

**Bagdonavichus v. Russia**

**Case No.19841/06**

**OBSERVATIONS OF THE APPLICANTS ON ADMISSIBILITY AND THE  
MERITS**

**IN REPLY TO THE GOVERNMENT'S OBSERVATIONS**

16 July 2014

## CONTENTS

<b>I. INTRODUCTION</b> .....	<b>4</b>
<b>II. FACTUAL BACKGROUND</b> .....	<b>5</b>
A. ALL APPLICANTS DIRECTLY AFFECTED BY DEMOLITION .....	6
<i>All Applicants Lived in the Village at the Time of the Demolition</i> .....	6
Bagdonavichus family.....	6
Arlauskas family .....	7
Zhguleva and Alexandrovich families.....	8
Samulajtis-Petravichute family .....	8
Kasperavichus family.....	9
Heads of household acted on behalf of families in eviction proceedings .....	9
<i>Registration is not a Reliable Indication of Actual Address</i> .....	10
B. VIOLENCE DURING DEMOLITION.....	11
<i>Interference with Article 34</i> .....	13
C. DRUG-RELATED CONVICTIONS .....	13
D. DECREE ON “ALLOCATION OF FUNDS” NOT A LEGITIMATE ALTERNATIVE.....	15
<b>III. ADMISSIBILITY OF THE APPLICATION</b> .....	<b>16</b>
A. ALL APPLICANTS ARE VICTIMS UNDER ARTICLE 34 .....	17
B. THE APPLICANTS PROPERLY EXHAUSTED DOMESTIC REMEDIES .....	18
<i>Remedies Properly Exhausted</i> .....	18
<i>Other Remedies not Available, Effective or Sufficient</i> .....	19
<i>Special Circumstances</i> .....	21
C. HELENA AND ANA BAGDONAVICHUTE DID NOT ABUSE THE RIGHT OF PETITION .....	22
<b>IV. MERITS</b> .....	<b>22</b>
<b>A. ARTICLE 8 (QUESTION 1)</b> .....	<b>23</b>
INTERFERENCE WITH APPLICANTS’ HOMES, AND THEIR PRIVATE AND FAMILY LIFE .....	23
INTERFERENCE NOT “IN ACCORDANCE WITH THE LAW”.....	24
INTERFERENCE NOT JUSTIFIED.....	25
<i>Narrow Margin of Appreciation Applies</i> .....	25
<i>Unlawfulness of Ownership not a Sufficient Justification</i> .....	26
Applicants’ long-term residence and vulnerable situation must be taken into account .....	26
Applicants entitled to recognition of ownership.....	28
<i>Criminal Activity and Collective Punishment Cannot Justify Demolition</i> .....	28
<i>Proposed Alternative Accommodation Inadequate</i> .....	29
<b>B. ARTICLE 1 OF PROTOCOL NO. 1 (QUESTION 2)</b> .....	<b>31</b>
INTERFERENCE WITH PEACEFUL ENJOYMENT AND DEPRIVATION OF POSSESSIONS .....	31
INTERFERENCE NOT JUSTIFIED.....	32
MARGIN OF APPRECIATION .....	32
<b>C. ARTICLE 14 (QUESTION 3)</b> .....	<b>32</b>
DIFFERENTIAL TREATMENT.....	33
<i>Applicants Disadvantaged on Account of Their Roma Ethnicity</i> .....	33
<i>Failure to Treat Differently</i> .....	34
NO OBJECTIVE AND REASONABLE JUSTIFICATION .....	35
DESTRUCTION OF THE VILLAGE DISPROPORTIONATE TO PROFFERED AIMS .....	35
NARROW MARGIN OF APPRECIATION APPLIES .....	35
<b>D. ADDITIONAL ARGUMENTS RAISED IN THE APPLICATION</b> .....	<b>35</b>
ARTICLE 2: RIGHT TO LIFE .....	35
ARTICLE 3: INHUMAN AND DEGRADING TREATMENT .....	36
ARTICLES 2 AND 3 IN CONJUNCTION WITH ARTICLE 14.....	36
ARTICLES 6 § 1 AND 13: DENIAL OF FAIR TRIAL AND EFFECTIVE REMEDY .....	36
<b>V. CLAIM FOR JUST SATISFACTION</b> .....	<b>36</b>

A. RESTITUTION OF HOUSING .....	37
B. AWARD FOR OTHER PECUNIARY DAMAGE .....	39
<i>Cost of Alternative Housing</i> .....	39
<i>Destruction of Personal Property</i> .....	41
C. AWARD FOR NON-PECUNIARY DAMAGE .....	42
<i>Emotional Suffering Caused by Eviction</i> .....	42
<i>Racial Discrimination</i> .....	44
<i>Death of Two Applicants and Impact on Health</i> .....	45
<i>Impact on Access to Education</i> .....	46
D. DEFAULT INTEREST .....	47
<b>ANNEX 1: LIST OF DOCUMENTS .....</b>	<b>48</b>

## I. INTRODUCTION

1. The applicants challenge the discriminatory demolition of their village and the destruction of their once vibrant Roma community. The actions of the Russian authorities constitute a gross and disproportionate interference with the applicants' rights. As one applicant said, as a result of the demolition of their homes in Dorozhnoe village, the "entire community has been eradicated."<sup>1</sup>
2. The facts of this case are emblematic of a wider problem of discrimination against and eviction of Roma communities in Europe today,<sup>2</sup> but they are also in themselves extreme and shocking to the conscience. The Russian authorities repeatedly demonstrated their total disregard for the humanity of the village residents in executing the demolition orders, explicitly equating the demolition with "extermination."<sup>3</sup> Russian riot police poisoned the applicants' wells after they finished bull-dozing and burning their homes.<sup>4</sup> They told the helpless village residents to vacate the area of the village: "if you do not leave, we will rape you and your small girls."<sup>5</sup> Many of the applicants stated that they felt they were treated as if they were "not human beings."<sup>6</sup>
3. The government seeks to minimize these disturbing facts by enlisting the same unyielding rules and regulations that have excluded the Roma community from access to basic rights for generations. The government argues that the applicants cannot be considered "victims" because they were not officially registered in the village, while at the same time the government claims they could not be registered there and the applicants have shown that authorities actively deregistered village residents leading up to the demolition. The applicants must have ownership over their land to assert a violation of their rights according to the government, but Russian authorities actively worked to extinguish any hope the applicants had of legalizing land title. The government also claims that it offered the applicants alternative housing and compensation by executive decree, but failed to make these benefits remotely accessible and in reality the proposed alternatives were uninhabitable.
4. The application should be declared admissible with respect to each individual applicant.
  - *A. Applicants are victims under Article 34.* The applicants were all directly affected by the actions of the Russian authorities, before, during and after the demolition. They continue to suffer as a result of the destruction of their homes and community – an integral part of their social identity.
  - *B. Domestic remedies properly exhausted.* The applicants exhausted all available and effective means of seeking redress for the government's actions in domestic courts.
  - *C. Applicants Helena and Ana Bagdonavichute did not abuse the right to petition the Court.* Helena and Ana Bagdonavichute were living in the village at the time of the demolition and have every right to seek the Court's intervention.

---

<sup>1</sup> *Bagdonavichus and others v. Russia*, App. No. 19841/06, Request for Priority pursuant to Rule 41 of the Rules of the Court, 2 March 2011 ("Request for Priority"), Ex. 1, at ¶ 22.

<sup>2</sup> See, e.g., Third Party Intervention of Minority Rights Group International and European Roma Rights Centre ("Third Party Intervention"), at ¶ 3. Application, at 30.

<sup>3</sup> See Application, Ex. 5, at ¶ 15 (Alexandras Arlauskas: "They said, 'you the Gypsies are all the same and you must be exterminated'").

<sup>4</sup> Application, at 20. References to the original application will either be to a page number or, where numbered paragraphs were provided, to a specific paragraph number.

<sup>5</sup> Application, Ex. 8, at ¶ 17.

<sup>6</sup> Application, Ex. 11, at ¶ 12; Ex. 7, at ¶ 13-14; Ex. 8, at ¶ 17.

5. The Russian authorities' actions violate the Convention rights of the applicants, as more fully set forth in the original application and supplemental submissions.
  - *Article 8* (Question 1). The forced evictions and demolition of the village were disproportionate interferences with the applicants' rights to home, private and family life and the government failed to take into account the applicants' vulnerable status and the significant impact that the destruction of the village has had upon their lives.
  - *Article 1 of Protocol 1* (Question 2). The bull-dozing and burning of their homes and property constitute an unjustified interference with the applicants' right to peaceful enjoyment of their possessions.
  - *Article 14* (Question 3). The destruction of Dorozhnoe village was a discriminatory act levied against an entire community on account of their Roma ethnicity.
  - *Additional violations raised in the application*. The Court is urged to consider the applicants' claims under Articles 2 (Right to Life), 3 (Degrading Treatment), 6(1) (Fair Trial) and 13 (Effective Remedy), taken alone and in conjunction with Article 14.
6. In accordance with the above and the full arguments contained in the original application, the Court should find Russia in violation of its obligations under the Convention and the first Protocol.
7. Given that the government destroyed not only individual houses but an entire community, the applicants request that the Court indicate that the only way to restore the applicants to the position that they were prior to the violations would be for the government to facilitate the restoration of their community, either in Dorozhnoe or at an equivalent site. Alternatively, they should receive compensation for the value of the houses which were destroyed, together with compensation for the destruction of their personal property and the cost of alternative accommodation for the past eight years. They also request non-pecuniary damages for their suffering in having to watch their houses and community be destroyed while they were vilified as part of a racially motivated campaign, together with damages for the destitution in which they have been left to live and the impact of the evictions and associated discrimination on the health and education of the applicants.

## II. FACTUAL BACKGROUND

8. A full description of the facts appears in the original application, a supplemental memorandum of 29 March 2007, and the applicants' request for priority of 2 March 2011.<sup>7</sup> The government's response places four major factual issues in dispute. On each point, the applicants disagree with the assertions and purported conclusions advanced in the government's response.
  - *A. Location of the applicants' residence*. All applicants clearly identified Dorozhnoe village as their home and the center of their family life in the application and subsequent updates submitted to the Court. The government erroneously attempts to use official registration as definitive proof of actual residency, even in the face of abundant evidence that authorities actively deregistered or denied registration to those living in Dorozhnoe.

---

<sup>7</sup> See Application, Statement of Facts, at p. 12-32; Supplemental Memorandum, 29 March 2007, at ¶¶ 5-26; Request for Priority, at ¶¶ 15-37, 41-52, 54-64.

- *B. Violence during demolition.* The gratuitous acts of violence by government actors accompanying the demolition of homes in Dorozhnoe village are well documented – including on film – and the government’s efforts to coerce applicants to state otherwise outside the presence of their representatives should be rejected.
- *C. Irrelevance of drug-related convictions.* The government is wrong in implying that the applicants’ criminal histories are linked to the demolition. The records furnished include only two drug-related offences between 2003 and 2007, the pivotal years leading up to and immediately after the authorities destroyed Dorozhnoe village. Conversely, records of convictions among the applicants in the late 1990s and early 2000s coincided with efforts by the government to regularize title to homes there.
- *D. No alternative accommodation.* The government failed to offer habitable alternative housing or any practical and effective mechanism for ensuring the rights of the applicants were respected leading up to and following the demolition.

#### **A. All Applicants Directly Affected by Demolition**

9. The applicants furnished ample evidence that all members of each family resided in Dorozhnoe village at the time of the demolition, and that each individual applicant has suffered as a direct result of the government’s actions toward the community.<sup>8</sup> Yet the government states that there is “no evidence” that the applicants lived in the village when the demolition occurred and presents information indicating that many of the applicants were not registered in the village.<sup>9</sup> Formal registration is not an appropriate means of ascertaining where individual applicants were actually living, contrary to the government’s suggestion.<sup>10</sup> In fact, the government stresses elsewhere in its observations that the law would not allow for registration in the village, and the applicants have shown that in practice authorities routinely refused to register residents in Dorozhnoe or in the temporary housing they found after the demolition.<sup>11</sup>

#### All Applicants Lived in the Village at the Time of the Demolition

10. The applicants’ sworn statements, submitted with the original application in 2006, attest that each family member was living in Dorozhnoe village at the time of the demolition. Many applicants also supplied official identity documents showing that they were registered in Dorozhnoe village for many years.

#### *Bagdonavichus family*

11. Magdalena Bagdonavichute described the moment when authorities came to destroy her home in her 2006 affidavit:
 

“My husband, grandson, two granddaughters, and I were all at home. My daughter took her youngest child and escaped when she heard the authorities in the village because she was very afraid they might hurt her child. My grandson could not stop crying and kept asking where they would live now.”<sup>12</sup>
12. Her son (Olegas Bagdonavichus) and grandson (Leonid Olegovich, age 8 in 2006) corroborated Magdalena’s statement, even though the government states that there is no

---

<sup>8</sup> See *Bagdonavichus and others v. Russia*, App. No. 19841/06, Observations of the Russian Government in Response to the Application (“Government’s observations”), at ¶ 97 (“The applicants provide no evidence to support the fact that they all lived in the village of Dorozhny at the time of the demolition.”).

<sup>9</sup> See Government’s observations, at ¶ 97, 100-101.

<sup>10</sup> *Ibid.*

<sup>11</sup> See, e.g., Application, at p. 14-15; Request for Priority, at ¶ 11.

<sup>12</sup> Application, Ex. 2, at ¶ 14.

proof that any of these applicants were living in the village at the time of the demolition.<sup>13</sup>

13. In April 2014, Magdalena Bagdonavichute's husband, Leonas Bagdonavichus, swore another statement that described the family's living situation:

“At the time of the demolition, all of my family members were living in my house in the village. My children were born there. We did not all have registration in the village, but we lived there together as a family. My daughter, Helena, married a Lithuanian and moved to Lithuania after the demolition, but at the time of the demolition she and her daughter, Ana, lived in the village with the rest of their family.”<sup>14</sup>

14. In December 2010, five applicants signed statements describing how the eviction and demolition had affected their lives.<sup>15</sup> Mr. Bagdonavichus described where his family members were living at that time, including three grandchildren – Nikita, Leonid and Tamila – who lived with Mr. Bagdonavichus and Magdalena in winter.<sup>16</sup> He also confirmed the current living situation of other members of the original household in the village: his daughter, Helena and her children, Ana and Olga (born in 2008), and his son, Olegas and his daughter-in-law, Natalya Alexandrovich (now deceased).<sup>17</sup>
15. Mr. Bagdonavichus has also supplied a birth certificate indicating Natalya and Olegas as the biological parents of Nikita.<sup>18</sup> As many of the applicants have indicated in their written testimony to the Court, such documentation is not always possible to secure on account of the difficulties that the Roma of Dorozhnoe village have experienced in obtaining accurate registration from Russian authorities.<sup>19</sup>

*Arlauskas family*

16. Alexandras (now deceased)<sup>20</sup> and Mariya Arlauskas also described the large family that lived with them in their home, including four children and five grandchildren.<sup>21</sup> Mihail Arlauskas, their son, confirms that he lived with his mother and father and “eight other family members” including siblings and their children.<sup>22</sup> Mariya Arlauskas reaffirmed this fact in April 2013:

“When they demolished our home all of my family members lived in the same house. My husband, my children and my grandchildren all in the same house. We lived there together as a family.”<sup>23</sup>

---

<sup>13</sup> Application, Ex. 3, at ¶ 8, 17; Ex. 4, at ¶ 3.

<sup>14</sup> Exhibit 1, at ¶ 6.

<sup>15</sup> See Request for Priority, Ex. 1-5.

<sup>16</sup> See Request for Priority, Ex. 1, at ¶ 7, 10-12.

<sup>17</sup> *Ibid.* at ¶ 10-12. See also Exhibit 7: Death Certificate of Natalya Antano Alexandrovich.

<sup>18</sup> See Exhibit 3, Birth Certificate of Nikita Olegovich Alexandrovich.

<sup>19</sup> See, e.g., Request for Priority, Ex. 2, Supplementary Affidavit of Mariya Arlauskene, 15 December 2010, at ¶ 8; Request for Priority, Ex. 3, Supplementary Affidavit of Nonna Zhguleva, 15 December 2010, at ¶ 17; Request for Priority, Ex. 5, Supplementary Affidavit of Anastasiya Silvestras Petravichute, at ¶ 15.

<sup>20</sup> See Exhibit 8, Death Certificate of Alexandras Arlauskas.

<sup>21</sup> See Application, Ex. 5, at ¶ 9. See Application, Ex. 6, 8. Mariya Arlauskene also states that she lived with her husband in her mother-in-law's house. *Ibid.* at ¶ 7. See Application, Ex. 7, at ¶ 7. He goes on to describe how frightened his son was when authorities came to demolish their family home. *Ibid.* at ¶ 11.

<sup>22</sup> See Application, Ex. 7, at ¶ 7. He goes on to describe how frightened his son was when authorities came to demolish their family home. *Ibid.* at ¶ 11.

<sup>23</sup> See Exhibit 2, Affidavit of Mariya Arlauskene, 13 April 2014, at ¶ 4.

17. Both Alexandras and Mariya, as well as their daughter, Anastasiya Arlauskajte (now deceased), and their son, Mihail Arlauskas, also submitted official internal passports indicating their connection to Dorozhnoe: Alexandras and Mariya were registered in Dorozhnoe since 1990 and 1991, respectively;<sup>24</sup> Mihail's internal passport states that he was born in the village in 1976;<sup>25</sup> and Anastasiya's internal passport confirms that she was born there in 1981.<sup>26</sup>
18. Mariya Arlaukene also provided birth certificates for Rustam Alexeevich Arlauskas, indicating that he is the son of Anastasiya Arlauskajte,<sup>27</sup> and Mihail Mihajlovich Arlauskas, indicating that he is the son of Mihail Alexandrovich Arlauskas.<sup>28</sup>

*Zhguleva and Alexandrovich families*

19. In a 2006 statement, Nonna Zhguleva described her own living situation at the time of the demolition, in a house with her son, Dinary.<sup>29</sup> She also confirmed that her mother, Tamara Alexeevna Alexandrovich, lived in a neighbouring house with Nonna's brother, his four children, Nonna's older sister, Margarita, and her daughter, Lyubov.<sup>30</sup> Nonna also submitted a statement in 2010 that traced the whereabouts of each member of these two households following the demolition.<sup>31</sup>
20. Nikolaj Alexandrovich (now deceased) corroborated his daughter's statements:
 

"I have two daughters, and my eldest daughter and her son used to live in the house with me and my wife. Also, my son and his four grandchildren [*sic*] lived with me. My other daughter also lived with me and my wife until she married."<sup>32</sup>
21. Lyubov Matulevich, in a December 2010 statement, also confirmed that Dorozhnoe village was her home from the time she was born there until the demolition.<sup>33</sup> She witnessed the destruction of her home at age 14, after which her mother, Margarita Matulevich, disappeared and has not been seen since.<sup>34</sup>
22. Documentary evidence submitted with the original application also confirms that Nonna Zhguleva, Nikolaj Alexandrovich, Tamara Alexandrovich and Margarita Matulevich were registered in the village since the 1980s.<sup>35</sup>
23. Nonna Zhguleva has also supplied a copy of Dinary Zhgulev's birth certificate, which indicates that he is her biological son.<sup>36</sup>

*Samulajtis-Petravichute family*

24. Anastasiya Petravichute confirmed in a 2006 statement that she lived in Dorozhnoe village with her brother, Konstantin Samulajtis, her grandfather and her daughter, Ramina.<sup>37</sup> Her supplementary statement of December 2010 reiterates this fact and details the impact that their eviction has had upon each family member.<sup>38</sup>

---

<sup>24</sup> Application, Ex. 15 and 16.

<sup>25</sup> Application, Ex. 17.

<sup>26</sup> Application, Ex. 18.

<sup>27</sup> See Exhibit 5, Birth Certificate of Rustam Alexeevich Arlauskas.

<sup>28</sup> See Exhibit 4, Birth Certificate of Mihail Mihajlovich Arlauskas.

<sup>29</sup> See Application, Ex. 8, at ¶ 7.

<sup>30</sup> See Application, Ex. 8, at ¶ 8.

<sup>31</sup> See Request for Priority, Ex. 3.

<sup>32</sup> Application, Ex. 9, at ¶ 11.

<sup>33</sup> See Request for Priority, Ex. 4, at ¶ 4.

<sup>34</sup> See Request for Priority, Ex. 4, at ¶ 4.

<sup>35</sup> See Application, Ex. 19-23.

<sup>36</sup> See Exhibit 6: Birth Certificate of Dinary Arunovich Zhgulev.

<sup>37</sup> See Application, Ex. 10, at ¶ 6.

<sup>38</sup> See Request for Priority, Ex. 5, Supplementary Affidavit of Anastasiya Silvestras Petravichute.



*Kasperavichus family*

25. Vitautas Kasperavichus (now deceased) also described the large family that once lived with him in Dorozhnoe village:

“I lived there with three sons, two daughters, a granddaughter, and a three-month old grandson.”<sup>39</sup>

*Heads of household acted on behalf of families in eviction proceedings*

26. The government is likewise incorrect in stating that certain applicants “acted only in their own interests”<sup>40</sup> in the domestic eviction proceedings, a point that the government makes in support of the assertion that the other family members did not actually live at the homes that were the subject of those proceedings. To begin with, many of the applicants were small children at the time and would not have been capable of asserting their own legal rights. Further, in each domestic proceeding, the head of household did attempt to raise claims on behalf of all family members. The claim made by the government that other family members, including minors, cannot be victims at all because they were not named as parties in flawed domestic proceedings highlights the unrealistic formalism of the government’s approach.
27. The cassational rulings annexed to the original application confirm that in appealing the eviction decisions the heads of household raised the interests of their family members. The decisions on appeal are nearly identical, and contain the following statement in response to the applicants’ arguments in the interests of their family members:
- “The arguments in the appeal stating that [] family members residing in the building constructed without authorization were not engaged in the case consideration cannot be grounds for revoking the judgment since the law does not provide for a possibility of concluding a contract of tenancy concerning a building constructed without authorization and which is not recognized as anybody’s property.”<sup>41</sup>
28. These decisions show both that the heads of household sought to have the courts consider the interests of all family members and that the courts firmly declined to do so on the ground that the law provides no such possibility.
29. In the regional court’s cassational ruling in Nonna Zhguleva’s case, it specifically states that there were not “sufficient reasons for engaging the child welfare agency representative” in response to Ms. Zhguleva’s request that the interests of her infant son, Dinary, should be protected.<sup>42</sup>
30. Vitautas Kasperavichus’s appeal to the Kaliningrad Regional Court also urged the court to consider that “he and his children” were registered as residing in the house,<sup>43</sup> although the court did not directly address this plea in rejecting his appeal (and, in this

---

<sup>39</sup> See Application, Ex. 11, at ¶ 11.

<sup>40</sup> See Government’s observations, at ¶ 99.

<sup>41</sup> Application, Ex. 27.b., English translation of Final Decision in *Bagdonavichus Case*, Cassational Ruling, Case No. 22-1918/2006, Kaliningrad Regional Court, issued on 3 May 2006. See also Application, Ex. 28, Appeal of the Judgment of the Gurievsk District Court of 7 February 2006, filed by Attorney Vladimir Luzin on behalf of Bagdonavichus family before Kaliningrad Regional Court on 2 May 2006 (stating on Leonas Bagdonavichus’s behalf: “my family members and I are registered as residing in [the house]” and that the district court’s ruling “meddles with my family life.” Other appellate decisions contained the same or similar language. See Application, Ex. 33 (Zhguleva Case) and Ex.36 (Alexandrovich Case).

<sup>42</sup> See Application, Ex. 33.

<sup>43</sup> See Application, Ex. 44.

case, reversing the earlier district court decision that granted Mr. Kasperavichus title to the land and legalized the construction).<sup>44</sup>

Registration is not a Reliable Indication of Actual Address

31. The government suggests that an applicant's officially recognized residency status is dispositive proof of their actual address.<sup>45</sup> The government's position ignores both the evidence furnished by the applicants that registration in the village became impossible in the years immediately preceding the demolition, and the government's own declaration that "**the law does not provide residence registration in any illegally constructed building, which has not been commissioned as a residential home**" (emphasis in original).<sup>46</sup>
32. Several of the adult applicants were registered in Dorozhnoe village in the past, as indicated in the application and supported by testimonial and documentary evidence that accompanies it.<sup>47</sup> As described in the application, once the Russian authorities determined to evict the community, they began deregistering Dorozhnoe residents.<sup>48</sup>
33. Both before and after the demolition, Dorozhnoe residents turned to alternative means of obtaining valid registration so that they could access the essential goods and services for which registration is a prerequisite, including education, healthcare, employment, pension payments and recognition of citizenship.<sup>49</sup> Many have paid landlords or depended on friends and other family members to supply a legal address for registration.<sup>50</sup> These are the actions of severely economically and socially marginalized individuals in order to keep their families afloat. In short, neither registration nor its absence serves as a reliable basis on which to determine where the applicants were living at the time of the demolition or in the years since their family homes were destroyed.<sup>51</sup>
34. For example, Leonas Bagdonavichus stated in December 2010:

"We paid a landlord to use his address for our registration—an address where we have never lived... This was before the authorities demolished our home in Dorozhnoe village. To get official registration we had to use an address outside the village because the authorities refused to legalize our house; even before the demolition, we had many problems registering because we are Roma.

"Today, many people from the former Dorozhnoe village are obtaining registration by paying landlords because they no longer have any address besides bungalows. It is not possible to register your address at a bungalow because bungalows are just slums in the woods, which do not comply with building regulations. The fact that we are Roma also makes even this irregular registration more difficult... Registration is important because without registration of a legal

---

<sup>44</sup> See Application, Ex. 47.

<sup>45</sup> See Government's observations, at ¶ 104.

<sup>46</sup> Government's observations, at ¶ 151.

<sup>47</sup> See, e.g., Application, Ex. 5 (Affidavit of Alexandras Arlauskas), Ex. 30 (Cassational ruling declaring Arlauskas's registration in the village "not founded" because lacking a street name and house number); Application, Ex. 19 and 33 (same, with respect to Nonna Zhguleva); Ex. 22 (registration in village in internal passport of Margarita Matulevich).

<sup>48</sup> See Application, at 14 (at the end of 2002, the government "began a campaign to deregister or refuse to issue official permanent residence registration to the long-term residents of Dorozhnoe village.").

<sup>49</sup> *Ibid.* See also, e.g., Request for Priority, Ex. 5, Supplementary Affidavit of Anastasiya Petravichute, 15 December 2010, at ¶ 11 ("I am registered [] at Koshevogo St., Kaliningrad City. This is the only way we can be registered.").

<sup>50</sup> See, e.g., Request for Priority, Ex. 4, Supplementary Affidavit of Lyubov Matulevich, 15 December 2010, at ¶ 6.

<sup>51</sup> See Government's observations, at ¶ 101, 192-200.

residence you can do nothing. You cannot have health insurance, you cannot apply for a job, and your children cannot go to school. You are not a human being without registration.”<sup>52</sup>

35. The government disputes in particular the living and family circumstances of Helena Bagdonavichute and her daughter, Ana Bagdonavichute, based on (a) lack of residency registration, an argument addressed above, and (b) “definite information” that both individuals entered Russia from Lithuania after the demolition.<sup>53</sup> The government’s “information” – Federal Migration Services records showing entry into Russia in March 2007 – ignores the undisputed fact that these applicants fled Russia following the demolition, attempting to return in 2007. As noted above, Magdalena Bagdonavichute stated in 2006 that her daughter and granddaughter fled the village when they heard that the Russian authorities were coming to demolish their home.<sup>54</sup> In April 2014, Leonas Bagdonavichus, Elena’s father and Ana’s grandfather, also signed a statement clarifying that both individuals were living in his house at the time of the demolition, but moved to Lithuania after the demolition took place.<sup>55</sup>

“At the time of the demolition, all of my family members were living in my house in the village. My children were born there. We did not all have registration in the village, but we lived together there as a family. My daughter, Helena, married a Lithuanian and moved to Lithuania after the demolition, but at the time of the demolition she and her daughter, Ana, lived in the village with the rest of their family.”<sup>56</sup>

36. Most importantly, Helena Bagdonavichute was clearly present in Kaliningrad in 2006, when she signed letters of authority, on behalf of herself and both of her daughters, to be represented by the Open Society Justice Initiative before the European Court of Human Rights.<sup>57</sup>

#### **B. Violence during Demolition**

37. The government argues that Russian authorities “did not handle the [Dorozhnoe] residents with any violence” during the demolition.<sup>58</sup> In support, the government refers to “explanations” given by three applicants in a meeting on 22 January 2014, held without the knowledge and outside the presence of their legal representatives.<sup>59</sup> The applicants were summoned through Leonas Bagdonavichus by a phone call from a representative of the Kaliningrad immigration authority claiming to be acting on behalf of a Russian Federation human rights body.<sup>60</sup> Without providing a transcript or any further description of the circumstances and content of the 22 January meeting, the government asserts that its summary report means that substantial evidence of violence before, during and after the demolition is “unreliable information.”<sup>61</sup> The applicants strongly object to the government’s actions as an interference with their right of petition under Article 34 of the Convention, and reject the proposition that the demolition occurred without significant violence on the part of Russian authorities.

---

<sup>52</sup> Request for Priority, Ex. 1, Supplementary Affidavit of Leonas Bagdonavichus, 15 December 2010, at ¶ 8-9. *See also* Request for Priority, Ex. 4, Supplementary Affidavit of Lyubov Zhguleva, 15 December 2010, at ¶ 6.

<sup>53</sup> *See* Government’s observations, at ¶ 122-23.

<sup>54</sup> *See* Application, Ex. 2, at ¶ 14.

<sup>55</sup> *See* Exhibit 1, at ¶ 6; paragraph 13, above.

<sup>56</sup> *See* Exhibit 1, at ¶ 6.

<sup>57</sup> *See* Letters of Authority (L.A.) L.A.4, L.A.6 and L.A.7, attached to the original application.

<sup>58</sup> Government’s observations, at ¶ 118, 206-07.

<sup>59</sup> *Ibid.* at ¶ 206-07.

<sup>60</sup> *See* Exhibit 1, at ¶ 10.

<sup>61</sup> *Ibid.* at ¶ 203 (section heading).

38. The applicants consistently described the use or threat of physical violence by riot police, who were dressed in uniforms and “masks” and carried machine guns when they arrived to enforce the demolition in Dorozhnoe.<sup>62</sup> The video taken by Tamila Bagdonavichute shows police beating two men with the butt of a machine gun. Several of these accounts mention that police fired shots, sometimes aiming for residents’ feet, during and after the demolition, and both Nonna Zhguleva and her father, Nikolaj Alexandrovich, witnessed special police (OMON) officers poisoning the water wells used by the community to drive the families away from the village.<sup>63</sup>
39. The Justice Initiative learned that Russian officials met with three of the applicants after the 22 January 2014 meeting had taken place. The Court is urged to dismiss any statements in the Government’s observations based on this meeting.<sup>64</sup> In statements from April 2014, Leonas Bagdonavichus and Mariya Arlauskene describe aspects of the meeting that further illustrate its coercive nature. Both applicants also dispute the representations made by the government in its observations about what was said during the meeting.
40. Leonas Bagdonavichus states:
- “When I went to the meeting the officers were in uniform. I was not concerned because I thought a hearing in the case had taken place. They explained that they were acting on behalf of a human rights body from Moscow and they were instructed to interview us. I asked why is it the immigration service is doing this, and I said we have lawyers, but they did not explain anything. [...]
- “They asked whether people in masks were beating us or not and I told them the truth, that the people were running and trying to get their places and they were beating some of them. They were like a barrier between us and our possessions. [...]
- “The government is lying about what I said in this meeting. How could there be no violence. People with babies were thrown out of their houses, pregnant women, and half of the village population has died because of the stress and living in tents. And I remember the beatings. They were burning our houses. What is violence then? Does violence only mean when you are killed?”<sup>65</sup>
41. Mariya Arlauskene’s testimony accords with the above:
- “There was one person in a police uniform. Each of us met with the officer alone. I asked why they contacted me and he said that someone from Moscow needed information about our case because there will be a hearing in the European Court. I don’t know why they only called three of us. I asked if there will be any benefit to us, and he said that in March there would be a decision by the Court and that I would get either compensation or housing. [...]

<sup>62</sup> See Application, Ex. 1, at ¶ 16 (Leonas Bagdonavichus); Ex. 2, at ¶ 13-14 (Magdalena Bagdonavichute); Ex. 4, at ¶ 6 (Leonid Alexandravichus); Ex. 5, at ¶ 16 (Alexandras Arlauskas); Ex. 6, at ¶ 14-16 (Mariya Arlauskene); Ex. 7, at ¶ 10 (Mihail Arlauskas); Ex. 8, at ¶ 14 (Nonna Zhguleva); Ex. 9, at ¶ 15-16, 18, 20-21 (Nikolaj Alexandrovich); Ex. 10, at ¶ 11, 13 (Anastasiya Petravichute); Ex. 11, at ¶ 19 (Vitautas Kasperavichus).

<sup>63</sup> See Application, Ex. 8, at ¶ 15; Ex. 9, at ¶ 20.

<sup>64</sup> In addition to statements allegedly made by these applicants with respect to violent treatment by police during the demolition, the applicants were also asked about their current living situation. See Government’s observations, at ¶ 193-195. The information provided is entirely consistent with the applicants’ official affidavits, submitted in support of the Request for Priority of 2 March 2011. See Request for Priority, Ex. 1, at ¶ 7 (Leonas Bagdonavichus); Ex. 2, at ¶ 6 (Mariya Arlauskene); Ex. 3, at ¶ 8 (Nonna Zhguleva).

<sup>65</sup> See Exhibit 1, at ¶ 11-14.

“He asked about the behaviour of the officials. I explained that the behaviour was terrible. They were shooting, everything. It was a nightmare. I told him that there were little children in the houses, and they put petrol on the buildings. One woman only had a few minutes to take her child out of the house.”<sup>66</sup>

#### Interference with Article 34

42. As the Court has repeatedly recognized,
- “it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.”<sup>67</sup>
- The applicants note that the Court has previously found that the Russian government has used “conversations” with an applicant in the absence of counsel, purportedly for the purpose of verifying the facts and obtaining information regarding a complaint, as an opportunity to coerce the applicant to alter his story regarding allegations of ill-treatment.<sup>68</sup>
43. Direct contact between the Russian immigration authority and three of the lead applicants in this case had a deceptive and coercive character. It was not explained why the applicants were being contacted directly, and the officials ignored the applicants’ assertions that they were represented by counsel. The officials led the applicants to believe that cooperation would result in desperately needed compensation or shelter. The subject of the questioning was also clearly not limited to updates on the applicants’ current living situation, but related to the events of 2006.<sup>69</sup> The Russian government then attempted to use the applicants’ alleged statements against them in its response, a further indication as to the purpose of the meeting.
44. It is accordingly urged that the Court disregard this information and hold the government accountable for interfering with the applicants’ rights under Article 34 of the Convention.

#### **C. Drug-related Convictions**

45. The government states that Dorozhnoe village “became the Kaliningrad region’s drug marketplace” and reproduces the criminal histories of the applicants and various law enforcement statistics to support this assertion.<sup>70</sup> The claim is not only ill-founded, but it also stands as a transparent attempt to disparage the applicants (including many small children) by relying on classic negative stereotypes of Roma.
46. The applicants object to the following offensive statement made in the Government’s observations:
- “[In 2005] criminal charges were brought against 61 persons [in Dorozhnoe village], of which 12 persons were ethnic Roma, and the other persons normally dropouts leading an asocial way of life without any permanent residence or source of income *used by persons of the Roma ethnicity to peddle drugs.*”<sup>71</sup>
47. This sentiment reflects the inhumane and discriminatory mentality underpinning the forced eviction of Roma families from Dorozhnoe village in the first place. The fixed

---

<sup>66</sup> See Exhibit 2, at ¶ 13-15.

<sup>67</sup> See, e.g., *Markin v. Russia*, ECtHR, Judgment of 22 March 2012, at ¶ 158.

<sup>68</sup> *Lopata v Russia*, ECtHR, Judgment of 13 July 2010, paras. 147-160.

<sup>69</sup> Compare *ibid.* at ¶ 162-63, concluding that questioning limited to gathering “up-to-date” information on the applicants’ family situation would not violate Article 34.

<sup>70</sup> See Government’s observations, at ¶ 175-191.

<sup>71</sup> See Government’s observations, at ¶ 184.

association between Roma ethnicity and criminality leads even government's lawyers defending the demolition before this Court to conclude that the Roma must somehow be to blame, even though on the government's own evidence the great majority of criminal activity allegedly connected to the village (over 80%) was committed by individuals not of Roma ethnicity.

48. Substantively, the statistics and individual records supplied by the government show that, both generally and among the applicants, drug-related activities were declining in the years preceding the forced eviction in Dorozhnoe, and in fact these indicators were much more significant in the late 1990s and early 2000s.<sup>72</sup> Certainly, the government has not demonstrated any causal link between this historical problem and the destruction of the entire village. Nor have they explained what legal authority permitted the physical destruction of an entire community on the basis of alleged or proven criminal activity. Further arguments rejecting the merits of the government's claim that fighting alleged criminal activity can justify the demolition of Dorozhnoe village appear both in the application (at paragraph 15.22) and below (see paragraphs 91, 116-123).
49. As described in the application, in 2001 the Gurievsk district administration invited Dorozhnoe families to legalize their homes, elaborating a master development plan approved by the Kaliningrad regional building committee, and even began implementing the plan by naming some streets.<sup>73</sup> Obviously, at this point, despite a number of criminal convictions in the late 1990s and in 2000 and 2001, some of which were among the applicants, the government was not considering mass eviction and destruction of the village as a reasonable solution.
50. The approach abruptly changed in 2005 when then-Regional Governor, Georgi Boos, began escalating public allegations of drug trafficking. However, during this critical period, in fact between 2003 and 2007, the government's records show that there were only two drug-related convictions among the 33 applicants – not to be expected from families that the government claims had “greatest influence and status in the international drug trade.”<sup>74</sup> The differences in crime statistics in Dorozhnoe village from 2004 and 2005 reflect the policy change. Although the number of actual criminal charges brought in each year is constant, policing had clearly picked up in 2005 – with nearly triple the number of “identified” crimes (the majority of which did not lead to criminal charges) compared to 2004.<sup>75</sup>
51. Criminal statistics concerning Roma in Russia are furthermore of questionable credibility in light of the wider patterns of discriminatory policing of Roma populations that were clearly given expression in Dorozhnoe. Both the applicants themselves and independent accounts have raised concerns about corruption and political influence in police activity, particularly with respect to aggressive policing of Roma communities. In his most recent statement, for example, Leonas Bagdonavichus, explained:

“They can write anything; they are protecting their interests. If you are stopped by the police, under the law they are not allowed to search you without two witnesses present, but in reality Roma are searched without any witnesses. Our women are afraid to take a taxi because you could be stopped and searched.”<sup>76</sup>
52. In a 2008 report on forced evictions of Roma communities in Russia, the International Federation for Human Rights (FIDH) and Anti-Discrimination Centre Memorial-Saint

---

<sup>72</sup> See Government's observations, at ¶ 180-83.

<sup>73</sup> See Application, Ex. 49.

<sup>74</sup> Government's observations, at ¶ 178.

<sup>75</sup> See Government's observations, at ¶ 183-84.

<sup>76</sup> Exhibit 1, at ¶ 15.

Petersburg describe the Kaliningrad eviction as emblematic of a nationwide practice among local politicians seeking to capitalize on popular attitudes associating Roma populations with criminality in order to win political favour:

Local politicians “exploit[] anti-Roma sentiments as a catalyst in their local election campaigns. Presenting their plan for ‘cleaning’ their city of ‘gypsies’ as one of the major promises to be fulfilled after winning elections, a promise widely reported by the mass media, these populations openly accused the entire local Roma population of earning a living from the drug trade. However, in order to evict the Roma officially, other arguments were presented in the courts. Reactions in the mass media, most notably on Internet forums, showed the extreme intolerance and widespread racist feeling among the population and support for the politicians in question.”<sup>77</sup>

#### **D. Decree on “Allocation of Funds” not a Legitimate Alternative**

53. The government refers in its observations to a 28 April 2006 decree by the Kaliningrad regional government directing sub-regional administrative bodies to use a small fund to create housing stock for the relocation of Roma affected by the forced eviction in Dorozhnoe. However the sum provided was inadequate in light of the scale of the destruction of the village, the process for accessing those funds was unspecified and unclear to the majority of residents, and the proposed housing that was shown to some community members was entirely inadequate. The decree was also issued absent any consultation with community members and only after the demolitions began.<sup>78</sup>
54. According to the Government’s observations, there were 321 residents as of 2002,<sup>79</sup> and the funds available for alternative housing were approximately USD 166,000. This casts considerable doubt on the government’s claim that these funds – amounting to just over USD 500 per person – would be sufficient to provide adequate alternative housing for all of those displaced and homeless as a result of the demolition.<sup>80</sup>
55. The procedures for accessing the proposed housing stock are not specified and, according to accounts from applicants, were not made known to the majority of village residents, many of whom are illiterate and all of whom were newly homeless and in a state of shock following the demolition of the village.<sup>81</sup>
56. Leonas Bagdonavichus states that four community members were informed that some compensation would be provided, but “[t]here was no explanation of what we would have to do to benefit from the compensation.” He then describes the reality of the government’s proposal:

“Some of our people were sent to some settlements far away from where our village had been, and someone showed them alternative houses. The houses were shabby, without windows; the living conditions were unacceptable. Some of the houses were not finished and we would need to renovate them totally. These places were

---

<sup>77</sup> See FIDH and ADC-Memorial St. Petersburg, Forced Evictions and the Right to Housing of Roma in Russia (2008), at 4, available at: <http://www.fidh.org/IMG/pdf/Romrussie501angconj2008-2-1.pdf>.

<sup>78</sup> See, e.g. Application, Ex. 1, at ¶ 16 (Leonas Bagdonavichus describing the destruction of five homes in April 2006); Ex. 2, at ¶ 13 (Magdalen Bagdonvichene stating that “[t]he mass demolitions took place in April, 2006”). See also European Roma Rights Centre, Letter to Georgiy Boos, Governor of Kaliningrad, 24 February 2006 (indicating that, as of February 2006, four homes in Dorozhnoe had already been demolished), available at: <http://www.errc.org/cikk.php?cikk=2520>.

<sup>79</sup> Government’s observations, at ¶ 185.

<sup>80</sup> See Government’s observations, at ¶ 163.

<sup>81</sup> See, e.g. Exhibit 2, at ¶ 5-6; Exhibit 1, at ¶ 7-8.

very far away from our homes, our other family members, and where our children were going to school.”<sup>82</sup>

57. Mariya Arlauskene’s statement agrees with Mr. Bagdonavichus’s account:

“A few days after the demolition, some people from the municipal administration came to the village and told us we could go to the municipality and seek compensation. They told us we had ten days to go to Gurievsk municipality, but we couldn’t do that. My husband had a heart attack shortly after the demolition and my daughter got sick. I couldn’t think of anything but them. I was in great shock and stress.

“One of my relatives, Vitautas Kasperavichus, was shown a shed in a remote municipality nearly 200 kilometers away from Kaliningrad city, near Nesterov town. The conditions were totally unacceptable. It was only one house in the middle of a field, far away from any markets, schools or hospitals. The condition of the shed itself was also very bad: like living in the street.”<sup>83</sup>

58. Both statements point to the decree’s major inadequacies: (i) the proposal would scatter close-knit families, uprooting children from schools and friends, and breaking apart the entire community; (ii) the homes appear to have been located in remote areas far from any basic needs, like food and access to medical care (a major concern given the health-related impacts of the demolition itself); (iii) the homes were also described as uninhabitable, with a very limited fund to bring them up to habitability given the size of the affected population; (iv) procedurally, even those community members who were informed about the possibility of compensation did not understand how to access it and, according to Mariya Arlauskene’s statement, the time limit for applying for assistance was extremely short.
59. The government is also incorrect in stating that “[i]n the period from 2006 to the present time no complaints about infringement of the rights of ethnic Roma whose houses were demolished were received by any law enforcement agencies, prosecutor’s office, municipality or the media.”<sup>84</sup> Mariya Arlauskene aggressively applied for housing assistance to municipal and regional authorities since at least 2011, only to learn that the housing supposedly allocated for Roma families from Dorozhnoe had been given to others due to the failure of Dorozhnoe applicants to request assistance.<sup>85</sup>
60. In sum, the 2006 decree does not amount to a real, legitimate alternative accommodation scheme given the scope and nature of the demolition and the vulnerability and social identity of the affected community.

### III. ADMISSIBILITY OF THE APPLICATION

61. The application should be declared admissible. In respect of each applicant, the application raises serious issues of fact and law requiring examination on the merits.<sup>86</sup> The applicants have each exhausted available and effective domestic remedies, have demonstrated that their Convention rights were directly affected by the government’s acts or omissions and have appropriately exercised their right to petition the Court.

---

<sup>82</sup> Exhibit 1, at ¶ 7-8.

<sup>83</sup> Exhibit 2, at ¶ 5-6.

<sup>84</sup> Government’s observations, at ¶ 218.

<sup>85</sup> Exhibit 2, at ¶ 7-11.

<sup>86</sup> See, e.g., *Yordanova and others v. Bulgaria*, ECtHR, Admissibility Decision of 14 September 2010; *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 93.



- *A. Applicants are victims under Article 34.* The applicants were all directly affected by the actions of the Russian authorities, before, during and after the demolition. They continue to suffer as a result of the destruction of their homes and community – an integral part of their social identity.
- *B. Domestic remedies properly exhausted.* The applicants exhausted all available and effective means of seeking redress for the government’s actions in domestic courts.
- *C. Applicants Helena and Ana Bagdonavichute did not abuse the right to petition the Court.* Helena and Ana Bagdonavichute were living in the village at the time of the demolition and have every right to seek the Court’s intervention.

#### **A. All Applicants are Victims under Article 34**

62. The government’s assertion that 23 of the applicants lacked victim status because they have not proved they lived in the village at the time of the demolition is unfounded. That assertion ignores substantial evidence that these 23 applicants lived together with their families in Dorozhnoe village, that their lives were dramatically affected by the demolition and that those who formally participated in the domestic proceedings did so on behalf of their entire families – in a last-ditch effort to try to hold the community together (see paragraphs 9-30, above). In short, the government’s actions achieved their desired result – the entire community of Dorozhnoe has been wiped out, a drastic measure that continues to have an acute impact on all applicants.
63. Victim status under Article 34 of the Convention “denotes the person directly affected by the act of omission which is in issue.”<sup>87</sup>
64. The government’s position on victim status has no rational relationship to the factual background of the case (*see* paragraphs 9-30, above). For example, the government claims that Tamila Bagdonavichute is not a victim because there is “no evidence” that she lived in the village. Yet she was there, filming the demolition.<sup>88</sup> The government even claims there is “no evidence” to show that couples married for decades were living under the same roof.<sup>89</sup> Even the criminal records furnished by the government discredit the claim that the applicants were not living in the village, otherwise how would these records logically justify the demolition of the village to begin with. As the Court has stated on numerous occasions,
- “In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties’ submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.”<sup>90</sup>
65. The evidence presented in the application and corroborated by the government’s response provides a strong basis for the Court to conclude that the applicants lived in Dorozhnoe village at the time of the demolition.
66. The applicants have furthermore fully explained the unreliability of official registration as a proxy for actual living circumstances, as many Roma are forced to pay landlords to register them at a legal address in order to access education, healthcare and

<sup>87</sup> *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 93.

<sup>88</sup> *See* Application, Ex. 1, at ¶ 17.

<sup>89</sup> *See* Government’s observations, at ¶ 97.

<sup>90</sup> *Nachova and others v. Bulgaria*, ECtHR, Judgment of 6 July 2005, at ¶ 147.

employment.<sup>91</sup> The government's own actions have, of course, further exaggerated this disconnect, both through an active deregistration campaign leading up to the demolition and as a result of the demolition itself. Left homeless, the applicants had to register anywhere they could.<sup>92</sup>

67. Finally, as the two updated filings submitted to the Court illustrate, the violations in this case are of a continuous nature, especially for those who were children when their families were evicted and for the elderly applicants. All applicants continue to suffer consequential rights violations stemming from the forced eviction and destruction of their homes.

### **B. The Applicants Properly Exhausted Domestic Remedies**

68. The applicants exhausted available and effective domestic remedies capable of providing redress for the impending forced eviction and demolition of their homes.<sup>93</sup> The Government's observations incorrectly state that all but five of the applicants either failed to pursue domestic remedies or failed to appeal to the Regional Court of Kaliningrad.<sup>94</sup>
69. The Court has emphasized that the rule of exhaustion applies flexibly, rather than "automatically," considering that it is to be applied "in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up."<sup>95</sup> With respect to the allocation of burden of proof and the criteria guiding application of the exhaustion rule, the Court has further stated:

"The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered a reasonable prospect of success."<sup>96</sup>

70. The Court may also relax the requirement if special circumstances exist absolving the applicant from pursuing domestic remedies in a given case.<sup>97</sup>

#### Remedies Properly Exhausted

71. Each applicant family either affirmatively attempted to regularize title to property in Dorozhnoe, thus ensuring the safety of their personal possessions, or fought eviction proceedings launched by Russian authorities, or both.<sup>98</sup> In the cases of the Kasperavichus and Samulajtis-Petravichute families, the district court of Gurievsk initially recognized title to the respective properties, but the Kaliningrad Regional Court overturned these decisions and, three years later, the families were evicted in summary

---

<sup>91</sup> This Court has recognized that the registration system in Russia interferes with access to a number of important rights. *See, e.g., Bolat v. Russia*, ECtHR, Judgment of 5 October 2006, at ¶¶ 64-70; *Tatishvili v. Russia*, ECtHR, Judgment of 22 February 2007, at ¶¶ 44-54.

<sup>92</sup> *See* Government's observations, at ¶ 101.

<sup>93</sup> *See* Application, at ¶¶ 16.1-16.5.

<sup>94</sup> *See* Government's observations, at ¶¶ 110-111.

<sup>95</sup> *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 92.

<sup>96</sup> *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 102.

<sup>97</sup> *Akdivar and others v. Turkey*, ECtHR, Judgment of 16 September 1996, at ¶¶ 65-69; *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 102.

<sup>98</sup> *See* Application, at ¶¶ 16.1-16.5; Ex. 27-47.

proceedings that did not comply with basic due process standards.<sup>99</sup> All applicant families provided copies of final decisions dismissing their appeals.<sup>100</sup>

72. The government's arguments persist in the erroneous blanket denial that the applicants lived together in large houses in Dorozhnoe as families.<sup>101</sup> A representative family member with the strongest legal claim to each respective property title pursued domestic remedies aggressively in the district and regional courts in Kaliningrad.<sup>102</sup> In each case, the applicants sought to call the domestic tribunals' attention to the impact that the eviction would have on all family members living in the houses.<sup>103</sup> Ultimately, each family received nearly identical cassational rulings denying them title to the land they had lived on for decades and declaring their houses "unauthorized buildings."<sup>104</sup>
73. The applicants' approach of raising their claims in the context of domestic judicial eviction proceedings in defence of their homes is also consistent with the practice in other mass forced eviction cases that have come before the Court.<sup>105</sup>

#### Other Remedies not Available, Effective or Sufficient

74. To be available, effective and sufficient a remedy must provide redress for the specific applicant with respect to the specific alleged Convention violation.<sup>106</sup> The government must demonstrate "with sufficient certainty that effective and accessible domestic remedies existed" in order to meet their burden."<sup>107</sup> They have not done so. Without providing any detail as to the relevant legal framework and practical realities, the government suggests that there are other domestic civil and possibly administrative avenues of redress.<sup>108</sup> Such theoretical options would not meet the criteria developed by the Court in assessing the application of the exhaustion rule.
75. *Unavailability.* As discussed above, it is clear from the records of regional cassation court appeals that the applicants attempted to raise the interests of family members, including infant children, and were rebuffed by the Russian courts.<sup>109</sup> Therefore, the government's argument that only the named applicants in civil eviction proceedings properly exhausted domestic remedies is an overly formalistic and unreasonable interpretation of both the Convention and the facts. Rather, such remedies were clearly unavailable to the other applicants, many of whom were infants and minor children at the time, and they should not be required to have exhausted such remedies in parallel cases.
76. *Ineffective.* Other theoretical remedies would also fail to meet the Court's standards of effectiveness in light of the fundamental arbitrariness evidenced in judicial decision making, the absence of due process and the prejudicial political and social context in which the events in question took place.

---

<sup>99</sup> See Application, Ex. 13, at ¶ 18 (Lucia Shachnazarova, lawyer for Kasperavichus and Arlauskas family in domestic proceedings, describes lack of notice and predetermined decisionmaking); see also Application, at ¶ 15.56-15-62.

<sup>100</sup> See Application, Ex. 27 (Bagdonavichus), 30 (Arlauskas), 33 (Zhguleva), 36 (Alexandrovich), 39 and 42 (Samulajtis-Petravichute), 44 (Kasperavichus).

<sup>101</sup> See Government's observations, at ¶ 110.

<sup>102</sup> See paragraphs 26-30, above.

<sup>103</sup> See paragraphs 26-30, above.

<sup>104</sup> See, e.g., Application, Ex. 33 (Zhguleva Case).

<sup>105</sup> See, e.g., *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 23-25; *Yordanova and others v. Bulgaria*, ECtHR, Admissibility Decision of 14 September 2009.

<sup>106</sup> *B. v. U.K.*, App. No. 18711/91, (1993) 15 EHRR CD 100.

<sup>107</sup> *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 99.

<sup>108</sup> See Government's observations, at ¶ 114-117.

<sup>109</sup> See paragraph 27, above; Application, Ex. 27 (Bagdonavichus Case); Ex. 33 (Zhguleva Case); Ex. 36 (Alexandrovich Case).

77. The applicants and their domestic lawyers consistently reported that due process guarantees such as adequate notice and fair hearings were not respected.<sup>110</sup> The applicants' lawyers also reflected on the fact that the appellate decisions contain virtually identical language, even though they were purportedly drafted by different chambers of the Kaliningrad regional court:
- “The court had basically decided the outcome before they even heard my arguments. I have never seen anything like this in my practice....The judges had clearly discussed and predetermined the outcomes in these cases.”<sup>111</sup>
78. Nothing in the government's cursory description of the procedural history of domestic proceedings contradicts the allegations of fundamental unfairness and lack of respect for due process advanced in the application.<sup>112</sup> The applicants have stated that they were intimidated into signing legal notices that they did not understand, and they therefore dispute the government's conclusion that the signature alone constitutes proof that they were “duly notified” that demolition hearings would take place in a matter of days.<sup>113</sup> The applicants have also provided testimonial evidence that the hearings referred to by the government were either conducted in absentia or in a remarkably summary fashion – lasting as little as seven minutes.<sup>114</sup> The courts failed to keep transcripts of these hearings, but the written decisions themselves and the testimony provided by the applicants make clear that the courts failed to examine claims of discrimination and denial of basic rights based on the Convention and international law.<sup>115</sup>
79. Domestic remedies must also be considered ineffective because of the political influence that local executive authorities clearly exert over the judiciary. Based on the decisions themselves and the bizarre conduct of the eviction proceedings, the applicants' lawyers concluded that the call for a forced eviction “[came] from high up” and that “there was an informal decision from the Governor that the Roma should be evicted from Dorozhny Village.”<sup>116</sup> As noted above, a 2008 report links the political influence at play in the Kaliningrad case with a broader pattern of local politicians exploiting negative stereotypes about Roma in order to garner popular support.<sup>117</sup>
80. The applicants agree with the third party interveners, European Roma Rights Centre and Minority Rights Group International, that the requirements of accessibility and effectiveness of remedies must be vigilantly enforced in cases of forced evictions of particularly vulnerable minority groups.<sup>118</sup> None of the critical protections identified by the third party interveners were observed in the eviction proceedings in this case and no special consideration was given on account of the applicants' vulnerable status or the

---

<sup>110</sup> See Application, at ¶ 15.50-15.62.

<sup>111</sup> Application, Ex. 13, at ¶ 17-18.

<sup>112</sup> See Application ¶ 15.57-15.61.

<sup>113</sup> See Government's observations, at ¶ 35, 41, 48, 58; Application, at ¶ 15.58.

<sup>114</sup> See Application, at ¶ 15.60.

<sup>115</sup> See, e.g., Application, at ¶ 15.61.

<sup>116</sup> Application, Ex. 12, at ¶ 12-14.

<sup>117</sup> See paragraph 52, above (citing FIDH and ADC-Memorial St. Petersburg, Forced Evictions and the Right to Housing of Roma in Russia (2008), at 4, available at: <http://www.fidh.org/IMG/pdf/Romrussie501angconj2008-2-1.pdf>).

<sup>118</sup> See Third Party Intervention, at ¶ 10 (citing *Rousk v. Sweden*, ECtHR, Judgment of 23 September 1982, at ¶ 61).

fact that eviction would render them homeless. In fact, the courts openly rejected the applicants' own pleas for mitigation.<sup>119</sup>

81. *Insufficiency*. The government also suggests that the applicants should have sought civil remedies pursuant to Article 25 of the Russian Civil Procedure Code to "obtain pecuniary damages for the loss and/or damage to movable property."<sup>120</sup> Although the government has provided no information on the effectiveness of such an action in the light of the specific facts of the case, it is clear that such a remedy would not be sufficient to address the applicants' claims. The Court has previously pointed out in the context of forced evictions that "the applicants' complaints...relate to their forced displacement and inability to return to their homes..., not to their inability to recover damages from authorities."<sup>121</sup> In such cases, where the respondent government has suggested that additional civil, administrative or criminal avenues exist, the Court has found such remedies incapable of providing redress or offering a reasonable prospect of success.<sup>122</sup>

#### Special Circumstances

82. In certain exceptional cases the Court has also ruled that applicants are dispensed from the exhaustion requirement due to special circumstances.<sup>123</sup> In *Ayder and others v. Turkey*, the Court found such special circumstances existed in the context of an attack on a Turkish village that resulted in the mass destruction of the applicants' homes.<sup>124</sup> The Court should specifically consider the wider context of discrimination and corruption in which the destruction of Dorozhnoe occurred and the fact that at least some applicants may have been erroneously led to believe that the government intended to provide meaningful compensation.
83. The eviction and destruction of homes in Dorozhnoe was a graphic and violent expression of the hostile prevailing environment for Roma living in the region and particularly for those living in the village.<sup>125</sup> The demolition resulted in "massive destruction and damage to homes and property,"<sup>126</sup> and was undertaken by officials of the special forces linked to the administration that had prosecuted the eviction cases<sup>127</sup> and was based on politically predetermined judicial decisions.<sup>128</sup> All of these factors militate in favour of relieving the applicants from any further obligation to exhaust domestic remedies.
84. The fact that local officials approached a few of the applicants with an abstract offer of compensation and possible alternative housing arrangements should also be considered special circumstances in connection with the reasonableness of requiring further engagement with local tribunals after the demolition. In the case of *Ayder and others v. Turkey*, for example, the Court noted that verbal statements by public officials suggesting that compensation may be provided could give rise to a legitimate expectation that the commencement of further proceedings would be unnecessary. This

---

<sup>119</sup> See, e.g., Application, Ex. 27 (Bagdonavichus Case) (Kaliningrad Regional Court: "The fact that the respondent has no other living accommodations but that one has no legal effect for the claim in re demolition of an unsanctioned building").

<sup>120</sup> Government observations, at ¶ 117.

<sup>121</sup> *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 108.

<sup>122</sup> See *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 109-110.

<sup>123</sup> See, e.g., *Akdivar and others v. Turkey*, ECtHR, Judgment of 16 September 1996, at ¶ 68; *Ayder and others v. Turkey*, Judgment of 8 January 2004, at ¶ 99-101.

<sup>124</sup> See *Ayder and others v. Turkey*, Judgment of 8 January 2004, at ¶ 100-101.

<sup>125</sup> See Application, at ¶ 25-29.

<sup>126</sup> *Ayder and others v. Turkey*, Judgment of 8 January 2004, at ¶ 100.

<sup>127</sup> Cf. *Dogan and others v. Turkey*, Judgment of 29 June 2004, at ¶ 109.

<sup>128</sup> See, e.g., Application, at ¶ 15.60; Ex. 13.

was the case even though, as here, it was clear that many of the applicants concerned did not understand the scope of or procedures for accessing such compensation.<sup>129</sup> At least for those applicants who were aware of the possibility of some form of compensation for the destruction of their homes in Dorozhnoe village, they may have believed that the government intended to compensate them on its own initiative.

85. In light of the above, the government has not demonstrated with sufficient certainty that further effective and accessible domestic remedies existed which the applicants should be required to exhaust.

### **C. Helena and Ana Bagdonavichute did not Abuse the Right of Petition**

86. Helena and Ana Bagdonavichute (who was not even two years old at the time) were both present in Kaliningrad and living in Dorozhnoe village at the time of the demolition. Nothing in the Government's observations raises serious doubt as to the veracity of the essential facts underlying these applicants' Convention claims. First, Helena was in Kaliningrad with Justice Initiative lawyers to sign authority letters in May 2006, just after the Bagdonavichus home was razed. Second, statements from other family members confirmed their whereabouts at the time of the demolition and acknowledged their flight to Lithuania (see paragraphs 13-14 and 35-36, above). Finally, Leonas Bagdonavichus specifically stated in April 2013 that his daughter and granddaughter were living in his house before it was demolished.<sup>130</sup>
87. The government only presents a summary of records that indicate entry from Lithuania to Russia in 2007, after the demolition had already taken place. This is entirely consistent with the applicants' accounts of the relevant facts.
88. The applications of Helena and Ana Bagdonavichute should accordingly be considered admissible on this ground as well.

## **IV. MERITS**

89. The Russian authorities' actions violate the Convention rights of the applicants, as more fully set forth in the original application and supplemental submissions. In response to the questions posed by the Court, and in reply to the government's arguments, the applicants make the following submissions.
- *Article 8* (Question 1). The forced evictions and demolition of the village were disproportionate interferences with the applicants' rights to home, private and family life and the government failed to take into account the applicants' vulnerable status and the significant impact that the destruction of the village would have upon their lives.
  - *Article 1 of Protocol 1* (Question 2). The bull-dozing and burning of their homes and property constitute an unjustified interference with the applicants' right to peaceful enjoyment of their possessions.
  - *Article 14* (Question 3). The destruction of Dorozhnoe village was a discriminatory act levied against an entire community on account of their Roma ethnicity.
  - *Additional violations raised in the application*. The Court is urged to consider the applicants' claims under Articles 2 (Right to Life), 3 (Degrading Treatment), 6(1) (Fair Trial) and 13 (Effective Remedy).

---

<sup>129</sup> See *Ayder and others v. Turkey*, Judgment of 8 January 2004, at ¶ 101.

<sup>130</sup> See Exhibit 1, at ¶ 6.

## A. ARTICLE 8 (QUESTION 1)

90. The applicants refer to the full arguments contained in the original application, showing that a violation of Article 8 has occurred as a consequence of the mass forced eviction in Dorozhnoe in 2006 and its aftermath. The order of interference with the applicants' homes, their family lives and their social identities is reflected through the individual testimonies provided to the Court in 2006, 2010 and 2014. The applicants emphasize that the violation in this case is as much a function of the manner in which the authorities exercised their power as it is a challenge to the illegitimate legal basis of the eviction itself.
91. The Government's observations in contrast apply a rote analysis of internal land administration law, seeking to justify the demolition by deeming the applicants' homes "unlawful constructions," without acknowledging the gross disproportionality of the interferences at stake. That the government also seeks to justify its actions as an effort to reduce crime underscores the irrationality of the applicants' eviction and the subsequent demolition of Dorozhnoe village. It is an expression of the prejudicial mentality toward Roma communities across Russia and beyond and should be dismissed as such. In a democratic society, criminal penalties must be prescribed by law, not meted out for political advantage or as part of an openly racist policy to "exterminate" an entire community.<sup>131</sup>

### **Interference with Applicants' Homes, and Their Private and Family Life**

92. The Russian government does not dispute that it interfered with the applicants' right to respect for their homes and their private and family lives by forcibly evicting them and demolishing their houses. For the purposes of informing the Court's analysis of proportionality, it is nevertheless important to emphasize the gravity of the interference at issue.<sup>132</sup>
93. The deliberate razing and burning of homes and their contents constitute a "serious" and "particularly grave" interference with the right to respect for the home protected under Article 8.<sup>133</sup> Additionally, the collective demolition of the homes of all of the applicants resulted in the destruction of an entire community.<sup>134</sup> This had unavoidable repercussions on the applicants' health, personal development and social and family ties, constituting an acute interference with their private and family life.<sup>135</sup>
94. The conditions in which the applicants have been forced to live underscore the seriousness of the interference. As described in the application and two supplementary filings, since the demolition the applicants have found temporary shelter in substandard conditions, particularly for harsh winters in western Russia, which has made it virtually

---

<sup>131</sup> See Application, Ex. 5, at ¶ 15.

<sup>132</sup> See also Application, at ¶ 15.33-15.38; Request for Priority, passim. The interference in this case, in terms of its character, scope and severity, is categorically distinct from cases such as *Chapman v. United Kingdom* and *Buckley v. United Kingdom*, where the applicants were individuals who were not rendered homeless or torn from their families and community as a result of the claimed violations. *Chapman v. United Kingdom*, ECtHR [GC], Judgment of 18 January 2001, at ¶ 18; *Buckley v. United Kingdom*, ECtHR, Judgment of 29 September 1996, at ¶ 7.

<sup>133</sup> *Akdivar and others v. Turkey*, ECtHR [GC], Judgment of 16 September 1996, at ¶ 88; *Selçuk and Asker v. Turkey*, ECtHR, Judgment of 24 April 1998, at ¶ 86. See also *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 120; *Yordanova and others v. Bulgaria*, Judgment of 24 April 2012, at ¶ 118.

<sup>134</sup> See Application, at 45-46.

<sup>135</sup> See *Yordanova and others v. Bulgaria*, Judgment of 24 April 2012, at ¶ 105; *Chapman v. the United Kingdom*, ECtHR, Judgment of 18 January 2001, at ¶ 73.

impossible for them to stay together as a community or even as family units.<sup>136</sup> For example, Leonas Bagdonavichus stated in December 2010, with respect to the near total eradication of the Kasperavichus applicant family:

“I can only relate what has happened to their family to the eviction. Everyone had to separate because of that. The family fell apart because of the eviction. We used to have a large family, too. Now you see the result.”<sup>137</sup>

95. As Nonna Zghuleva described in her 2010 statement: the Roma community of Dorozhnoe was “eradicated” by the government’s actions.<sup>138</sup>

**Interference not “in Accordance with the Law”**

96. The interference was also not “in accordance with the law” because the government’s actions were arbitrary, unforeseeable and essentially politically-determined.
97. The requirement that an action or measure should be “in accordance with the law” includes a qualitative assessment of the law’s accessibility and foreseeability.<sup>139</sup> As stated above, the quality of procedural safeguards is critical in eviction cases.<sup>140</sup> This is especially true in cases of evictions carried out by force and applied to an entire community.<sup>141</sup>
98. As discussed in the application and above (see paragraph 74-81), the eviction and demolition were carried out through expedited, irregular legal proceedings that did not respect due process.<sup>142</sup> The decisions furthermore ignored the fact that the Roma community was originally forced to settle on account of the 1956 decree.<sup>143</sup> Although the government argues that the decree itself did not establish Dorozhnoe as the site of a Roma settlement and did not grant title to any particular parcel of land, that failure should not now be used against the applicants and other families of the village.<sup>144</sup>
99. As noted by the third party interveners, the eviction in Kaliningrad is part of a larger pattern of discriminatory forced evictions of Roma communities across Russia.<sup>145</sup> As in the present case, these evictions are often preceded by local media campaigns demonizing Roma as “drug dealers and criminals” and are justified by decisions denying title in spite of the existence of an acquisitive prescription statute, Article 234 of the Russian Civil Code.<sup>146</sup> Before the domestic courts, the applicants’ lawyers argued

---

<sup>136</sup> See, e.g., Application, Ex. 8, at ¶ 20; Request for Priority, Ex. 1, at ¶ 10, 16; Ex. 2, at ¶ 20 (Mariya Arlauskene: “This has had an incredible impact on my family. We’ve lost everything: our health, our family members. I’ve lost my daughter. I have nothing now.”); Ex. 3, at ¶ 22; Ex. 5, at ¶ 8.

<sup>137</sup> Request for Priority, Ex. 1, at ¶ 22.

<sup>138</sup> Request for Priority, Ex. 3, at ¶ 22.

<sup>139</sup> See *Amann v Switzerland*, ECtHR, Judgment of 16 February 2000, at ¶ 50; *Kuric and others v. Slovenia*, ECtHR, Judgment of 26 June 2012, at ¶ 341-350.

<sup>140</sup> See Third Party Intervention, at ¶ 10. Cf. *Buckley v. United Kingdom*, ECtHR, Judgment of 29 September 1996, at ¶ 76 (procedural safeguards “especially material” in proportionality assessment in Article 8 cases; “decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8”).

<sup>141</sup> Cf. *Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples’ Rights, Judgment of 25 November 2009, at ¶ 218 (“Forced evictions, by their very definition, cannot be deemed to satisfy Article 14 of the [African] Charter’s test of being done ‘in accordance with the law.’”).

<sup>142</sup> See Application, at ¶ 15.50-15.68.

<sup>143</sup> See Application, at 12-13.

<sup>144</sup> See Government’s observations, at ¶ 141.

<sup>145</sup> See FIDH and ADC-Memorial St. Petersburg, Forced Evictions and the Right to Housing of Roma in Russia (2008), available at: <http://www.fidh.org/IMG/pdf/Romrussie501angconj2008-2-1.pdf>.

<sup>146</sup> *Ibid.* at 3.



that decisions in respect of non-Roma petitioners under Article 234 with similar facts reached the opposite outcome, to no avail.<sup>147</sup>

100. For these reasons, the Court should consider the government's actions not "in accordance with the law," in violation of Article 8(2).

**Interference not Justified**

101. The interference caused by the destruction of the applicants' homes and community cannot be considered necessary in a democratic society because it is disproportionate to the alleged public interests relied upon by the government.
102. The government offers two justifications. First, the government argues that the applicants' homes were not "lawfully established," and, therefore, the demolition was justified in order to "ensure compliance with the rules of land use."<sup>148</sup> Second, the demolition was justified according to the government because the village was "the drug market for the Kaliningrad Region" and the applicants were players in "international drug trafficking business." Neither ground suffices to explain, let alone justify, the grave interference with the applicants' rights in this case.

Narrow Margin of Appreciation Applies

103. The government exaggerates the scope of its margin of appreciation with respect to the interference with the applicants' Article 8 rights.<sup>149</sup> The most pertinent factors informing the scope of the margin of appreciation for purposes of proportionality analysis in collective forced eviction cases include the gravity of the interference caused by the loss of one's home, the paramount importance of procedural safeguards available in eviction proceedings, and the particular vulnerability of Roma as a minority group.<sup>150</sup> While states enjoy some degree of latitude, in particular regarding evictions of individuals, the margin is considerably narrowed in this case due to the fact that it concerns the destruction of an entire community<sup>151</sup> and due to the particular vulnerability of the applicants. In any case, the margin of appreciation cannot be wide enough under any circumstances to leave Contracting States to exercise such brutality with virtual impunity.
104. As the Court has recognized, "as a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority [...]. They therefore require special protection."<sup>152</sup> Taken together, the actions of the Russian authorities in this case directly contravened this well-settled principle of the Court's jurisprudence. As noted above (see paragraphs 51-52), the targeting of Dorozhnoe for evictions and demolition forms part of a broader trend of forced evictions of Roma in Russia that calls for the Court's continued vigilance in ensuring respect for Convention rights.<sup>153</sup> In 2011, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities documented the challenges that Roma in other parts of Russia face, including employment discrimination, lack of access to education,

---

<sup>147</sup> See Application, Ex. 28. See also Application, at 33, Ex. 55-56 (citing contradictory comparative jurisprudence from another district court in the Kaliningrad region).

<sup>148</sup> See Government's observations, at ¶ 129, 154.

<sup>149</sup> See, e.g., Government's observations, at ¶ 126-27, 169.

<sup>150</sup> See, e.g., *Connors v. United Kingdom*, ECtHR, Judgment of 27 May 2004, at ¶ 82-86; *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 118; *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 147.

<sup>151</sup> *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 121.

<sup>152</sup> *Oršuš and others v. Croatia*, ECtHR [GC], Judgment of 16 March 2010, at ¶ 147.

<sup>153</sup> See, e.g., FIDH and ADC-Memorial St. Petersburg, *Forced Evictions and the Right to Housing of Roma in Russia* (2008), at 3, available at: <http://www.fidh.org/IMG/pdf/Romrussie501angconj2008-2-1.pdf>.

and extreme poverty.<sup>154</sup> Given the hardships which they suffer as members of this particularly vulnerable minority, the applicants' forcible eviction and the demolition of their homes without provision of suitable alternative housing (see below) did not just fail to satisfy the obligation of "special protection;" they put the entire Roma community of Dorozhnoe village in an even more vulnerable position.

105. These factors considerably narrow the government's margin of appreciation in the specific circumstances of this case.<sup>155</sup>

#### Unlawfulness of Ownership not a Sufficient Justification

106. In order to justify the evictions and demolition of Dorozhnoe village the government adopts an overly narrow and selective reading of both the Court's case-law in other forced eviction cases and the construction of Russian land law.<sup>156</sup> On both accounts, the applicants dispute the arguments advanced by the government. The Court's more recent case-law has clarified that legal title is not dispositive in the context of Article 8 cases challenging forced evictions.<sup>157</sup> The applicants equally maintain their claim that Article 234 of the Russian Civil Code should have been employed to clarify their lawful rights to hold title to the houses they occupied in the village, ensuring their security and dignity.<sup>158</sup>

#### *Applicants' long-term residence and vulnerable situation must be taken into account*

107. The government ignored the required assessment of proportionality in demolishing the village, even if the applicants' homes were unlawful constructions under domestic law. Specifically, the government failed to take account of the Roma community's long-term ties to the village and their particularly vulnerable situation in determining to evict them and demolish their homes.
108. Legal title may be a relevant factor in weighing the proportionality of an interference under Article 8(2), but the Court has repeatedly confirmed that applicants "need not present title deeds" to substantiate a claim under Article 8.<sup>159</sup> As the Court emphasized in *Winterstein and others v. France*, domestic courts should not accord an outsized importance to the applicants' non-compliance with internal land laws and regulations,<sup>160</sup> but must instead consider the proportionality of an eviction from the perspective of its impact on individual, family and community life.<sup>161</sup> This is all the more so where, as in Russia during the relevant time period, internal land regulations were subject to political manipulation, as well as arbitrary and biased implementation.
109. In *Yordanova and others v. Bulgaria*, the Court found that a violation of Article 8 would occur if the applicant community was evicted from homes on unlawfully settled municipal land because the Bulgarian government had made no attempt to remove the community for several decades, resulting "in the applicants' developing strong links

---

<sup>154</sup> See Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the Russian Federation, 24 November 2011, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_RussianFederation\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_RussianFederation_en.pdf).

<sup>155</sup> *Timishev v. Russia*, ECtHR, Judgment of 13 March 2006, at ¶ 56 ("Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.")

<sup>156</sup> See Government's observations, at ¶ 129.

<sup>157</sup> See *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 16, 150; *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 121.

<sup>158</sup> See Application, at 31-33.

<sup>159</sup> See *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 120; *McCann v. United Kingdom*, Judgment of 13 May 2008, at ¶ 46.

<sup>160</sup> *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 156.

<sup>161</sup> *Ibid.* ¶ 151-58.

with Batalova Vodenitsa and building a community life there.”<sup>162</sup> The Court went on to stress that “situations, where a whole community and a long period are concerned, [should] be treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property.”<sup>163</sup> The Court reaffirmed this position in *Winterstein and others v. France*, finding that the French government had taken insufficient account of the applicants’ longstanding presence in the settlement, and that the government could not simply rely on the fact that it was an illegal settlement as justification for the eviction at issue.<sup>164</sup>

110. Like the applicants in *Yordanova* and *Winterstein*, the applicants in the present case had a long history of undisturbed presence in Dorozhnoe village. The Roma settlement there existed since 1956, when it was established in accordance with state *fiat*.<sup>165</sup> Members of each applicant family lived there for between forty and fifty years, and several of them were born and lived their entire lives there.<sup>166</sup> The Soviet authorities took no action to remove the settlement, nor did the Russian government in the 1990s and the early 2000s. To the contrary, until late 2002 the local authorities engaged in an active effort to formalize legal title to the properties, before they radically shifted course and commenced their campaign of deregistration and demolition.<sup>167</sup> The decades-long presence of the applicants in Dorozhnoe outweighs the government’s interest in removing an allegedly unlawful settlement.
111. The authorities also failed to consider the vulnerable status of the applicants, as members of the Roma community, as a factor weighing against the eviction and demolition. Instead, citing the fact that the lower courts were simply following established jurisprudence, the government affirms that “there was no reason to ignore it given the fact that the Roma were the defendants in the case.”<sup>168</sup> In *Yordanova and others*, the Court held that “the applicants’ specificity as a social group and their needs must be one of the relevant factors in the proportionality assessment that the national authorities are under a duty to undertake.”<sup>169</sup> Citing to *Yordanova* as well as several European and United Nations-level declarations and recommendations, the Court in *Winterstein* again noted the particular vulnerability of Roma communities and the risk posed to them by mass forced evictions.<sup>170</sup>
112. The applicants’ collective struggle to survive since the demolition only confirms the Court’s concerns about the particular vulnerability of Roma following the eviction of an entire community. The applicant families were rendered homeless, requiring them to seek whatever temporary shelter they could find, splitting up families, and sending

---

<sup>162</sup> *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 121.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 151-58.

<sup>165</sup> See Application, at 12-13.

<sup>166</sup> See Application, at 15-24.

<sup>167</sup> See Application, at 12-13. It is important to note that, unlike the applicants in *Chapman v. United Kingdom*, *Buckley v. United Kingdom*, and progeny, the applicants in this case were not conscious of the unlawfulness of their occupation of Dorozhnoe village. While the applicant in *Chapman* may have acted “in conscious defiance of the prohibitions of the law,” *Chapman v. United Kingdom*, ECtHR, Judgment of 18 January 2001, at ¶ 102, the applicant families in the present case purchased and built homes first where the Soviet government directed them to and later where their community was already settled. See Application, at 12-15. Unlike the applicant in *Buckley* who retroactively applied for permission to park her caravan on her land, the applicants in this case followed all procedures made available by the presiding government, including the registration process meant to increase the community’s access to basic public services.

<sup>168</sup> Government’s observations, at ¶ 148.

<sup>169</sup> *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 130.

<sup>170</sup> *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 159-61.

small children to be cared for in orphanages.<sup>171</sup> Accessing education has also become increasingly difficult for the children because of the loss of what little resources they had and even greater distances between their current homes and their schools.<sup>172</sup> Since the eviction and demolition of Dorozhnoe village, six of the applicants have died, including two of ill-health caused by their poor living conditions.<sup>173</sup> Another two of the original applicants have gone missing.<sup>174</sup> All of these events demonstrate the extremely grave state of vulnerability in which the Russian government's actions put the applicants and that vastly outweighs the justification the government has provided.

*Applicants entitled to recognition of ownership*

113. As stated in the application, the applicants also maintain that the Russian courts should have recognized their right to hold legal title under Article 234 of the Russian Civil Code, and that the failure to do so was motivated by racially discriminatory animus on the part of local and regional officials determined to deliver on their promises to eliminate the village.<sup>175</sup> This is another factor that was omitted from the consideration of the proportionality of the evictions.
114. Prior to the anti-Roma campaign, the applicants were in the midst of a government-initiated process of legalizing their title,<sup>176</sup> had been paying taxes on their properties,<sup>177</sup> arranged for electricity and other vital public services to be delivered to their homes<sup>178</sup> and even gained legal recognition of title to two houses that were later demolished after these decisions were reversed.<sup>179</sup>
115. In light of these considerations, the applicants should have been accorded legal title to their land and the homes constructed on them.

Criminal Activity and Collective Punishment Cannot Justify Demolition

116. The government also seeks to justify the interference on account of drug-related criminal activity associated with the village. The applicants dispute both the factual basis upon which the government relies and the rationality of the decision to destroy the entire village in order to fight crime. The approach is plainly disproportionate and amounts to collective punishment.
117. As stated in the application, razing an entire village in the name of crime prevention constitutes degrading and inhuman treatment; it is certainly disproportionate in the context of the Court's Article 8 jurisprudence.<sup>180</sup>

---

<sup>171</sup> See Government's observations, at ¶ 188 n.9; Supplemental Memorandum, at ¶ 7.

<sup>172</sup> See Request for Priority, at ¶ 60-65. The fact that criminal history records for Mihail Mihailovich Arlauskas note that he is now attending school. See Government's observations, at ¶ 188. While a positive development, this does not mean the assertion that he was unable to attend school for years as a result of the demolition is "untrue." *Ibid.*

<sup>173</sup> See Government's observations, at ¶ 188; Request for Priority, at ¶ 38-52; Exhibit 7: Death certificate of Natalya; Exhibit 8: Death certificate of Alexandras Arlauskas.

<sup>174</sup> See Request for Priority, at ¶ 50-52. The Government's information indicating the whereabouts of Alexander Kasperavichus is consistent with his status as "missing" as he has apparently been detained in a pre-detention center for nearly one year. The government does not indicate that any of his family members have been notified of his detention. See Government's observations, at ¶ 188.

<sup>175</sup> See Application, at ¶ 15.29-15.32.

<sup>176</sup> See Application, at 12-13.

<sup>177</sup> See, e.g., Application, Ex. 13, at ¶ 10.

<sup>178</sup> See, e.g., Application, at 12-13; Ex. 13, at ¶ 10.

<sup>179</sup> See Application, Ex. 43, 47.

<sup>180</sup> See Application, at ¶ 15.22; *Ayder and others v. Turkey*, ECtHR, Judgment of 8 April 2004, at ¶ 107. See also paragraphs 48-49, above.

118. The applicants themselves questioned the rationality of such a drastic measure. Alexandras Arlauskas told authorities that
- “terrible things take place in the city, but you do not destroy the city. They said ‘you the gypsies are all the same and you must be exterminated.’”<sup>181</sup>
119. Vitautas Kasperavichus similarly stated:
- “[W]e are not selling heroin. And even if it were true, it is being sold in the city, and the authorities are not demolishing the whole city. When the authorities came to demolish our homes, they said that ‘All of you are drug dealers and criminals. Get out of here and go to Lithuania! We are going to [set] your homes on fire!’”<sup>182</sup>
120. As noted above (see paragraph 51-52), the government’s actions in this case are unfortunately consistent with practices throughout Russia, where Roma communities are routinely indiscriminately over-policed and at the mercy of unscrupulous policies and practices.<sup>183</sup> Police raids on Roma communities “approach the whole Romani community as if it were one household.”<sup>184</sup> The same prejudicial mentality is reflected in the government’s arguments seeking to justify the demolition as a crime-fighting tool.<sup>185</sup> The most obvious expression of this collective punishment mindset is the claim that even though only a low number of those convicted in Dorozhnoe in 2005 appear to be of Roma ethnicity, this is because the Roma must be “using” other non-Roma individuals “to peddle drugs.”<sup>186</sup>
121. The information provided by the government furthermore does not lend support to the proposition that the demolition was linked to actual criminal activity. As stated above, among the applicant community, there were only two convictions related to drugs in the three years leading up to 2006.<sup>187</sup> Several of the applicants were 16 or 17 years old at the time of conviction.<sup>188</sup> Most of the convictions occurred either in the 1980s and 1990s or after the village was demolished.
122. The government also overlooks the fact that each of the applicants and any other community members legitimately convicted of crimes serve *criminal sentences*, the appropriate penalty under the law.
123. The Court should reject the premise of the government’s justification on the basis of criminal activity as both factually unsubstantiated and grossly disproportionate.

Proposed Alternative Accommodation Inadequate

124. In order to mitigate the severity of its actions, the government states that it offered to make housing stock and compensation available for the families of the Dorozhnoe village to resettle and that the applicants failed to apply.<sup>189</sup> However, this alternative housing was not an acceptable substitute for the demolished homes and the compensation offered was insufficient to fix the deficiencies.

---

<sup>181</sup> See Application, Ex. 5, at ¶ 15.

<sup>182</sup> See Application, Ex. 11, at ¶ 21.

<sup>183</sup> See Application, at 29 (citing European Roma Rights Centre, *In Search of Happy Gypsies: Persecution of Pariah Minorities in Russia* (May 2005)).

<sup>184</sup> *Ibid.*

<sup>185</sup> See Government’s observations, at ¶ 169-189.

<sup>186</sup> See Government’s observations, at ¶ 184.

<sup>187</sup> See paragraphs 48-50, above.

<sup>188</sup> See Government’s observations, at ¶ 188 (Nonna Zhguleva, age 17, her only conviction; Alexander Kasperavichus, first conviction, age 16; Graf Kasperavichus, first conviction, age 16; Mihail Arlauskas, his only conviction, age 17).

<sup>189</sup> Government’s observations, at ¶ 159-161.

125. The Court has said on multiple occasions that the eviction of an entire community – even an illegally settled one – cannot be compared to the eviction of a single family when evaluating the sufficiency of any alternative housing offered.<sup>190</sup> Though the Convention imposes no positive obligation on governments to provide housing to the homeless, the provision of alternative housing and its suitability are factors that the Court also takes into account when determining whether an eviction is proportionate.<sup>191</sup> Specifically, “the more suitable the alternative accommodation is, the less serious is the interference.”<sup>192</sup>
126. The fact that the community to be evicted is a Roma community must likewise be “a weighty factor” in assessing the appropriateness of alternative accommodation.<sup>193</sup> This includes not only acknowledging an increased risk of homelessness, but also taking into account the particular needs of the Roma community regarding the kind of accommodation made available. In *Winterstein and others v. France*, the Court stated that those applicants who requested but were denied alternative housing on family sites were in a highly precarious situation and they could not be faulted for not accepting social housing that did not correspond to their way of life.<sup>194</sup>
127. Several aspects of the alternative housing offered were insufficient to protect against the extreme vulnerability of the applicants. First, when the decree allocating the housing stock to the residents of Dorozhnoe was made on 28 April 2006, the demolitions had already begun.<sup>195</sup> Members of the community were not consulted or even informed of the availability of compensation or alternative housing until after the demolitions had begun and no information was provided on how the decree would be implemented.<sup>196</sup> This raises serious doubts that the substance of the decree could have made any significant step to alleviate the applicants’ suffering and help them rebuild their community.
128. Even if municipal housing stock had been made available in a timely and appropriate fashion, it was not an adequate alternative for this particular community. According to the 2006 decree, the housing stock allocated for the residents of Dorozhnoe was to be spread out over several different municipalities, meaning that the community would have to accept being separated. Requests for land to be made available to move the village as a whole were denied.<sup>197</sup> Mariya Arlauskene confirms that those who were shown the available housing after the demolition were taken to settlements at least 200 kilometers away from Dorozhnoe, meaning they would be separated from the community, family members and the school some of the children had attended.<sup>198</sup> The

---

<sup>190</sup> *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 121; *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 148. Compare *Buckley v. United Kingdom*, ECtHR, Judgment of 29 September 1996, at ¶ 81.

<sup>191</sup> *Coster v. United Kingdom*, ECtHR, Judgment of 18 January 2001, at ¶ 117.

<sup>192</sup> *Ibid.*

<sup>193</sup> *Yordanova and others v. Bulgaria*, ECtHR, Judgment of 24 April 2012, at ¶ 133.

<sup>194</sup> *Winterstein and others v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 163-164. Cf. *Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples’ Rights, Judgment of 25 November 2009, ¶ 234 (if for valid reasons states must displace indigenous populations from traditional lands, they must “surrender alternative lands of equal extension and quality, which will be chosen by agreement with the members of the indigenous peoples, according to their own consultation and decision procedures”).

<sup>195</sup> See, e.g. Application, Ex. 1, at ¶ 16 (Leonas Bagdonavichus describing the destruction of five homes in April 2006); Ex. 2, at ¶ 13 (Magdalen Bagdonvichene stating that “[t]he mass demolitions took place in April, 2006”).

<sup>196</sup> See Exhibit 1, at ¶ 7-8; Exhibit 2, at ¶ 5-6.

<sup>197</sup> See Application, Ex. 1, at ¶ 21.

<sup>198</sup> See Exhibit 2, at ¶ 6. See also, Exhibit 1, at ¶ 8.

houses were reportedly uninhabitable and far from markets or hospitals.<sup>199</sup> The small fund appropriated could not reasonably have brought such structures up to habitability for the community members. There were 45 houses in Dorozhnoe with 321 residents as of 2002; the fund allocated only USD 166,000 to make repairs.<sup>200</sup>

129. These alternatives therefore did not satisfy the needs of the community, whose members had resided in the same village for decades and faced everyday discrimination in society. This decree therefore does not alleviate the violation of their Article 8 rights and the residents of Dorozhnoe cannot be faulted for not accepting it.<sup>201</sup>

## **B. ARTICLE 1 OF PROTOCOL NO. 1 (QUESTION 2)**

130. The deliberate destruction and burning of the applicants' homes and other property – accomplished with insufficient notice and absent other necessary procedural safeguards – violates their right to peaceful enjoyment of their possessions and the prohibition of unjustified deprivation of possessions guaranteed in Article 1 of Protocol 1 to the Convention. The applicants' full arguments on the merits are set forth in the original application.<sup>202</sup>

### **Interference with Peaceful Enjoyment and Deprivation of Possessions**

131. The notion of “possessions” in Article 1 of Protocol 1 has an “autonomous meaning” from that assigned to it under national law.<sup>203</sup> Thus, while the government relies on the applicants' lack of formal ownership or proprietary interest over their houses to deny that it violated Article 1 of Protocol 1, this is misplaced and does not address the substance of their claims.<sup>204</sup> The Court has also made clear that even where applicants did not have “registered property,” Article 1, Protocol 1 protections may be triggered.<sup>205</sup> In reality the demolition destroyed both the houses and their contents, even if Russian law apparently considered that the demolition has no legal effect on the applicants' right to possession of an “unauthorized” dwelling<sup>206</sup> – a position which is hardly compatible with the Convention framework.<sup>207</sup>
132. As the applicants argued in the original application, the purposeful demolition of their homes and personal possessions contained therein constitutes a grave interference with their “possessions” within the meaning of Article 1 of Protocol 1. The government does not appear to dispute this conclusion, beyond offering its abstract interpretation of Russian land law.

---

<sup>199</sup> See Exhibit 2, at ¶ 6.

<sup>200</sup> See paragraph 54, above.

<sup>201</sup> *Winterstein and other v. France*, ECtHR, Judgment of 17 October 2013, at ¶ 163-64.

<sup>202</sup> See Application, at ¶ 15.27, 15.46-15.49. As noted in the Application, the Court has often examined violations of Article 1 of Protocol 1 alongside its examination of Article 8 claims in analogous cases, where forced evictions coincided with the destruction of homes and property. See, e.g., *Akdivar and others v. Turkey*, ECtHR, Judgment of 16 September 1993, at ¶ 88; *Selcuk and Asker v. Turkey*, ECtHR, Judgment of 24 April 1998, at ¶ 83-87; *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 199-121.

<sup>203</sup> See *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 138.

<sup>204</sup> See Government's observations, at ¶ 152.

<sup>205</sup> See *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 139.

<sup>206</sup> *Ibid.*

<sup>207</sup> See *Dogan and others v. Turkey*, ECtHR, Judgment of 29 June 2004, at ¶ 139 (“The Court notes that it is not required to decide whether or not in the absence of title deeds the applicants have rights of property under domestic law.”).

### **Interference not Justified**

133. For the reasons elaborated in the application and above with respect to the applicants' claims under Article 8, the interference cannot be said to strike a fair balance with the public interests it purportedly aimed to serve.<sup>208</sup> Any measure interfering with an applicant's Article 1 of Protocol 1 rights must be "both appropriate for achieving its aim and not disproportionate thereto."<sup>209</sup> "The requisite balance will not be found if the person concerned has had to bear 'an individual and excessive burden.'"<sup>210</sup>
134. The government cites two "public interest" objectives of the demolitions: "ensuring observance of the building rules to observe proper development of the territories" and addressing criminal activities, specifically drug trafficking, in the Gurievsk district.<sup>211</sup>
135. As stated above, the applicants dispute the suggestion that Russian law denies them ownership rights over the land in Dorozhnoe. Even if they are not entitled to ownership over their land and the constructions erected on it over the years, the Court has not considered ownership to be decisive where authorities "deliberately destroyed the applicants' houses and property," rendering them homeless.<sup>212</sup> Such a grave interference cannot be justified simply in the name of regulating development.
136. The demolition was also an inappropriate and disproportionate means of achieving its stated goal of combatting criminal activities, for the reasons outlined above. As stated in the application:
- "[T]he indiscriminate razing of the applicants' homes without any evaluation of their individual alleged involvement in criminal activity is certainly disproportional to any public good the Government would hope to achieve."<sup>213</sup>

### **Margin of Appreciation**

137. While the Court may accord a margin of appreciation to states in determining the public interest, the government's actions in this case far exceed any reasonable latitude they may have in fashioning domestic policies in relation to land and other property rights.<sup>214</sup>
138. The applicants furthermore submit that the same considerations arising under Article 8(2), specifically the lack of procedural safeguards to protect their property rights and their personal vulnerability as members of a marginalized minority, should factor in the Court's construction of the margin of appreciation in respect of Article 1 of Protocol 1 in this case.

### **C. ARTICLE 14 (QUESTION 3)**

139. The applicants provided abundant evidence that their village was deliberately and publicly targeted for eradication, that the domestic courts treated them with hostility and failed to adequately consider their claims of discrimination and that the officials carrying out the demolition shouted racial epithets while violently mistreating them.<sup>215</sup>

---

<sup>208</sup> See Application, at ¶ 15.48-15.49; paragraphs 48-52, 101-129, above.

<sup>209</sup> *James and others v. United Kingdom*, ECtHR, Judgment of 21 February 1986, at ¶ 50.

<sup>210</sup> *Ibid.*

<sup>211</sup> See Government's observations, at ¶ 156, 190.

<sup>212</sup> *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 119-120.

<sup>213</sup> See Application, at ¶ 15.49.

<sup>214</sup> See Application, at ¶ 15.48-15.49.

<sup>215</sup> See Application, at 24-31.



140. The government denies that a difference in treatment has occurred, arguing that its actions were justified in the name of fighting “crime and delinquency.”<sup>216</sup> The government persists in employing racially discriminatory language in its observations, perpetuating the nefarious falsehood that Roma are criminals by nature.<sup>217</sup> Implied in the policy justification for the demolition is the idea that the wholesale eradication of the Roma community is a legitimate government action. It is not. Crime fighting is not a rational justification for razing an entire village and the demolition is in any case disproportionate to the aim identified.
141. Given the stark evidence of discriminatory animus and the gravity of the interference with the applicants’ rights, the Court is urged to make a separate finding that the government’s actions were discriminatory in violation of Article 14, read in conjunction with Article 8 and Article 1 of Protocol 1.<sup>218</sup>

### **Differential Treatment**

142. The applicants were treated differently on account of their Roma ethnicity.
- Applicants Disadvantaged on Account of Their Roma Ethnicity
143. Before, during and after the demolition, the Russian authorities’ words and actions exposed its essentially discriminatory nature.
144. *Differential treatment in demolition proceedings.* The applicants themselves realized that they were being treated differently from any other residents of Kaliningrad actually or allegedly connected to the drug trade. Vitautas Kasperavichus stated, for example: “[heroin] is being sold in the city, and the authorities are not demolishing the whole city.”<sup>219</sup> In fact, the evictions and demolition transpired amidst a public campaign by local politicians calling for the intensification of a fight against drug-dealing, centering on the elimination of the Roma from Dorozhnoe.<sup>220</sup> Statements by local officials, reported in the media, played on stereotypes indiscriminately associating Roma with criminal activity.<sup>221</sup>
145. The courts operated arbitrarily and summarily dismissed the applicants’ argument that the eviction proceedings were racially motivated.<sup>222</sup> The applicants furnished additional evidence indicating that title actions brought by non-Roma occupants of Dorozhnoe under Article 234 of the Russian Civil Code were favourably decided,<sup>223</sup> whereas the only two that were granted to the applicants were promptly reversed. This is consistent with a reported national trend through which Russian authorities across the country are expanding the discriminatory application of Article 222 on “unauthorized buildings” as a precursor to forced evictions of Roma communities.<sup>224</sup>
146. *Racial animus expressed openly by authorities during demolition.* While special police forces were in the village bulldozing and burning the Roma houses, they repeatedly insulted the applicants with racial slurs and threatened them with talk of

<sup>216</sup> See Government’s observations, at ¶ 212.

<sup>217</sup> See Government’s observations, at ¶ 184.

<sup>218</sup> As discussed below, the applicants also raised claims of discrimination in conjunction with their claims under Articles 2, 3, 6(1) and 13 of the Convention. See Application, at 34-50.

<sup>219</sup> Application, Ex. 11, at ¶ 21.

<sup>220</sup> See Application, Ex. 58-60; paragraphs 45-47, 52, above.

<sup>221</sup> See Application, Ex. 58-60.

<sup>222</sup> See, e.g., Application, at ¶ 15.50-15.62.

<sup>223</sup> See Application, Ex. 56-57.

<sup>224</sup> See FIDH and ADC-Memorial St. Petersburg, Forced Evictions and the Right to Housing of Roma in Russia (2008), at 4, available at: <http://www.fidh.org/IMG/pdf/Romrussie501angconj2008-2-1.pdf>.

“extermination.”<sup>225</sup> Russian police harassed the applicants’ lawyer;<sup>226</sup> the district ombudsman told another representative that the applicants “deserve what they get.”<sup>227</sup>

147. *Differential treatment of non-Roma houses in the village.* The government states that “[n]o ethnic Russians lived in the village.”<sup>228</sup> The applicants dispute this statement. Two houses in the village were not demolished, even though many of the houses were legalized, including the houses of the Samulajtis and Kasperavichus families.<sup>229</sup> One house remains occupied by the ethnic Russian Kotov family. The second house is believed to have been rented by the Hristeva family prior to the demolition from an ethnic Russian landlord.<sup>230</sup>
148. Finally, the government argues that there is “no objective evidence” of differential treatment on account of race or ethnicity because government agencies have not received a formal complaint.<sup>231</sup> It is hardly surprising that, after the police and other municipal officials, as well as the judicial authorities, colluded to demolish their homes, and in light of the offensive statements and violence on the part of the authorities undertaking the demolition, the applicants did not make further attempts to report such incidents to government offices.

#### Failure to Treat Differently

149. A violation of Article 14 will also occur when states, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different.<sup>232</sup>
150. The duty to afford special protection to vulnerable groups and therefore to treat them differently is rooted in the importance the Court attaches to pluralism, tolerance and broadmindedness – the “hallmarks of democracy.”<sup>233</sup> Accordingly, the failure to protect the most vulnerable groups in society undermines the principles of equality and human dignity that form the very essence of the democratic principles of the European public order.
151. There is every reason to consider that the government should have taken positive steps to ensure that the rights of the Roma community of Dorozhnoe should be protected. The previous administration began to recognize this obligation by initiating a development plan that would vindicate the applicants’ interests in their homes within the community, and provide them with legal title.<sup>234</sup> On the contrary, the government now states in its observations that “[t]here was no reason” to depart from standard application of Russian land law “given the fact that the Roma were defendants.”<sup>235</sup> The government’s perpetual disavowal of its obligations toward the Roma community of Dorozhnoe village represents a serious affront to the abiding principles of tolerance and respect for human dignity that inform the Convention as a whole. Even if the Court could consider forced evictions a legitimate means of addressing the public interest

---

<sup>225</sup> See Application, at 25-26.

<sup>226</sup> See Application, Ex. 13, at ¶ 19-20.

<sup>227</sup> Application, Ex. 12, at ¶ 14.

<sup>228</sup> Government’s observations, at ¶ 216.

<sup>229</sup> See Application, Ex. 43, 47.

<sup>230</sup> See Application, Ex. 3, at ¶ 16 (Olegas Bagdonavichus: “I know there is a brick house in which one of our neighbors lives that was not demolished. This neighbor said there were buyers coming to him and offering a lot of money for his home. He is Roma but because he is a tenant of the home and the actual owner is not Roma, the home was not demolished.”)

<sup>231</sup> See Government’s observations, at ¶ 218.

<sup>232</sup> *Thlimmenos v. Greece*, ECtHR, Judgment of 6 April 2000, at para. 44.

<sup>233</sup> *Gorzelik & others v. Poland*, ECtHR [GC], Judgment of 17 February 2005, at para. 90.

<sup>234</sup> See Application, 13-14.

<sup>235</sup> Government’s observations, at ¶ 148.

concerns of states, such severe interferences with the rights of vulnerable individuals must be undertaken only after the sober, genuine consideration of their needs.

#### **No Objective and Reasonable Justification**

152. As emphasized above, crime fighting and anti-drug trafficking campaigns are not rational justifications for destroying the homes of an entire community, including many young children. *See* paragraphs 116-123, above.

#### **Destruction of the Village Disproportionate to Proffered Aims**

153. Even if crime fighting may be considered a reasonable justification, the means employed – demolishing and burning more than 40 homes in order to wipe out a community – is surely disproportionate. *See* paragraphs 116-123, above.

#### **Narrow Margin of Appreciation Applies**

154. The specific facts and circumstances of this case narrow the margin of appreciation in assessing the compliance of Russia's actions with Article 14.<sup>236</sup> *See* paragraphs 103-104, above. The Court has made clear that where race or ethnicity plays a role in determining state action, the margin of appreciation is narrowed considerably, and states must provide "very weighty reasons" to justify interferences with Convention rights.<sup>237</sup> As the Court affirmed in *Timishev v. Russia*:

"[N]o difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures."<sup>238</sup>

### **D. ADDITIONAL ARGUMENTS RAISED IN THE APPLICATION**

155. The Court is urged to consider the additional arguments raised in the application.

#### **Article 2: Right to Life**

156. The applicants presented a claim under Article 2 due to the threats to life and health stemming from the demolition and subsequent acts and omissions of the Russian authorities.
157. The application made reference, for example, to the deliberate poisoning of the community's drinking water by Russian officers after the demolition,<sup>239</sup> as well as the death of Anastasiya Arlauskas from an infection she acquired while living in a tent after her home was destroyed, and shortly after she gave birth to a son.<sup>240</sup> Six applicants have now died; two are missing. In their 2 March 2010 Request for Priority, the applicants recounted in detail the impact that the demolition has had on their health.<sup>241</sup> Officers used excessive force creating a grave risk to life and health during the execution of the demolition.<sup>242</sup> Authorities also failed to protect the applicants from imminent harm stemming from the destruction of their homes,<sup>243</sup> including by failing to provide

---

<sup>236</sup> *See Oršuš and others v. Croatia*, ECtHR, Judgment of 16 March 2010, at ¶ 147.

<sup>237</sup> *See ibid.*, at ¶ 149; *Timishev v. Russia*, ECtHR, Judgment of 13 March 2006, at ¶ 56.

<sup>238</sup> *Timishev v. Russia*, ECtHR, Judgment of 13 March 2006, at ¶ 58.

<sup>239</sup> *See* Application, Ex. 8, at ¶ 15; Ex. 9, at ¶ 20.

<sup>240</sup> Request for Priority, at ¶ 41-43.

<sup>241</sup> *See* Request for Priority, at ¶ 15-37.

<sup>242</sup> *See Nachova and others v. Bulgaria*, ECtHR, Judgment of 6 July 2005.

<sup>243</sup> *See Oneryildiz v. Turkey*, ECtHR, Judgment of 30 November 2004, at ¶ 97-110.

adequate healthcare.<sup>244</sup> In short, Russia failed to do “all that could have been required of it to prevent . . . life from being unavoidably put at risk.”<sup>245</sup>

### **Article 3: Inhuman and Degrading Treatment**

158. The applicants maintain that the Russian government’s actions toward them rise to such a level of severity as to be considered inhuman and degrading treatment.<sup>246</sup>
- *The demolitions were violent and forceful in nature.* Applicants watched their homes burn before their eyes,<sup>247</sup> fled from stray shots fired for days after the demolition and were physically beaten by Russian agents.
  - *Russia’s actions constitute systematic discrimination.* The applicants, many of whom were innocent children, were singled out on the basis of race for differential treatment, representing a special affront to human dignity, and amounting to degrading treatment.<sup>248</sup>
  - *The demolitions amount to collective punishment.* The mass eviction and demolition of Dorozhnoe village was an indiscriminate attack on the Roma community living there.

### **Articles 2 and 3 in Conjunction with Article 14**

159. For the reasons stated in the application and above, the applicants emphasize the discriminatory nature of the threats to life and health and the inhuman and degrading treatment they experienced.<sup>249</sup> This is twofold: firstly, the applicants were targeted for the destruction of their community and that destruction was carried out in a particularly violent and degrading manner because they are Roma; and secondly, the impact of that eviction on their life, health and dignity has been amplified by the lack of access to basic social services faced by Roma throughout Russia.<sup>250</sup>

### **Articles 6 § 1 and 13: Denial of Fair Trial and Effective Remedy**

160. The applicants also challenged their lack of access to fair and adequate redress for the violations of their rights.<sup>251</sup> See also paragraphs 74-81, above.
161. Because of the discriminatory character of the interference with the applicants’ rights they brought these claims independently and in conjunction with Article 14.<sup>252</sup>

## **V. CLAIM FOR JUST SATISFACTION**

162. The violations set out in the application and subsequent filings caused substantial injuries to the applicants, both pecuniary and non-pecuniary. The most direct loss is the

---

<sup>244</sup> See *Cyprus v. Turkey*, ECtHR, Judgment of 10 May 2001.

<sup>245</sup> See *L.C.B. v. United Kingdom*, ECtHR, Judgment of 9 June 1998, at ¶ 36.

<sup>246</sup> See, e.g., *Soering v. United Kingdom*, ECtHR, Judgment of 7 July 1989, at ¶ 108-09; *Ireland v. United Kingdom*, ECtHR, Judgment of 18 January 1978, at ¶ 162.

<sup>247</sup> See *Ayder and others v. Turkey*, Judgment of 8 April 2004, at ¶ 109-110. Application, at ¶ 15.11-15.19.

<sup>248</sup> See Application, at ¶ 15.20.

<sup>249</sup> See Application, at ¶ 15.3-15.26; paragraphs 51-52, 83, 120, 142-148, above.

<sup>250</sup> See, e.g., European Roma Rights Centre, Parallel Report to the United Nations Committee on the Elimination of All Forms of Discrimination (CERD), January 2013 (citing general lack of access to personal identity documents among Roma in Russia), available at:

<http://www.errc.org/cms/upload/file/russian-cerd-submission-30-january-2013.pdf>; European Roma Rights Centre, In Search of Happy Gypsies: Persecution of Pariah Minorities in Russia, May 2005, available at: <http://www.errc.org/cms/upload/media/01/4A/m0000014A.pdf>.

<sup>251</sup> See Application, at ¶ 15.55-15.66.

<sup>252</sup> See Application, at ¶ 15.67-15.69.

destruction of their houses and their community. They also suffered additional pecuniary losses, as the demolition and burning of their houses without adequate notice destroyed much of their personal property, and they were forced to seek alternative accommodation. Finally, the applicants suffered the emotional distress of watching their homes and community razed, without any redress, as part of a racially motivated campaign and while suffering abuse at the hands of the state agents carrying out that destruction. The conditions in which the applicants were left to live following the demolition of their homes have caused additional suffering, including their exposure to significant health problems, leading to the death of two applicants, and loss of access to education for the children.

163. The object of the application is to vindicate the rights of the applicants under the European Convention on Human Rights. The applicants have received no reparation under domestic procedures, and in this part they seek just satisfaction under the Convention.
164. The applicants will outline the damage that they suffered and the restitution that they request, primarily the restoration of their community, below. This includes just satisfaction through (A) restitution of their housing, either by rebuilding the destroyed houses, or providing a new community, or providing compensation to allow the applicants to do so, (B) an award for other pecuniary damages, including the cost of alternative housing and the destruction of personal property, (C) an award for non-pecuniary damages, recognizing the emotional suffering of the applicants and the discriminatory nature of the government's operation, as well as the consequences of the destruction of their lives, and (D) default interest.
165. Given the nature of the violations in this case, where the applicants' homes were destroyed with no or inadequate notice and the applicants were scattered and many forced to constantly move between makeshift accommodation in the years since, they cannot be expected to provide detailed evidence to support each claim. Under these circumstances, the applicants would be willing to seek additional evidence of their loss if the Court considers it appropriate to request additional submissions on just satisfaction. Alternatively, the applicants ask that the Court make an award on an equitable basis, taking into consideration the information set out below.

#### **A. Restitution of Housing**

166. The applicants request that the government restore their houses and community, either by reconstructing the houses that it destroyed in Dorozhnoe or providing the applicants with compensation for the value of those houses and facilitating the reconstruction of their community in an appropriate location. The Court should indicate that this is the only appropriate way in which individual measures can be satisfied in this case.
167. The destruction of their houses, where the applicant families had lived for decades as part of the Roma community, was the most immediate and direct loss suffered by the applicants. Where governments have breached the Convention, they are responsible for making reparation in such a way that will allow the applicants to live to the extent possible as they did prior to the breach.<sup>253</sup> Where that breach involves an interference with the applicant's property, the principle of *restitution in integrum* requires that the property be returned.<sup>254</sup> In this case, simply returning the property is impossible because the government not only forcibly evicted the applicants but also demolished their homes by bulldozing and burning them. Here, just satisfaction requires that the

---

<sup>253</sup> *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 219; *Akdivar and others*, ECtHR [GC], Article 50 Judgment of 1 April 1998, at ¶ 47.

<sup>254</sup> *Brumărescu v. Romania*, ECtHR, Article 41 Judgment of 23 January 2001, at ¶ 20-22.

government bear the costs of the re-construction of houses comparable to those it destroyed.<sup>255</sup>

168. If conditions do not permit the government to fully restore the applicants' homes, the government should be ordered to pay pecuniary damages to compensate the applicants for the loss of their houses, regardless of whether or not they held legal title,<sup>256</sup> as detailed below.
169. Given that the objective of just satisfaction is to allow the applicants to live as they did prior to the breach, any restitution must also restore the applicants' community. They must be provided with housing, or assisted to build housing with the compensation claimed below, together as a community. If the restored housing cannot be in Dorozhnoe, then it must be in a comparable location with adequate access to municipal services including health care, education and markets.
170. When assessing the compensation appropriate for the destruction of a house, the Court has in the past based its award on the value of the house, and where there is no specific evidence for the value of the individual houses which were demolished then it has examined the average value of a house in the region where the demolition occurred.<sup>257</sup>
171. Specific figures are available for the valuation of property both in Kaliningrad city and in the Gurievsk municipality where Dorozhnoe village is located. The average price for housing in Kaliningrad is approximately 3,200,000 rubles for a two bedroom apartment, 4,500,000 rubles for three bedrooms, and 5,600,000 rubles for four bedrooms.<sup>258</sup> These prices are based on properties in Kaliningrad city, where the average price per square meter is approximately 54,000 rubles.<sup>259</sup> Dwellings outside of the city are generally valued at approximately 41,300 rubles per square meter,<sup>260</sup> which is consistent with the average price of 42,600 rubles per square meter from a review of 93 properties for sale in the Gurviesk municipality.<sup>261</sup> These figures indicate that property outside of Kaliningrad city, including in the same municipality as the destroyed village, is valued at approximately 75% of the value of property in Kaliningrad city.
172. Based on these figures, and the size of the applicants' houses which were demolished, the applicants claim the following in pecuniary damages for the loss of their houses:
  - a) The Bagdonavichus family's house consisted of six bedrooms, plus a kitchen and living room. These rooms were located on two floors, each 10 by 12 meters, for a total area of 240 square meters.<sup>262</sup> Taking an average value per square meter in the municipality of 42,000 rubles, the value of this dwelling is therefore approximately

---

<sup>255</sup> *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 219; *Akdivar and others*, ECtHR [GC], Article 50 Judgment of 1 April 1998, at ¶ 47; *Orhan v. Turkey*, ECtHR, Judgment of 18 June 2002, at ¶ 450-451.

<sup>256</sup> *Akdivar and others*, ECtHR [GC], Article 50 Judgment of 1 April 1998, at ¶ 18.

<sup>257</sup> *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 207.

<sup>258</sup> Real Estate in Kaliningrad, <http://kaliningrad.realty.dmir.ru/prices/ceny-na-kvartiry-v-kaliningrade/> (accessed 9 July 2014).

<sup>259</sup> Real Estate in Kaliningrad, <http://kaliningrad.realty.dmir.ru/prices/ceny-na-kvartiry-v-kaliningrade/> (accessed 9 July 2014); Independent Examination Center BALTEKSPERTIZA, Residential property prices in Kaliningrad (June 2014), [http://www.baltextpertiza.ru/czenyi-na-zhiluyu-nedvizhimost-v-kaliningrade-\(iyun-2014\).html](http://www.baltextpertiza.ru/czenyi-na-zhiluyu-nedvizhimost-v-kaliningrade-(iyun-2014).html) (accessed 9 July 2014).

<sup>260</sup> Property Prices in Kaliningrad, Russia, [http://www.numbeo.com/property-investment/city\\_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=RUB](http://www.numbeo.com/property-investment/city_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=RUB) (accessed 9 July 2014).

<sup>261</sup> Kaliningrad Real Estate Website, [http://калининграднедвижимость.рф/?type=2&district=групп&price\\_lower=&price\\_upper=&sort\\_by=date%7Cdesc](http://калининграднедвижимость.рф/?type=2&district=групп&price_lower=&price_upper=&sort_by=date%7Cdesc) (accessed 9 July 2014).

<sup>262</sup> Application, Ex. 1, at ¶ 11.

240 x 42,000 = 10,080,000 rubles. Applicants 1 to 10 therefore claim EUR 215,000 for the destruction of their house.

- b) The Arlauskas family's house had four rooms, a big kitchen, plus a second brick building in the yard. It housed three generations of the family.<sup>263</sup> While the size of the house is not known, the number of rooms indicates that it is comparable to a three bedroom dwelling, which would have a value of approximately 4,500,000 (the average in Kaliningrad city for a three bedroom house) x 75% (reduced as outside Kaliningrad) = 3,375,000 rubles. Applicants 11 to 19 therefore claim EUR 73,000 for the destruction of their house.
- c) The Zhguleva family's house had two large rooms, plus a kitchen and a terrace that was used as living space in the summer. It housed Nonna Zhguleva and her son.<sup>264</sup> Based on a two bedroom dwelling, the value would be approximately 3,200,000 (the average in Kaliningrad city for a two bedroom house) x 75% = 2,400,000 rubles. Applicants 20 and 21 therefore claim EUR 52,000 for the destruction of their house.
- d) The Alexandrovich family's house had four rooms plus a kitchen on the ground floor, plus another one or two rooms on the second floor. Each floor was 11 by 12 meters, for a total area of 264 square meters.<sup>265</sup> The value of this large dwelling is therefore approximately 264 x 42,000 = 11,088,000 rubles. Applicants 23 to 25 therefore claim EUR 240,000 for the destruction of their house.
- e) The Samulajtis-Petravichute family's house had four rooms: two bedrooms, a kitchen and a living room.<sup>266</sup> The value would thus be approximately 3,200,000 x 75% = 2,400,000 rubles. Applicants 26 to 29 therefore claim EUR 52,000 for the destruction of their house.
- f) The Kasperavichus family's house had four rooms: a large living room, one bedroom, a kitchen and auxiliary room. The house was approximately nine by seven meters, for a total area of 54 square meters. Based on that area, the value of the house would be approximately 54 x 42,000 = 2,268,000 rubles. Applicants 31 and 33 therefore claim EUR 49,000 for the destruction of their family's house.

## **B. Award for Other Pecuniary Damage**

173. The applicants also claim pecuniary damages for the cost of providing alternative accommodation since their houses were destroyed, and for personal property also destroyed.

### Cost of Alternative Housing

174. Since the demolition of their homes, the applicants have been forced to seek alternative housing wherever they could find it. Initially, many had no option but to live in tents, in railway carriages, or with friends; but subsequently many rented apartments, or were able to find shacks to rent or buy, although as described in the February 2011 Request under Rule 41 these shacks are not designed for permanent accommodation and lack insulation, heat or running water.<sup>267</sup> If not for the government's breach, the applicants would have been able to stay in their own homes and avoid these costs.

---

<sup>263</sup> Application, Ex. 5, at ¶ 9; Ex. 6, at ¶ 8.

<sup>264</sup> Application, Ex. 8, at ¶ 7.

<sup>265</sup> Application, Ex. 9, at ¶ 11; Ex. 8, at ¶ 8.

<sup>266</sup> Application, Ex. 10, at ¶ 6.

<sup>267</sup> See Request for Priority, at ¶ 10, 16, 24, 27, 30. The shacks are called "dacha" in Russian, often translated as "bungalow" in English.

175. Compensation for alternative housing following a wrongful eviction is determined by the actual costs paid by the applicants or, where that information is not feasible to document, an equitable amount.<sup>268</sup> The actual costs incurred by several of the applicants are known. In other cases, we ask that the Court allow an opportunity for the applicants to provide additional details of the costs they incurred, or make an award on an equitable basis in light of the details provided below.

- a) Bagdonavichus family: After staying in a railway carriage for the first year, Leonas Bagdonavichus purchased a summer house where he and his wife live during the warmer months. While Mr. Bagdonavichus does not have records of this transaction, the price was between USD 15,000 and 20,000 (EUR 11,000 to 14,700).<sup>269</sup> Mr. Bagdonavichus also rents a one-room flat during the winter, because the shack is uninsulated and unheated,<sup>270</sup> which has cost on average USD 300 to 400. His rental expenses for approximately six months of the year over seven winters have thus been approximately USD 14,700 (EUR 10,800).

The families of Mr. Bagdonavichus's sons, Sasha and Olegas (Applicants 3 and 5), live in rented houses elsewhere in the Kaliningrad region.<sup>271</sup> The average rent for even a one-bedroom apartment outside of the city center in Kaliningrad is EUR 320 per month.<sup>272</sup> The rental costs incurred by Applicants 3 and 5 over the eight years since the demolition of their community is therefore approximately EUR 30,720 each.

Mr. Bagdonavichus's daughter-in-law Natalia Antano (Applicant 10) found accommodation in Kaliningrad, where the average rent for a one-bedroom apartment in the city of Kaliningrad is EUR 367 per month,<sup>273</sup> although she has had to travel to St. Petersburg at times for medical treatment.<sup>274</sup> She died in September 2013.<sup>275</sup> Her rental costs up until this point would have been approximately EUR 27,500.

- b) Arlauskas family: The Arlauskas family, like the Bagdonavichus family, has been separated as a result of the demolition. Some have been living with various other family members (Applicants 11, 14, 16 and 19).<sup>276</sup> Mariya Aslauskene (Applicant 12) has had to live in a small shack since approximately 2007.<sup>277</sup> The cost of renting a shack is estimated to be approximately one-third of the cost of renting an apartment, or approximately EUR 100 per month. She has therefore incurred costs of approximately EUR 8,400.

---

<sup>268</sup> *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 155.

<sup>269</sup> This is consistent with the cost of basic summer homes in the Kaliningrad region, which range from 650,000 to 850,000 rubles (EUR 14,000 – 18,000): see

<http://kaliningrad.cottage.ru/objects/554985.html>; <http://kaliningrad.cottage.ru/objects/546993.html>;  
<http://kaliningrad.cottage.ru/objects/535109.html>; <http://kaliningrad.cottage.ru/objects/489207.html>.

<sup>270</sup> Request for Priority, at ¶ 16.

<sup>271</sup> March 2007 Supplemental Memorandum, at ¶ 12; Request for Priority, at ¶ 19.

<sup>272</sup> Property Prices in Kaliningrad, Russia, [http://www.numbeo.com/property-investment/city\\_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=EUR](http://www.numbeo.com/property-investment/city_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=EUR) (accessed 9 July 2014).

<sup>273</sup> Property Prices in Kaliningrad, Russia, [http://www.numbeo.com/property-investment/city\\_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=EUR](http://www.numbeo.com/property-investment/city_result.jsp?country=Russia&city=Kaliningrad&displayCurrency=EUR) (accessed 9 July 2014).

<sup>274</sup> Request for Priority, at ¶ 21.

<sup>275</sup> See Exhibit 7: Death certificate of Natalya Antano Alexandrovich.

<sup>276</sup> March 2007 Supplemental Memorandum, para. 15; Request for Priority, at ¶ 23-27.

<sup>277</sup> Request for Priority, at ¶ 24.



Three members of the family (Applicants 15, 18 and 19) moved to Lithuania shortly after the demolition.<sup>278</sup> The average rent for a one-bedroom apartment there, outside of the city centers, is EUR 180 per month.<sup>279</sup> Their rental costs over the eight years since would therefore have been approximately EUR 17,200.

- c) Zhguleva and Alexandrovich families: The majority of the members of the Zhguleva and Alexandrovich families live in a small shack. Nonna Zhguleva and her son Dinary (Applicants 20 and 21) have lived there since shortly after the demolition.<sup>280</sup> Nikolaj Alexandrovich and his wife Tamara (Applicants 22 and 23) initially lived in a railway carriage, but after Nikolaj's death, Tamara moved in with Nonna and Dinary.<sup>281</sup> Margarita Matulevich (Applicant 24) has disappeared, and is presumed dead, so her daughter Lyubov' Malutevich (Applicant 25) also lives in this shack.<sup>282</sup> Following the calculations above, the approximate cost incurred for this shack over the eight years is EUR 9,600.
- d) Samulajtis-Petravichute family: Initially, after the demolition of their house, Anastasiya Petravichute and her daughter Ramina (Applicants 27 and 29) purchased a small shack, for USD 1,000 (EUR 730).<sup>283</sup> However, they were forced out after one year, and now live in another shack together with Konstantin Samulajtis and his wife Rada (Applicants 26 and 28).<sup>284</sup> Konstantin and Rada had themselves previously lived in a rented shack on the outskirts of Kaliningrad city. In addition to the EUR 730 spent to purchase the first shack, the approximate rental costs would have been an estimated EUR 9,600.
- e) Kasperavichus family: Two members of the Kasperavichus family have died, Vitautas (Applicant 30) in December 2006, and Graf (Applicant 32) in June 2008. Prior to his death, Graf Kosporovichus had rented an apartment in Kaliningrad city,<sup>285</sup> and approximate rental costs for these two years would have been EUR 8,800. As a result of their deaths, Kristina Kasperavichute (Applicant 33) now lives in an orphanage and the circumstances of Alexander Kasperavichus (Applicant 31) are unknown, and no claim is made for their costs of housing.

#### Destruction of Personal Property

176. The nature of the evictions and destruction of their houses also meant that the applicants lost the vast majority of their personal property, for which they are also entitled to compensation. The local authorities did not provide adequate warning as to when the evictions would occur. Instead, the applicants were confronted by armed members of the Special Forces and ordered to vacate their homes immediately. They were typically given only 15 to 30 minutes to gather a few possessions and exit their house,<sup>286</sup> leaving the rest to be destroyed as their homes were bulldozed and then burned.<sup>287</sup> Mihail Arlauskas stated that he barely had time to dress his children before their house was demolished,<sup>288</sup> and Nikolaj Alexandrovich recalled that he was unable

---

<sup>278</sup> March 2007 Supplemental Memorandum, at ¶ 16; Request for Priority, at ¶ 28.

<sup>279</sup> Property Prices in Kaliningrad, Russia, [http://www.numbeo.com/property-investment/country\\_result.jsp?country=Lithuania&displayCurrency=EUR](http://www.numbeo.com/property-investment/country_result.jsp?country=Lithuania&displayCurrency=EUR) (accessed 9 July 2014).

<sup>280</sup> March 2007 Supplemental Memorandum, at ¶ 18.

<sup>281</sup> March 2007 Supplemental Memorandum, at ¶ 19; Request for Priority, at ¶ 29.

<sup>282</sup> Request for Priority, at ¶ 29.

<sup>283</sup> March 2007 Supplemental Memorandum, at ¶ 22.

<sup>284</sup> Request for Priority, at ¶ 35-36.

<sup>285</sup> March 2007 Supplemental Memorandum, at ¶ 24.

<sup>286</sup> See Application, Ex. 1, at ¶ 4; Ex. 2, at ¶ 16; Ex. 5, at ¶ 14; Ex. 6, at ¶ 14; Ex. 10, at ¶ 11.

<sup>287</sup> See, e.g., Application, at 17, 19 and 23.

<sup>288</sup> See Application, Ex. 7, at ¶ 11.

even to salvage a second set of clothes, leaving him with only those he was wearing.<sup>289</sup> Even to the extent that some applicants were able to salvage a few belongings, these were largely destroyed after the demolition by the rain as the applicants were at that time mostly living in tents, with nowhere to store their property.<sup>290</sup>

177. In the absence of documentation of the contents of a house before it was demolished, the Court may reasonably assume that the applicants owned normal household property.<sup>291</sup> Where the exact value of that property is unknown, an award to each applicant of the average value of typical household property may provide just satisfaction based on the principles of equity.<sup>292</sup>
178. Given the passage of time and the circumstance of the violation, the applicants are unable to provide itemized lists or evidence of the property destroyed. In line with the principles of equity and in line with prior cases decided by the Court, they therefore request that each applicant family be awarded EUR 8,000 for their destroyed household property.<sup>293</sup>

### **C. Award for Non-pecuniary Damage**

179. The government's actions have also caused severe non-pecuniary damages. The applicants have suffered distress from having their homes and community destroyed, aggravated by the racism to which they were subjected in the lead up to and during the evictions. They have also suffered distress from the destitution they have been forced to live in for the past eight years, which together with the impact of the eviction itself has caused serious health problems for many of the applicants, including the death of at least two, and has adversely affected the education of many of those applicants who are children.

#### Emotional Suffering Caused by Eviction

180. The applicants have suffered significant emotional distress from the loss of their homes and the destruction of their long-standing community. The applicants were evicted suddenly and violently, and confronted with the sight of their houses being completely destroyed. Since that time, they have been living in destitution, separated from their community and, for many of the applicants, from their family members as well.
181. A mere finding of a violation will not serve as compensation in these circumstances, as the Court has found in other cases where homes were destroyed by government action. In such cases, the Court has recognized the distress that such destruction caused, and has awarded significant sums in non-pecuniary damages:
- a) Where applicants were forcibly evicted by armed security forces and their houses demolished in the context of the Turkish government's campaign against the PKK, the Court has made awards to individual applicants for non-pecuniary damages of EUR 14,500 (2004),<sup>294</sup> GBP 10,000 (1998),<sup>295</sup> and GBP 8,000 (1998).<sup>296</sup>

---

<sup>289</sup> See Application, Ex. 9, at ¶ 17.

<sup>290</sup> See Application, Ex. 5, at ¶ 14; Ex. 9, at ¶ 17.

<sup>291</sup> *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 209.

<sup>292</sup> *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 209; *Selçuk and Asker v. Turkey*, ECtHR, Judgment of 24 April 1998, at ¶ 110.

<sup>293</sup> See, e.g., *Kerimova and others v. Russia*, ECtHR, Judgment of 3 May 2011, at ¶ 332.

<sup>294</sup> *Ayder and others v. Turkey*, ECtHR, Judgment of 8 January 2004, at ¶ 160.

<sup>295</sup> *Selçuk and Asker v. Turkey*, ECtHR, Judgment of 24 April 1998, at ¶ 118.

<sup>296</sup> *Akdivar and others v. Turkey*, ECtHR [GC], Article 50 Judgment of 1 April 1998, at ¶ 37.

- b) Where Russian security forces destroyed the homes and possessions of applicants during the conflict in Chechnya, the Court has similarly awarded non-pecuniary damages of between EUR 10,000 and 15,000 (2011).<sup>297</sup>
182. The importance of awarding substantial non-pecuniary damages to provide just satisfaction where applicants have been wrongfully deprived of their homes is highlighted by the Court's award in eviction cases even where the applicant's home has not been destroyed. The applicant in *Connors v. United Kingdom* (2004) was awarded EUR 14,000 for the feelings of frustration and injustice he felt after being evicted from his land without the opportunity for judicial review of the eviction decree.<sup>298</sup> The applicant was briefly detained during the actual execution of the eviction, but his caravan, land, and possessions were not destroyed.<sup>299</sup> The applicant was separated from his wife and has had to move repeatedly, but he has been able to continue living in his own caravan at different locations.<sup>300</sup>
183. In this case, the applicants suffered substantial emotional distress as they were forced from their homes and watched their homes and community bulldozed and burned to the ground. As detailed in the application and above, this demolition was accompanied by a profound sense of injustice as the applicants were not provided with proper notice of the demolitions, or a meaningful opportunity to challenge them or seek redress. Many of the applicants were particularly vulnerable to the effects of this eviction, due to their advanced age, being young children, through ill-health, or in one case being seven and a half months pregnant.<sup>301</sup>
184. The impact of the demolitions was amplified by the manner in which they were carried out: by armed security officers wearing masks who forcibly evicted the families. The conduct of the authorities appeared calculated to intimidate and degrade the applicants: the officers verbally abused them, calling them "sons of bitches" as well as racist insults (see below), beat elderly members of their community, and fired their weapons at the feet of families as their homes were being destroyed.<sup>302</sup> The distress caused is evident in their testimony, as explained by Anastasiya Arlanskaite:
- "[Watching the demolition] was so traumatic and stressful. It affected our nervous systems. My child got very sick after the demolition because it was raining while this was happening, and my daughter was outside for hours in the rain. . . My daughter was very scared. She was crying. But she was trying to calm me down, because when children see their mothers upset, they also suffer so much . . . This has caused so much pain to our souls, and we will feel it our whole lives."<sup>303</sup>
185. The impact on those applicants who were children is exemplified by the statement of Leonid Alexandrovichus, who was eight years old at the time of the demolitions:
- "I was at my home the day that people in masks came to my house. I was playing in my room with my brother at the time that they came. All of the sudden, as I was playing, many men in masks came into my house and started yelling. They were shouting something like 'Get out of the house.' They were dressed in all black and had machine guns. I could not see any of their faces. I was very afraid.

<sup>297</sup> *Kerimova and others v. Russia*, ECtHR, Judgment of 3 May 2011, at ¶ 338; *Esmukhambetov and others v. Russia*, ECtHR, Judgment of 29 March 2011, at ¶ 216.

<sup>298</sup> *Connors v. United Kingdom*, ECtHR, Judgment of 27 May 2004, at ¶ 114-115.

<sup>299</sup> *Connors v. United Kingdom*, ECtHR, Judgment of 27 May 2004, at ¶ 28-31.

<sup>300</sup> *Connors v. United Kingdom*, ECtHR, Judgment of 27 May 2004, at ¶ 35.

<sup>301</sup> Application, at ¶ 15.12; Rule 41 Request, at ¶ 41.

<sup>302</sup> See Application, at 19-21.

<sup>303</sup> See Application, at ¶ 15.13.

I was very scared. . . . They shouted ‘get out,’ and I ran out of the house. There was a big tractor outside which demolished our house. I saw everything. Everybody in our family that was in the house ran out and watched. I was crying a lot. . . . I still think about what happened. I cannot forget it.”<sup>304</sup>

186. The impact of the demolition has been amplified by the conduct of the authorities in the following months and in the conditions which the applicants have been forced to live in the eight years since. Following the demolitions, some applicants were reduced to living in tents or sheds near where their houses had once stood. But the authorities continued to harass them, verbally abusing them, burning down any remaining small structures that stood (including a shed that had an old woman still in it when it was set alight), and threatening to attack those who remained, send the children to orphanages, and rape any women unless they left.<sup>305</sup> Nikolaj Alexandrovich describes initially taking shelter in his shed, but that shortly thereafter drunken special police officers came at 3am, threatened the family and burned the shed. After this, they had to shelter in tents and wash in the lake.<sup>306</sup> Nonna Zhguleva similarly describes living in a tent with her sick son, then just four years old.<sup>307</sup>
187. Since that time, the applicants have been living in destitution, as described in detail in the March 2007 Supplemental Memorandum and February 2011 Request for Priority. They have been forced to live in tents, in plywood shacks, and in abandoned railway cars often without electricity, gas or running water. These living conditions are entirely unsuitable and inhumane, especially in light of the advanced age and ill-health of many applicants, and the brutal winters that have taken a further toll on them. As Mr. Alexandrovich explained, “This situation could not be worse. I feel the smell of death. The winter is coming, where can we go? . . . I also have a heart and cannot bear how my family is suffering. It is just too much.”<sup>308</sup>
188. Not only have the families been separated from the rest of their community, but the extended families who lived together in Dorozhnoe have been fragmented, and even immediate families have been broken up:<sup>309</sup> for example, Olegas Bagdonavichus was left to sleep in his car, separated from his children, and they now must live with their grandparents over the winter; Mariya Aslauskene is unable to live with her husband and the rest of her family.<sup>310</sup> This has, in turn, amplified the impact of the deaths of particular applicants, as extended family are no longer able to care for children, who were placed in orphanages or state care facilities.<sup>311</sup>
189. Given the violent and distressing nature of the eviction and destruction itself, the prolonged sense of injustice that the applicants have been subjected to, and the conditions in which they have been forced to live, the applicants request just satisfaction in the form of non-pecuniary damages of at least EUR 20,000 per applicant.

#### Racial Discrimination

190. Throughout the ordeal of losing their homes and possessions, the applicants have suffered additional emotional distress and a sense of injustice from knowing that the government’s actions against them were racially motivated. The evictions were preceded by and were part of a campaign to present the entire Roma community as drug

---

<sup>304</sup> See Application, at ¶ 15.18.

<sup>305</sup> See Application, at 19-20 and ¶ 15.14; Ex. 8, at ¶ 14; Ex. 9, at ¶ 18.

<sup>306</sup> See Application, Ex. 9, at ¶ 22-23.

<sup>307</sup> See Application, Ex. 8, at ¶ 10-11.

<sup>308</sup> See Application, at ¶ 15.16.

<sup>309</sup> Request for Priority, at ¶ 58-59; *see also* Application, Ex. 11, at ¶ 23.

<sup>310</sup> Application, Ex. 2, at ¶ 12; Ex. 3, at ¶ 15.

<sup>311</sup> Rule 41 Request, at ¶ 55-56.

dealers and criminals, and were part of a systemic pattern of discrimination against Roma in Russia, including particular vulnerability to forced evictions.<sup>312</sup> The distress of the applicants described above was furthermore amplified by being subjected to racial insults from the authorities as they destroyed the applicants' homes and community, telling the applicants that all "Gypsies" are the same, that they must be "exterminated," that they should be destroyed as a people.<sup>313</sup> Even the applicants' lawyers were harassed because they were representing Roma clients.<sup>314</sup>

191. The Court has repeatedly recognized the additional harm suffered when a breach is accompanied by racial animus and that a finding of a violation is not sufficient compensation. For example, where the authorities failed to investigate potential racial motivations behind a fire which killed the relatives of a Roma woman, the Court made an award of EUR 20,000 even though there was no substantive violation of the right to life.<sup>315</sup>
192. Such additional awards are entirely appropriate. As the Court has noted, discrimination based on race or ethnicity is "a particularly invidious kind of discrimination and ... requires from the authorities special vigilance and a vigorous reaction."<sup>316</sup> By making such an award in this case, the Court would recognize both the impact that such discrimination has on the victims and the particularly serious nature of such misconduct by state authorities. The applicants in this case therefore request an additional EUR 10,000 each for the aggravated distress they suffered due to the fact that the violations were motivated by their Roma ethnicity.

#### Death of Two Applicants and Impact on Health

193. The details of the impact that the government's actions have had on the health of the applicants have been described repeatedly in the Application, the February 2011 Request for Priority, and these current Observations in Reply. Their forced eviction has resulted in additional stress, appalling living conditions and decreased access to health care and has severely compromised the health of numerous applicants.
194. At least two applicants died as a result of the destruction of their homes, the conditions in which they were subsequently forced to live and the lack of health or other care provided by the Russian authorities in the aftermath of the demolition, and another is missing and presumed dead. Anastasiya Arlauskajte (Applicant 13) was seven and a half months pregnant when her house was destroyed. After giving birth to her son a month and a half after the demolition, she was left to return with her newborn son to live in a tent, exposed to the elements. One month after the birth, she developed a kidney infection and died.<sup>317</sup> Another applicant, Nikolaj Alexandrovich (Applicant 22), also succumbed to an illness – acute bronchitis – that he developed when he was forced to sleep in a tent exposed to wind and rain following the demolition of his house.<sup>318</sup> In addition, Margarita Matulevich (Applicant 24) went missing shortly after the demolitions, and due to the dislocation caused by the destruction of the community she has not been seen since. The police have indicated that they believe her to be dead, but have refused to investigate.<sup>319</sup>

---

<sup>312</sup> See Application, at 28-31.

<sup>313</sup> See Application, at 25-26.

<sup>314</sup> See Application, at 26-28.

<sup>315</sup> *Fedorchenko and Lozenko v. Ukraine*, ECtHR, Judgment of 20 September 2012, at ¶ 78.

<sup>316</sup> *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at ¶ 56.

<sup>317</sup> See Request for Priority, at ¶ 40-43.

<sup>318</sup> See Request for Priority, at ¶ 46-48.

<sup>319</sup> See Request for Priority, at ¶ 50-51.

195. In each case, the government is responsible for creating the conditions which led to the death (or presumed death) of these applicants. Where the government has created conditions which led to the death of a person, including by aggravating existing conditions and failing to provide adequate medical care, then the Court has awarded sums of approximately EUR 25,000.<sup>320</sup> The applicants therefore request EUR 25,000 for the family members of Applicants 13, 22 and 24.
196. In addition, where a government has forced a person to live in an environment that is unsafe and unsanitary, causing that person to suffer as a result of the impact on their health, the Court has made significant awards based on the distress caused by the disregard for the person's health even where the person did not die.<sup>321</sup> Many of the applicants saw their health suffer from the conditions. Tamara Alexandrovich suffered two heart attacks in the aftermath of the demolition. Mr. Alexandrovich also suffered heart problems and asthma. Alexandras Arlauskas, who subsequently died, was hospitalized due to heart problems and a nervous condition which arose following the demolition of the village and resulting death of his daughter, Anastasiya. Konstantin Samulajtis has seen his high blood pressure worsen.<sup>322</sup>
197. In this case, by evicting the applicants and destroying their homes and possessions without providing any kind of alternative accommodation, the government placed their health at risk and made them vulnerable to serious illness. Each applicant therefore requests an additional EUR 5,000.

#### Impact on Access to Education

198. Since the eviction of their families, the children of the applicants have had even more difficulty attending school than they did previously.<sup>323</sup> Five of the applicant children do not attend school at all because of a lack of registration papers (Applicants 12, 16, 19, 21 and 25). The three that do still attend school only do so infrequently because of the increased distance between their schools and where they are now forced to live. Ramina Arlauskajte (Applicant 29) must travel over an hour by bus to attend school and has missed several weeks at a time due to weather conditions and illness. Nikita and Leonid Alexandrovich (Applicants 8 and 9) must walk to school, and so during the winter must live with their grandparents instead of their parents in order to be able to attend regularly. As a result of all of these circumstances, the children's education has suffered substantially, which will further entrench the disadvantages which they suffer as a result of the systemic discrimination against Roma which led to the destruction of their community and remains pervasive.<sup>324</sup>
199. Where a government's breach of the Convention has interfered with the ability of a child to receive an adequate education, the Court has awarded non-pecuniary damages in recognition of the fact that simply finding a violation is not sufficient compensation.<sup>325</sup> The applicants therefore request that EUR 5,000 be awarded to each child applicant whose access to education has been harmed by the government's actions.

<sup>320</sup> See, e.g., *Shumkova v. Russia*, ECtHR, Judgment of 14 February 2012, at ¶ 134; *Tarariyeva v. Russia*, ECtHR, Judgment of 14 December 2007, at ¶ 126.

<sup>321</sup> See, e.g., *G.C. v. Italy*, ECtHR, Judgment of 22 April 2014, at ¶ 89; *Yepishin v. Russia*, ECtHR, Judgment of 27 June 2013, at ¶ 83.

<sup>322</sup> See Request for Priority, at ¶ 24, 33, 36; Application, at ¶ 15.8.

<sup>323</sup> See Request for Priority, at ¶ 60-65.

<sup>324</sup> See Third Party Intervention, 15 April 2014, at ¶ 3-4.

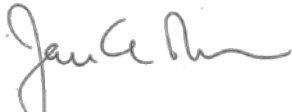
<sup>325</sup> *D.H. and others v. Czech Republic*, ECtHR (GC), Judgment of 13 November 2007, at ¶ 217 (EUR 4,000 each); *Oršuš and others v. Croatia*, ECtHR (GC), Judgment of 16 March 2010, at ¶ 191 (EUR 4,500 each); *Sampanis and others v. Greece*, ECtHR, Judgment of 5 June 2008, at ¶ 101 (EUR 6,000 each).

**D. Default Interest**

200. The applicants request that any just satisfaction award made by the Court is accompanied by a default interest rate equal to the marginal lending rate of the European Central Bank plus three percentage points.



Laura Bingham, Legal Officer



James A. Goldston  
Executive Director  
Open Society Justice Initiative

## **ANNEX 1: LIST OF DOCUMENTS**

- Exhibit 1 Leonas Iono Bagdonavichus (Applicant 1) statement, 13 April 2014 (English and Russian)
- Exhibit 2 Mariya Arlauskene Savel'evna (Applicant 12) statement, 13 April 2014 (English and Russian)
- Exhibit 3 Birth certificate of Nikita Olegovich Alexandrovich (Applicant 9) (photocopy)
- Exhibit 4 Birth Certificate of Mihail Mihajlovich Arlauskas (Applicant 16) (photocopy)
- Exhibit 5 Birth Certificate of Rustam Alexeevich Arlauskas (Applicant 19) (photocopy)
- Exhibit 6 Birth certificate of Dinary Arunovich Zghuleva (Applicant 21) (photograph)
- Exhibit 7 Natalya Antano Alexandrovich (Applicant 10) death certificate (photocopy)
- Exhibit 8 Alexandras Andreyaus Arlauskas (Applicant 11) death certificate (photocopy)