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

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The authorities breached the Convention by not taking proper account of the consequences of the clearance of a Roma encampment or the applicants' particular circumstances

In today's **Chamber** judgment[1] in the case of **Hirtu and Others v. France** (application no. 24720/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights,

a violation of Article 8 (right to respect for private and family life and the home), and

a violation of Article 13 (right to an effective remedy).

The case concerned the clearance of an unauthorised encampment where the applicants, who are of Roma origin, had been living for six months.

The Court observed first of all that the circumstances of their forcible eviction and their subsequent living conditions did not amount to inhuman or degrading treatment.

The authorities had been entitled in principle to evict the applicants, who had been unlawfully occupying municipal land and could not claim to have a legitimate expectation of remaining there.

Nevertheless, with regard to the manner of the applicants' eviction, the Court noted that the measure had not been based on a judicial decision but on the procedure for issuing formal notice under section 9 of the Law of 5 July 2000. The decision to use that procedure had entailed a number of consequences. Owing to the short time between the issuing of the prefect's order and its implementation, no account had been taken of the repercussions of the eviction or the applicants' particular circumstances. Furthermore, because of the procedure that had been applied, the remedy provided for by domestic law had come into play after the decision had been taken by the administrative authorities and had been ineffective in the present case.

The Court emphasised that the fact that the applicants belonged to an underprivileged social group, and their particular needs on that account, had to be taken into consideration in the proportionality assessment that the national authorities were under a duty to undertake. As that had not been done in the present case, the Court held that the manner of the applicants' eviction had breached their right to respect for their private and family life.

Lastly, the Court noted that that there had been no judicial examination at first instance of the applicants' arguments under Articles 3 and 8 of the Convention, either in proceedings on the merits or under the urgent procedure, in breach of the requirements of Article 13.

Principal facts

The applicants are seven Romanian nationals who belong to the Roma community: Laurentiu Constantin Hirtu, Stanica Caldaras, Dorina and Paulina Cirpaci, Imbrea and Virginia Istfan, and Angelica Latcu.

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.

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The applicants stated that they had lived in France for many years and that, with one exception, they all held ten-year residence permits as European Union nationals. At the time of the events, all the school-age children were attending school. On 1 October 2012, after a previous encampment had been dismantled, the applicants, as part of a group of 141 people including around 50 children, moved in 43 caravans to a plot of land in La Courneuve, in the suburbs of Paris.

At the request of the mayor of La Courneuve, the prefect of Seine-Saint-Denis issued an order on 29 March 2013 requiring "the travellers unlawfully settled on the site at rue Politzer and rue de la Prévôté in the municipality of La Courneuve" to vacate the site within 48 hours, failing which they would be forcibly evicted.

Mr Hirtu was the only applicant who succeeded in bringing an action in the Montreuil Administrative Court, which declared his action inadmissible. He appealed to the Versailles Administrative Court of Appeal, without success.

On 5 April 2013 Virginia Istfan, Dorina Cirpaci, Stanica Calderas and another occupant of the site submitted an urgent application for protection of a fundamental freedom to the administrative court, requesting that the eviction be postponed until 1 July 2013 to allow them time to find stable accommodation.

In a decision of 10 April 2013, served on the same day, the urgent-applications judge declared the application inadmissible. The applicants lodged an appeal with the urgent-applications judge of the *Conseil d'État*, but withdrew it subsequently on the advice of their lawyer since they had been evicted from the land in the meantime.

On 11 April 2013 the applicants applied to the Court for an interim measure under Rule 39, seeking the suspension of the prefect's order and relying on Articles 3 and 8 of the Convention and on Article 2 of Protocol No. 1 (right to education). On 12 April 2013 their representative, the European Roma Rights Centre (ERRC), informed the Court that the applicants had left of their own accord during the night of 11 April and were staying a few streets away in Bobigny.

No accommodation was offered to the applicants, who stated that they had slept outside or in their cars before moving to the settlement known as Coquetiers in Bobigny, where they had to share a caravan with other families or buy a new one.

On 19 August 2014 the municipality issued an order requiring the inhabitants of the Coquetiers encampment to vacate it within 48 hours. Several of the inhabitants lodged an urgent application for protection of a fundamental freedom with the administrative court, which rejected it on 25 August 2014. The same day, three of the applicants requested the Court to apply Rule 39 of the Rules of Court, seeking the suspension of the municipality's order.

On 1 September 2014 the duty judge decided not to apply Rule 39, in view of the assurances given by the Government that prior to any eviction the prefect would carry out the social assessment provided for by domestic law and would provide all vulnerable persons with emergency accommodation. On 16 April 2015 the Court declared the application (no. 58553/14) inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants contended that the circumstances of their forcible eviction and their subsequent living conditions amounted to inhuman and degrading treatment. Under Article 8 (right to respect for private and family life and the home), they complained of a breach of their right to respect for their private and family life and their homes. Relying on Article 13 (right to an effective remedy), they alleged that they had not had an effective remedy by which to challenge their forcible eviction.

The application was lodged with the European Court of Human Rights on 11 April 2013.

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

Síofra **O'Leary** (Ireland), *President*,
Gabriele **Kucsko-Stadlmayer** (Austria),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Victor **Soloveytchik**, *Deputy Section Registrar.*

Decision of the Court

Article 3

The Court observed that the applicants complained, firstly, about the circumstances of their eviction. However, the removal from the site that had been lawfully ordered by the prefect had not taken place, as the applicants had anticipated it and had left the camp of their own accord. While the applicants alleged that most of their caravans had been seized, this had not been established and they did not claim to have been subjected to any other violence on that occasion. The applicants' second complaint concerned their living conditions after the eviction. In that connection the Court observed that several of the applicants had returned to Romania after the camp had been cleared, and that Stanica Caldaras and his family had been provided with social housing. As to the others, their request for interim measures concerning their situation in the Coquetiers settlement had been rejected in view of the assurances provided by the Government, and their further application to the Court had been declared inadmissible. Accordingly, the French authorities could not be said to have remained indifferent to their situation.

The Court therefore held that there had been no violation of Article 3 of the Convention.

Article 8

The Court stated at the outset that the applicants could not claim interference with their right to respect for their homes, in view of the lack of a sufficient and continuous link with the place where they had been living. As in several previous cases, however, the Court considered that the clearance of an encampment inevitably had repercussions on private life and family ties. There had therefore been interference with the applicants' right to respect for their private and family life.

In the present case the Administrative Court of Appeal had observed that, according to a police report submitted to it, the caravans on the site had been on wheels and had been parked next to vehicles capable of towing them. The court had inferred from this that the Law of 5 July 2000, referred to above, was applicable in the applicants' case. The interference had therefore been in accordance with the law.

The Court noted that the prefect's order had been based both on the public-health risks and on the disturbance to people in the locality. The police report had mentioned a number of problems suffered by local businesses, including break-ins, the presence of people carrying knives, fights, litter in the hedgerows, and the presence of excrement. The Court therefore considered that the interference had pursued the legitimate aims of protecting health and public safety and protecting the rights and freedoms of others.

The Court drew a distinction between the eviction itself and the manner in which it had been carried out. With regard to the former aspect, the authorities had been entitled in principle to evict the

applicants, who had been unlawfully occupying municipal land and could not claim to have a legitimate expectation of remaining there.

As to the manner in which the eviction had been carried out, the Court observed that the measure had not been based on a judicial decision but had been carried out in accordance with the procedure for issuing formal notice under section 9 of the Law of 5 July 2000. The decision to use that procedure had entailed a number of consequences.

Firstly, in view of the short time between the issuing of the prefect's order, its service, and the eviction itself, none of the measures advocated in the 2012 circular had been implemented. While the Government argued that there had been no obligation to rehouse the applicants since they had possessed caravans, the Court noted, firstly, that the applicants had alleged that all but one of their caravans had been seized, and secondly, that the measures listed in the circular (assessment of the situation of the families and individuals concerned, as well as assistance with schooling, healthcare and housing) were applicable whether or not the persons concerned had caravans. Hence, no account had been taken of the repercussions of the eviction or the applicants' particular circumstances.

Secondly, because the procedure for giving formal notice had been applied, the remedy provided for in domestic law had come into play after the decision had been taken by the administrative authorities, whereas in other cases the courts assessed the proportionality of the measure before taking their decision. None of the remedies used by the applicants had enabled them subsequently to submit their arguments to a judicial body.

As a result, the first judicial body to rule on the proportionality of the interference had been the Administrative Court of Appeal in October 2014, 18 months after the evictions from the camp.

The Court reaffirmed that the fact that the applicants belonged to an underprivileged social group, and their particular needs on that account, had to be taken into consideration in the proportionality assessment that the national authorities were under a duty to undertake, not only when considering approaches to dealing with the unlawful settlement but also, if eviction was necessary, when deciding on its timing and manner and, if possible, arrangements for alternative accommodation. As part of the procedural safeguards of Article 8, any person subjected to interference with his or her rights under that provision should be able to have the proportionality of the measure reviewed by an independent tribunal in the light of the relevant principles under Article 8.

As this had not been the situation in the present case, the Court held that the manner of the applicants' eviction had been in breach of Article 8 of the Convention.

Article 13 read in conjunction with Articles 3 and 8

The Court noted that domestic law provided for a specific remedy with suspensive effect under section 9 of the Law of 5 July 2000.

While that remedy appeared effective, the Court observed that in the applicants' case the judge had not examined the action on the merits but had declared it inadmissible on the grounds that Mr Hirtu had not established that he had been resident on the site. The Court also observed that the urgent application for protection of a fundamental freedom lodged by three other applicants had also been declared inadmissible on the grounds of the existence of the specific remedy provided for by section 9 of the Law of 5 July 2000.

Accordingly, the Court found that there had been no judicial examination at first instance of the applicants' arguments under Articles 3 and 8 of the Convention, either in proceedings on the merits or under the urgent procedure, in breach of the requirements of Article 13.

There had therefore been a violation of Article 13.

Just satisfaction (Article 41)

The Court held that France was to pay 7,000 euros (EUR) each to the individual applicants and jointly to Imbrea and Virginia Istfan, in respect of non-pecuniary damage, and EUR 7,920 to the applicants jointly, plus any tax that might be chargeable to them, in respect of costs and expenses.

The judgment is available only in French.

Press contacts
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