a combination of the *ex post facto* remedies that were available in the circumstances of the case cannot be regarded as ineffective for the purposes of the Convention. In the light of the principle of subsidiarity, before having their Convention claims examined by the Court, the applicants should have sought redress at the domestic level.

3. Concerning the merits of the application, we agree with the view that the demolition had a valid basis in domestic law, namely, section 48 of the Building Act (see paragraph 148). We also fully agree that the demolition orders pursued the legitimate aims of ensuring public order, in the sense of ensuring compliance with urban planning and combating unlawful construction, and the protection of the rights of others, in the sense of ensuring the personal safety of all those present on and in the vicinity of the site (see paragraph 149). In our view, it is essential to ensure order in the field of urban planning.

We also agree with the following assessment made by the majority in paragraph 156:

“As to the possibility of relocating the applicants, the Court is satisfied that they received timely offers of alternative and apparently adequate accommodation (see paragraphs 40 and 41 above) and financial aid (see paragraph 44 above). The applicants were given general assistance and encouraged to ameliorate their social conditions by taking up language classes and registering at the unemployment centre (see paragraph 41 above). The Court therefore considers that the applicants’ reluctance

to take advantage of those offers contributed to their homelessness immediately after the demolition. It also notes that several applicants at least did ultimately opt to benefit from a long-term housing programme set up through a collaboration between local authorities and NGOs (see paragraphs 46, 47 and 92 above).”

In our view, for all the reasons presented above, the demolition order does not appear to have constituted a disproportionate interference with the applicants’ rights.

Moreover, under the Court’s case-law, authorities ordering the demolition of houses are not required to carry out a systematic proportionality assessment *proprio motu*. Rather, “where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic judicial proceedings, the domestic courts should examine them in detail and provide adequate reasons” (see *Winterstein and Others v. France*, no. 27013/07, § 148, 17 October 2013).

We agree, in this context, with the majority’s view that the applicants could not seek to have the administrative authorities or courts make a proportionality assessment before ordering the demolition of their unlawful settlement. However – unlike the majority – we consider that, by means of the above-mentioned remedies, the applicants could have tried to present their arguments about the risk of homelessness and its potential repercussions for their private and family life and could have sought to have them taken effectively into consideration by the authorities for the purposes of a proportionality assessment. The fact that the domestic legislation does not provide for a proportionality assessment in the case of an envisaged demolition, and even requires that demolition be ordered automatically once the legal conditions are met, does not preclude the direct application of the Convention and a proportionality assessment by the Polish courts and administrative bodies under the Convention as so applied. Had the interference with their Convention rights been found by the domestic authorities to be disproportionate, the applicants could have claimed compensation for the pecuniary and non-pecuniary damage caused to them.

4. To sum up, the approach adopted by the majority would appear to represent a departure from the principle of subsidiarity and from the Court’s case-law on exhaustion of domestic remedies which will incite other applicants to remain passive at the domestic level and bring their claims directly to the Court without first seeking redress from the domestic authorities.

APPENDIX

No.	Applicant's name	Year of birth	Nationality	Place of residence
1.	Traian CALDARAR	1966	Romanian	Wrocław
2.	Darius CALDARAR	2008	Romanian	Wrocław
3.	Maria CALDARAR	1970	Romanian	Wrocław
4.	Princu CALDARAR	2010	Romanian	Wrocław
5.	Robert CALDARAR	1993	Romanian	Wrocław
6.	Rusalina CALDARAR	1995	Romanian	Wrocław
7.	Teresa CALDARAR	2000	Romanian	Wrocław
8.	Traian CALDARAR	1963	Romanian	deceased
9.	Traian-Nicolae CALDARAR	1990	Romanian	Wrocław
10.	Armando-Versatu LACATUS	2012	Romanian	Wrocław
11.	Gabriel LACATUS	2011	Romanian	Wrocław
12.	Joanna LACATUS	1993	Romanian	Wrocław
13.	Marcela LACATUS	1965	Romanian	Wrocław
14.	Tomasz LACATUS	2013	Romanian	Wrocław
15.	Zoltan LACATUS	1994	Romanian	Wrocław
16.	Sabrina STOICA	2001	Romanian	Wrocław