



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

FIRST SECTION

Application no. 19841/06
Leonas Iono BAGDONAVICIUS and others
against Russia
lodged on 12 May 2006

STATEMENT OF FACTS

The applicants are thirty-three individuals from six Roma families who had been long-term residents of the Dorozhnoye village located in the Gurievsk district of the Kaliningrad Region, approximately seven kilometres from the Kaliningrad city in north-western Russia. The applicants' details are listed in the appendix. They are represented before the Court by Mr J. Goldston, Ms J. Harrington and Ms M. Adjami, lawyers with the Open Society Justice Initiative in Budapest, Hungary, and by Mr V. Luzin, a Russian lawyer.

The facts of the case, as submitted by the applicants, may be summarised as follows.

On 5 October 1956 the USSR authorities adopted Decree no. 450 entitled "On Engaging Vagrant Gypsies in Labour." This decree criminalized Roma nomadic living, forcing Roma to establish fixed residence. The Soviet authorities selected sites for Roma to settle and even provided some communities with building materials to aid in the construction of their first houses.

Pursuant to the 1956 decree, the authorities in Kaliningrad allocated the Dorozhnoye village for the settlement of the local Roma population and since then, Dorozhnoye developed as an almost exclusive Roma settlement on the outskirts of Kaliningrad city. Roma families built permanent houses on parcels of land in Dorozhnoye Village. Furthermore, they obtained passports that officially recognized their permanent residence as their homes in Dorozhnoye village.

The Roma of Dorozhnoye village, including the six applicant families, maintained their permanent residence in their family homes after the dissolution of the Soviet Union. In 2001, the Gurievsk district administration invited the Roma residents of Dorozhnoye village to collaborate in the development of a general reconstruction plan for their community. This plan foresaw the provision of based public services from the government, including electricity and waste disposal, in addition to

reserved space for private development. On 29 March 2001, representatives of the Roma residents of Dorozhnoye discussed this development plan with the Kaliningrad Regional Building Committee, which approved the general structure of the plan and decided to continue to elaborate the plan further. Shortly after the general adoption of this master development plan, municipal officials began implementing some aspects of the plan, for example, by proceeding to name some of the streets within Dorozhnoye village.

As the Kaliningrad authorities were discussing the terms of the Dorozhnoye village development plan in 2001, they were also encouraging village residents to undergo legal proceedings to formalise their legal title to their houses in Dorozhnoye village. The applicant Mr Samulaytis applied to the court to have his title to the house recognised by virtue of acquisitive prescription, that is, on account of the fact that he had possessed the house openly and in good faith for more than fifteen years, since 1988. On 20 February 2002 the Gurievsk District Court granted his claim. However, on 24 June 2002 the Presidium of the Kaliningrad Regional Court quashed that judgment by way of supervisory review and remitted the case for a new consideration. On 29 November 2002 the District Court discontinued the proceedings because Mr Samulaytis had not shown up at two hearings.

Several families, including some of the applicant families, began these proceedings and obtained decisions in their favour from the Gurievsk District Court, recognising their entitlement to their homes.

By the end of 2002, the local government administration changed its policy and halted further legalization and development of the Dorozhnoye community.

According to the applicants, from 2005 on, the new Governor of the Kaliningrad Region and the local branch of the Federal Drug Enforcement Agency (Gosnarkokontrol) increasingly made public allegations in the media that Dorozhnoye village was a haven for drug dealing.

In May 2005 the Gurievsk municipal authorities conducted an on-site inspection in the Dorozhnoye village with a view to identifying unauthorised constructions. They established that the applicants' dwelling fell into that category and the Gurievsk district prosecutor's office instituted judicial proceedings to obtain court orders declaring the applicants' families' occupation of their houses unlawful.

The first judgment was entered against Mr Kasperavichus by the Gurievsk District Court of the Kaliningrad Region on 20 December 2005. His house no. 37 was determined to be unauthorised construction and he was required to tear it down at his own expense. On 7, 8 and 9 February 2006 the District Court issued similar orders against Mr Bagdanovicius, Mr Arlauskas, Ms Zhguleva and Mr Aleksandrovich.

In the meantime, the District Court re-opened the proceedings in Mr Samulaytis' case (see above) at his request and, by judgment of 27 December 2005, rejected his claim, finding that the house in question had been unauthorised construction, in respect of which no legal title can be obtained.

All of the above applicants submitted statements of appeal, assisted by professional lawyers.

On 22 February 2006 the Kaliningrad Regional Court rejected an appeal by Mr Kasperavichus, on 1 March 2006 an appeal by Mr Samulaytis, and on

3 May 2006 four appeals by Mr Bagdanovicius, Mr Arlauskas, Ms Zhguleva and Mr Aleksandrovich. The latter decisions were identically worded and read, in the relevant part, as follows:

“...the house [in question] was constructed without having obtained the necessary permits, such as an approved detailed design and a building permission. Under such circumstances, the [District Court] correctly concluded that it was unauthorised construction and should be demolished.

The arguments concerning the duration of the respondent's possession of the house... have no legal significance because ... the Civil Code establishes special conditions for recognising the title to an unauthorised construction which are not present in this case.

Reliance on the fact that the respondent and his family members are registered as resident in the impugned house cannot be taken into consideration by the [Regional Court] because the law does not provide for a possibility of being registered in an unauthorised construction which was not commissioned as a residential building.

The fact that the respondent has no other accommodation, except his current one, has no legal significance for the claim concerning demolition of an unauthorised construction.

The allegation of discrimination [of the respondent and family members] on account of [their] Gypsy origin is without foundation since there are sufficient legal grounds for granting [the prosecutor's] claim...”

The Regional Court also rejected the applicants' arguments relating to the alleged failure to inform them about the hearings before the District Court. It found that the summons had been delivered to the applicants, in some cases against their signature, in good time.

During the week of 29 May through 2 June 2006, the Russian authorities demolished and burned the homes of the six applicant families. In all, the authorities razed the approximately 43 Roma houses that had formed Dorozhnoye village, leaving only two private dwellings in the area, both owned by ethnic Russians, standing.

The applicants went on to live in makeshift accommodation, including abandoned railway cars, wooden shacks and tent shelters in a field. As a consequence of the destruction of their homes, the applicants have no residence status or registration papers, which means that they have no access to medical care or limited access to education for their children.

COMPLAINTS

The applicants complain under Article 8 of the Convention and Article 1 of Protocol No. 1, taken on their own and in conjunction with Article 14 of the Convention, about the demolition of their homes, their forced eviction, loss of possessions and separation of their families which was motivated by racial animus toward them as Roma people.

QUESTIONS TO THE PARTIES

1. In the light of the principles established in the Court's case-law (see *Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012), was there a violation of Article 8 of the Convention as regards the domestic courts' decision to evict the applicants from their homes and to have their houses demolished?

2. As regards the demolition of the applicants' houses and the disposal of their chattel, was there a violation of Article 1 of Protocol No. 1?

3. Were the applicants discriminated against on account of their Roma ethnicity in breach of Article 14 of the Convention, read in conjunction with Article 8 of the Convention? Reference is being made in particular to the fact that only the houses belonging to the Roma, but not those belonging to ethnic Russians, were demolished, and to the statements made by the Governor of the Kaliningrad Region and officers of the Federal Drug Enforcement Agency.

APPENDIX: List of applicants by their family

Bagdanovicus Family

1. Leonas Iono BAGDONAVICIUS born on 16/11/1950 is a Lithuanian and Russian national. He is the head of household.
2. Magdalena BAGDONAVICIENE born on 06/02/1953 is a Lithuanian national. She is the wife of the first applicant.
3. Aleksandr BAGDONAVICIUS born on 14/03/1978 is a Lithuanian national. He is the son of the first applicant.
4. Helena BAGDONAVICIUTE born on 13/04/1972 is a Lithuanian national. She is the daughter of the first applicant.
5. Olegas BAGDONAVICIUS born on 14/02/1970 is a Lithuanian national. He is the son of the first applicant.
6. Tamila BAGDONAVICIUTE born on 16/01/1988 is a Lithuanian national. She is the granddaughter of the first applicant and the daughter of the fourth applicant.
7. Ana BAGDONAVICIUTE born on 28/09/2004 is a Lithuanian national. She is the granddaughter of the first applicant and the daughter of the fourth applicant.
8. Leonid Olegovich ALEKSANDROVICH born on 06/05/1998 is a Russian national. He is the grandson of the first applicant and the son of the fifth applicant.
9. Nikita Olegovich ALEKSANDROVICH born on 14/03/2000 is a Russian national. He is the grandson of the first applicant and the son of the fifth applicant.
10. Nataliya Antano ALEKSANDROVICH born on 07/08/1978 is a Russian national. She is the wife of the fifth applicant.

Arlauskas Family

11. Aleksandras Andreyaus ARLAUSKAS born on 15/05/1956 is a Russian national. He is the head of household.
12. Mariya Savelyevna ARLAUSKENE born on 08/04/1958 is a Russian national. She is the wife of the eleventh applicant.
13. Anastasiya Aleksandrovna ARLAUSKAYTE born on 26/02/1981 is a Russian national. She is the daughter of the eleventh applicant. She died on 15/08/2006.
14. Mikhail Aleksandrovich ARLAUSKAS born on 25/11/1976 is a Russian national. He is the son of the eleventh applicant.
15. Angela Aleksandrovna ARLAUSKAYTE born on 22/08/1983 is a Russian national. She is the daughter of the eleventh applicant.
16. Mikhail Mikhaylovich ARLAUSKAS born on 14/06/1995 is a Russian national. He is the grandson of the eleventh applicant and the son of the fourteenth applicant.
17. Vanya Aleksandrovich ARLAUSKAS born on 10/04/2001 is a Russian national. He is the grandson of the eleventh applicant and the son of the fifteenth applicant.
18. Olga Aleksandrovna ARLAUSKAYTE born on 13/04/2002 is a Russian national. She is the granddaughter of the eleventh applicant and the daughter of the fifteenth applicant.

19. Rustam Alekseyevich ARLAUSKAS born on 06/05/2002 is a Russian national. He is the grandson of the eleventh applicant and the son of the thirteenth applicant.

Zhguleva Family

20. Nonna Alekseyevna ZHGULEVA born on 26/12/1970 is a Russian national. She is the head of household.

21. Dinari Arunovich ZHGULEV born on 21/04/2002 is a Russian national. He is the daughter of the twentieth applicant.

Aleksandrovich Family

22. Nikolay Ivanovich ALEKSANDROVICH born on 05/05/1946 is a Russian national. He is the head of household. He died on 17/01/2008.

23. Tamara Alekseyevna ALEKSANDROVICH born on 17/11/1949 is a Russian national. She is the wife of the twenty-second applicant.

24. Margarita Alekseyevna MATULEVICH born on 22/03/1969 is a Russian national. She is the daughter of the twenty-second applicant. She went missing and is considered to be dead.

25. Lyubov Grafovna MATULEVICH born on 10/04/1992 is a Russian national. She is the granddaughter of the twenty-second applicant and the daughter of the twentyfourth applicant.

Samulaytis-Petravichute Family

26. Konstantin Sergeyevich SAMULAYTIS born on 04/08/1961 is a Russian national. He is the co-owner of household and the brother of the twenty-seventh applicant.

27. Anastasiya Silvestras PETRAVICHUTE born on 16/02/1975 is a Russian national. She is the co-owner of household and the sister of the twenty-sixth applicant.

28. Rada Viktorovna ARLAUSKAYTE born on 18/10/1973 is a Russian national. She is the wife of the twenty-sixth applicant.

29. Ramina Ruslanovna ARLAUSKAYTE born on 28/04/1997 is a Russian national. She is the daughter of the twenty-seventh applicant.

Kasperavichus Family

30. Vitautas Mikolo KASPERAVICHUS born on 10/10/1951 is a Russian national. He is the head of household. He died on 14/12/2006.

31. Aleksandr Vitautovich KASPERAVICHUS born on 01/11/1977 is a Russian national. He is the son of the thirtieth applicant. He went missing.

32. Graf Viktorovich KASPERAVICHUS born on 27/06/1980 is a Russian national. He is the son of the thirtieth applicant. He died on 1 June 2008.

33. Kristina Aleksandrovna KASPERAVICHUTE born on 18/03/1999 is a Russian national. She is the granddaughter of the thirtieth applicant and the daughter of the thirty-first applicant.