



The demolition of homes and the forced eviction of residents of Roma origin breached their right to respect for their private and family life

In today's Chamber judgment¹ in the case of [Bagdonavicius and Others v. Russia](#) (application no. 19841/06) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights; and

that the respondent State had not failed to comply with its obligations under Article 34 (**right of individual application**) of the Convention.

The case concerned the demolition of houses and the forced eviction of the applicants, who are of Roma origin and were resident in the village of Dorozhnoye.

The Court concluded that the applicants had not, in the proceedings with regard to the demolition of their homes, had the benefit of an examination of the proportionality of the interference, in compliance with the requirements of Article 8, and that the national authorities had not conducted genuine consultations with the applicants about possible rehousing options, on the basis of their needs and prior to their forcible eviction.

With regard to the applicants' allegation of proprietary interests with regard to their homes, the Court considered that these had not been sufficiently weighty and established to constitute a substantive interest and hence "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention.

Lastly, in the light of the case file, the Court held that the authorities of the respondent State had not hindered the applicants in the exercise of their right of individual application.

Principal facts

The applicants are 33 individuals, six of whom are now dead and one of whom is missing, from six Roma families who lived in the village of Dorozhnoye in the Guryevsk district of the Kaliningrad Region. They complained that their homes were demolished and that they were forcibly evicted on account of their membership of the Roma community.

In October 1956 the USSR Council of Ministers issued a decree criminalising nomadic living, thus forcing the Roma to become sedentary. The Soviet authorities selected the municipalities in which the Roma were to settle. The applicants submitted that as a result of the decree, the village of Dorozhnoye had served as a destination for Roma and had been developed into a settlement almost exclusively populated by Roma families. Various inhabitants of the village continued to live there after the dissolution of the Soviet Union without legalising their dwellings or acquiring title to the land on which they had been built. During 2001 and 2002 the local authorities considered plans to develop Dorozhnoye. In 2001 the authorities allegedly asked residents of the village to assist in the implementation of a development plan whereby a number of houses would be demolished. Some of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

the residents applied to the courts to have their title to their houses recognised by virtue of acquisitive prescription. Towards the end of 2002 the authorities changed their policy and halted their development plans for the village of Dorozhnoye. According to the applicants, from 2005 onwards the regional authorities made discriminatory statements about the village inhabitants.

In February 2002 two of the applicants – Mr Kasperavichus and Mr Samulaytis – applied to the courts for recognition of their title to their respective houses, but were unsuccessful.

In 2005 and 2006 representatives of the Guryevsk district authorities came to the village to conduct a survey of the buildings. On the basis of the data obtained, the district prosecutor's office instituted judicial proceedings, seeking a declaration that the buildings inspected had been constructed illegally, and a consequent order for their demolition. The court held that the buildings in question were unauthorised and ordered their demolition. Some of the applicants appealed against the judgments relating to their homes. The Kaliningrad Regional Court dismissed their appeals. The applicants state that their homes were demolished between 29 May and 2 June 2006, in accordance with binding court decisions. The Government submitted a copy of order no. 288 issued by the Kaliningrad regional government on 28 April 2006, granting financial support (of approximately 166,700 euros) to stabilise the social situation in the village of Dorozhnoye.

Complaints, procedure and composition of the Court

Relying on Article 8, the applicants alleged that their eviction and the demolition of their homes had infringed their right to respect for their private and family life and home. Under Article 1 of Protocol No. 1 (protection of property), they complained of a violation of their right to the peaceful enjoyment of their possessions. Relying on Article 34 (right of individual application), they alleged that the interviews that some of them had had with the police had hindered the exercise of their right of individual application. Lastly, they claimed to have been the victims of violations of their rights under Article 14 (prohibition of discrimination) in conjunction with Article 8.

The application was lodged with the European Court of Human Rights on 12 May 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that the occupation of the land in the village of Dorozhnoye through unauthorised building work had covered a sufficiently long period and dated back to the Soviet period. The applicants had been able to develop sufficiently close ties with the locality and to establish a community life in it. The Court noted that the domestic court had ordered that the houses be demolished without invoking any reasons other than the absence of building permits and the fact that the land was occupied unlawfully. The domestic courts had not assessed the proportionality of this measure: once they had found that the buildings were constructed unlawfully, they had given

that aspect paramount importance, without weighing it up against the applicants' arguments. The Court concluded that the applicants had not, in the proceedings with regard to the demolition of their homes, had the benefit of an examination of the proportionality of the interference in compliance with the requirements of Article 8.

The possible consequences of demolishing the houses and forcibly evicting the applicants had not been taken into account by the domestic courts during or after the judicial proceedings brought by the prosecutor. As to the proposals for rehousing, the Government had not shown that the adoption of order no. 228 had been followed by the actual creation of a housing fund and that such housing had been made available and offered to the applicants.

In consequence, the Court considered that the national authorities had not conducted genuine consultations with the applicants about possible rehousing options, on the basis of their needs and prior to their forcible eviction.

Article 1 of Protocol No. 1

The Court found that the interpretation of Article 234 of the Civil Code by the domestic courts, to the effect that the applicants could not benefit from acquisitive prescription in the absence of a valid title to the land on which the houses had been built, was neither arbitrary nor unreasonable. The Court, in line with the conclusions of the domestic courts, considered that the applicants did not have valid title to their houses, within the meaning of the national legislation.

It followed from this that the applicants could not consider themselves to be "legally secure". Nor was there any indication that they had ever paid any taxes related to possession of the houses or that they had been provided with public services for which they were charged. The Court did not detect any uncertainty as to the application of Article 222 of the Russian Civil Code that would have given the applicants grounds to hope that their homes would not fall within its scope. The fact that the authorities had failed to react for a certain period of time could not give the applicants the impression that proceedings could not be brought against them, and proceedings were indeed brought in 2005 and 2006. Lastly, the Court noted that the duration of the possession of the houses was not sufficient in itself to constitute a proprietary interest that was "sufficiently established and weighty".

In conclusion, the Court considered that the applicants' proprietary interests with regard to their homes had not been sufficiently weighty and established to constitute a substantive interest and hence "possessions" within the meaning of Article 1 of Protocol No. 1. It followed that this part of the complaint had to be rejected by application of Article 35 § 4 of the Convention.

With regard to the destruction of moveable property during the operation to demolish the houses, the Court noted that the applicants had neither submitted a complaint nor applied to the national courts for compensation. This part of the complaint had to be rejected for failure to exhaust the domestic remedies.

Article 34

Some of the applicants had had interviews with the police on 26 and 27 August 2014. The Court noted that these interviews had been intended, with a view to preparation of the Government's observations to the Court, merely to gather information about the events which had taken place seven years before the application was communicated to the Government and about the applicants' subsequent places of residence. The interview records did not indicate that the applicants had made any objections or comments about how these interviews were held or about the conduct of the police officer who carried them out. The authorities of the respondent State could not be held to have hindered the applicants in the exercise of their right of individual petition. The respondent State had not breached its obligations under Article 34.

Article 14 taken together with Article 8

Having regard to its finding concerning Article 8, the Court considered that it was not necessary to examine separately whether there had been a breach of Article 14 taken in conjunction with Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicants 500 euros (EUR) in respect of pecuniary damage, and EUR 7,500 in respect of non-pecuniary damage.

Separate Opinion

Judge Keller expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.