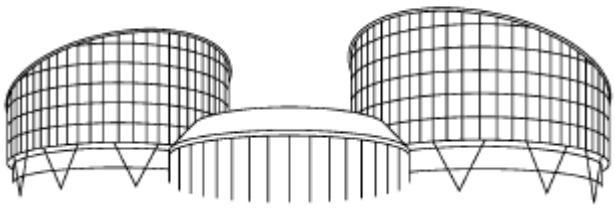

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BAGDONAVICIUS AND OTHERS v. RUSSIA

(Application no. 19841/06)

JUDGMENT

STRASBOURG

11 October 2016

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

In the case of Bagdonavicius and others v. Russia

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

Luis Lopez Guerra, *President*,
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 13 September 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19841/06) against the Russian Federation lodged with the Court on 12 May 2006, by thirty-three individuals, whose names, dates of birth and nationalities are listed in the Annex to the present judgment ("the applicants"), pursuant to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

2. The applicants were represented by R. Skilbeck, J. Goldston, J. Harrington, M. Adjami, attorneys-at-law, New York, and by V. Louzine, legal advisor in Nijni Novgorod (Russia). The Russian government ("the Government") was represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. Six of the applicants have died on various dates (see Annex to the present judgment) since the present application was lodged: Mrs Nataliya Antano Alexandrovitch (the tenth applicant), Mr Aleksandras Andreyaus Arlauskas (the eleventh applicant), Mrs Anastasiya Aleksandrovna Arlauskayte (the thirteenth applicant), Mr Nikolay Ivanovitch Aleksandrovich (the twenty-second applicant), Mr Vitautas Mikolo Kasperavichus (the thirtieth applicant), Mr Graf Viktorovich Kasperavichus (the thirty-second applicant). Mrs Margarita Alekseyevna Matulevich (the twenty-fourth applicant) has been reported as missing.

4. In a letter dated 6 April 2016, the representative of applicants informed the Court that the applications of the missing applicants and the deceased applicants, with the exception of Mr Vitautas Mikolo Kasperavichus (the thirtieth applicant) and Mr Graf Viktorovich Kasperavichus (the thirty-second applicant), would be maintained and pursued on their behalf by their family members, who are also applicants, and whose names are listed in the Annex to the present judgement.

5. In particular, the applicants allege a violation of Article 8 itself or in combination with Article 14 of the Convention arising from the demolition of their houses and their forced evictions, which, in their view, were predicated on their membership of the Roma community. On the basis of the same set of facts, they also allege a violation of Article 1 of Protocol No. 1 of the Convention.

6. On 8 November 2013, the complaints related to Article 8 and 14 of the Convention, as well as that based on Protocol No. 1 were communicated to the Government and the rest of the application was declared inadmissible in accordance with Article 54 § 3 of the Rules of Court. Having been informed, On 14 November 2013, the Lithuanian Government was informed of the possibility of presenting written observations in accordance with Articles 36 § 1 of the Convention and Article 44 of the Rules of Court, but the Lithuanian government has not expressed their intention to exercise that right.

7. In their observations of 16 July 2014, the applicants further submitted that the interviews conducted by the police with certain applicants following notification of the present application to the Government constitute a hindrance to the exercise of their individual right to petition protected by Article 34 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

8. The applicants are members of six Roma families that lived in the village of Dorozhnoye, in the district of Gurievsk, in the Kaliningrad Region, in Russia.

9. By the Decree no. 450 of 5 October 1956 on the rules governing employment authorizations of travelling Roma, the Council of Ministers of the USSR criminalised the nomadic way of life and forced Roma people to settle. The Soviet authorities chose the communes in which the Roma people were required to settle permanently.

10. The applicants argue that, following the Decree of 5 October 1956, the village of Dorozhnoye served as a place of settlement for Roma people, and grew to become a suburb almost exclusively populated by families from that community. A number of families constructed detached houses on the lands available in the village. Some residents registered their address with the authorities and obtained their official identity documents through this registration process.

11. A number of residents in the village of Dorozhnoye continued to reside in their houses after the dissolution of the USSR without obtaining legal status for the constructions or title to the land on which they were built.

12. According to the applicants, each family lived in a single detached house, with the exception of the Arlauskas family who had two detached houses located close to one another.

13. According to the applicants, between 2001 and 2002, the local authorities made plans to develop the village of Dorozhnoye. For instance, in 2001, the authorities in the Gurievsk district invited the residents of the village of Dorozhnoye to take part in the implementation of the village development plan, which provided for the construction of infrastructure, including an electricity network, and the establishment of other public services. On 29 March 2001, the Kaliningrad regional urban planning council adopted an initial development project plan, which was to be reviewed after some modifications. The project involved the demolition of a number of village houses.

14. According to the applicants, some residents in the village of Dorozhnoye, including Mr Kasperavichus (the thirtieth applicant) and Mr Samulaytis (the twenty-sixth applicant), brought processings before the court to be recognized as owning title to their houses under the rules governing acquisitive prescription. They did not succeed in their claims (Paragraphs 22 and 25 below).

15. The applicants further submitted, that towards the end of 2002, the regional authorities changed their policy and abandoned their plans to develop the village of Dorozhnoye.

16. The applicants argue that, from 2005 onwards, the regional authorities had made discriminatory statements against the village residents. In support of these claims, they submitted an excerpt from an interview given by the governor of the Kaliningrad Region on 20 February 2006 in which he stated:

> "With regard to the village of Dorozhnoye, first of all, let's be very clear about what we are talking about and use the right terminology [given that] we are being accused of fostering ethnic divisions. We are doing no such thing. What we are doing is weeding out a drugs haven, and fighting resolutely against illegal drugs in all their forms, which we will eradicate. We were contacted by 'Memorial', a non-governmental organisation from Saint Petersburg [...] which wants to organise a round table to discuss the necessity of demolishing unauthorised constructions in the village of Dorozhnoye. Should steps be taken to enforce the law and restore order or not? My opinion on this topic is clear and unequivocal: we will enforce the law and restore order everywhere, and that includes the village of Dorozhnoye. Wherever there is drug trafficking, we will eliminate it."

17. The applicants also submitted a news item published on 16 January 2006 on the website of an online newspaper. The content of this item was based on a press release from the department of the Kaliningrad Region of the

local branch of the Federal Drug Enforcement Agency. The relevant passages read as follows:

> "The Kaliningrad Region will intensify the fight against drug trafficking. Kaliningrad, 16 January 2006.
>
> This is what was declared by [V.D.], the Governor of the Kaliningrad Region and the local branch of the Federal Drug Enforcement Agency. There will soon be a "purge" of what is known as the most problematic drug trafficking centre – the village of Dorozhnoye. Checks on the official registration of the residence of the Roma living in the village will be carried out: foreigners will be deported from the country and Russian citizens residing unlawfully there will be [returned] to their original place of residence. In parallel, a series of measures will be taken to demolish unauthorised constructions in the village of Dorozhnoye (...)"

B. The legal proceedings

1. The legal proceedings instituted by the third and the twenty-sixth applicants to obtain recognition of their title to their respective houses.

18. In February 2002, Mr Kasperavichus (the thirtieth applicant) and Mr Samulaytis (the twenty-sixth applicant) both took a case to court to obtain recognition of their title to their houses, under the rules governing acquisitive prescription, as set out in Article 234 of the Civil Code. In two judgments of 20 February 2002, the Gurievsk District Court granted their requests.

19. However, on 24 June 2002, the abovementioned judgments were quashed on appeal on the grounds that the court had not applied the law correctly. The cases were referred back for a new hearing on the merits.

20. In November 2002, the examination of the applications of the parties was abandoned due to their repeated absences at hearings.

21. In June 2005, Mr Samulaytis requested that the case, which had been struck from the list of cases in November 2002, be reopened.

22. On 27 December 2005, the Gurievsk District Court refused to grant the request. The court ruled that the applicant could not benefit from the acquisitive prescription as provided for in Article 234 of the Civil Code as he did not hold the title to the land on which the house was built.

23. On 1 March 2006, the Kaliningrad Regional Court rejected the appeal by Mr Samulaytis against the judgment of 27 December 2005.

24. Mr Kasperavichus did not request that the case suspended in November 2002 be reopened. However, on 7 December 2005, he filed a counterclaim, based on Article 234 of the Civil Code, in the civil case brought against him by the Gurievsk district prosecutor's office (Paragraph 28 below).

25. In a judgment of 20 December 2005, the Gurievsk District Court dismissed the counterclaim, again on the grounds that Article 234 of the Civil Code did not apply.

26. On 22 February 2006, the Kaliningrad Regional Court upheld on appeal the judgment of 20 December 2005.

2. The legal proceedings initiated by the public prosecutor against certain applicants

27. On various dates in 2005 and 2006, representatives of the authorities of the district of Gurievsk travelled to the village of Dorozhnoye to take an inventory of the unauthorised constructions. The results of the checks were recorded in reports in which the inspectors indicated the names of the individuals "responsible" for each house recorded; and a reference number was assigned to each house (see table in Paragraph 29 below).

28. On the basis of this data, the Gurievsk district prosecutor's office initiated court proceedings with a view to classifying the listed buildings as unauthorised constructions under Article 222 of the Civil Code and to order their demolition. The proceedings were initiated against those individuals whose names were recorded by the Gurievsk district authorities as "responsible" for the houses under dispute.

29. On the dates shown in the table below, the Public Prosecutor's requests were granted by the Gurievsk District Court.

	Name of the person summoned, reference no. of the house	Date of the judgment of the Gurievsk District Court	Appeal against the judgment
1	Mr Bagdonavicius (the first applicant), house no. 44	7 February 2006	yes
2	Mr Arlauskas (the eleventh applicant), house no. 43	8 February 2006	yes
3	Mrs Arlauskayte (the thirteenth applicant) house no. 45	9 February 2006	no
4	Mrs Zhguleva (the twentieth applicant), house no. 54	9 February 2006	yes
5	Mr Aleksandrovich (the twenty-second applicant) and Mrs Aleksandrovich (the twenty-third applicant), house no. 3	8 February 2006	yes

6	Mr Samulaytis (the twenty-sixth applicant) and Mrs Petravichute (the twenty-seventh applicant), house no. 41	7 February 2006	no
7	Mr Samulaytis (the twenty-sixth applicant) and Mrs Arlauskayte (the twenty-eighth applicant), house no. 32	7 February 2006	no
8	Mr Kasperavichus (the thirtieth applicant), house no. 37	20 December 2005	yes

30. In granting the Public Prosecutor's applications, the Gurievsk District Court found that the houses under dispute were constructed without a building permit and were located on lands to which the defedants had no title. The Court ruled that the buildings in question were unauthorised constructions, and on the basis of Article 222 § 2 of the Civil Code, ordered their demolition.

31. Some of the applicants listed in the table above appealed the judgments against them. They claimed, inter alia, that the court of first instance had examined their cases in their absence, that it had not established the composition of their respective households, and had refused the rights of their family members to intervene in the proceedings. All the applicants, with the exception of Mrs Zhguleva, also alleged that the houses under dispute were their only home and that, if demolished, the families would become homeless.

32. In a decision of 22 February 2006, the Kaliningrad Regional Court rejected the appeal by Mr Kasperavichus (the thirtieth applicant). In separate decisions, dated 3 May 2006, the same Court rejected the other appeals lodged by the applicants.

33. The appeal court adopted the conclusions of the Gurievsk District Court on the application of Article 222 § 2 of the Civil Code. The Court ruled that Article 222 § 3 of the same code, which provided the specific conditions necessary for the recognition of property rights with respect to an unauthorised construction, did not apply as the conditions were not met. It also dismissed the argument concerning the official registration of domicile of the family members of the applicants at the corresponding addresses on the grounds that the law in force did not allow for such registration to be made at an address corresponding to an unauthorised construction. The Court further held that it was not up to it to take into consideration the composition of the household of the defendants or the absence of any other housing invoked by some of the applicants, on the grounds that these circumstances had no

bearing on the substance of the litigation, i.e. the unlawfulness of the constructions at issue.

C. The events after the adoption of court decisions ordering the demolition of the houses at issue

1. The demolition of the houses under dispute

34. The applicants indicate that their houses were demolished between 29 May and 2 June 2006, in accordance with court decisions which became legally enforceable. They claim that the bailiffs arrived at the houses without notice and asked the residents of the houses to leave. The residents claim to only have had a short time to collect their personal effects and furniture before their houses were demolished by bulldozers. The demolition of each house took about one hour. In all, forty-three houses in the village of Dorozhnoye were demolished, including those of the applicants. The applicants alleged that the only two houses that were not demolished belonged to Russian families.

35. The applicants claim that after the demolition of their houses, they had to live in makeshift cabins, tents or carriages, in difficult conditions, often separated from their families.

2. Interviews with the police

36. In 2014, a police officer conducted interviews with Mr Bagdonavicius (the first applicant), Mrs Arlauskene (the twelfth applicant) and Mrs Zhguleva (the twentieth applicant). During these interviews, the applicants responded to questions about the demolition of their houses, where they were currently living or where the former residents of the village of Dorozhnoye were currently living, as well as their relationships with members of their families.

D. The evidence submitted by the Government

1. Police record, official addresses and property of certain applicants

37. The Government produced a letter of information from the Russian Ministry for the Interior dated 4 September 2014 which shows that during the period between 1997 and 2013, ten applicants (the first, third, fifth, tenth, eleventh, thirteenth, twentieth, twenty-third, thirty-first and thirty-third) were either charged with or convicted of drug trafficking offences.

38. The Government produced a letter of information from the office of the Russian Public Prosecutor containing the data on the official registration of the applicants' address.

39. The Government also submitted data obtained on 10 April 2014 from the central land registry on the title and property transfers of the second,

eleventh, fourteenth, twenty-seventh and twenty-eighth applicants. The data consists of a list of properties including apartments, houses, and building plots where the applicants had resided in or disposed of between 1997 and 2014 or where they were still living on the date the list was drawn up.

2. Possibilities for rehousing the applicants

40. The Government submitted a copy of Order no. 288 of the Government of the Kaliningrad Region of 28 April 2006 on granting financial assistance for the stabilization of the social situation in the village of Dorozhnoye. The Order provided for 5,713,157 Russian roubles (RUB) (approximately EUR 166,700 on the date of its adoption) to be granted to the municipalities listed in the Annex for the purpose of creating a "special-purpose housing" fund. Under Paragraph 2 of the said Order, the municipality of Gurievsk was required to organise for people "of no fixed abode" to be relocated to the abovementioned housing.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

A. Domestic law

41. Article 222 of the Russian Civil Code, as in force at the relevant time, provided that an unauthorised construction is any property for the purpose of housing or for another purpose, building or other property constructed: a) on land not designated for that purpose by law; b) without a building permit, or c) in violation of planning standards. Article 222 specifies that any person who erects an unauthorised construction shall not become the owner thereof; such persons are not entitled to dispose of the property, i.e. to sell, give or lease the property or to undertake any other contract with respect to the propoerty. According to Paragraph 3 of the Article, any unauthorised constructions must be demolished by the person who erected them, or at the expense of that person, unless the land on which the construction is located was transferred to the person in question in accordance with legislation.

42. Article 234 of the Russian Civil Code provides that any person who, is not the owner, but has enjoyed possession of the property openly, in good faith and continuously for a period of fifteen years shall acquire the title to the property under the rules of acquisitive prescription.

B. International materials

43. A certain number of international materials on the protection of Roma, particularly cases of forced evictions, are summarised in the case of

Winterstein and others v. France (no. 27013/07, §§ 80-102, 17 October 2013).

1. The Council of Europe

44. In its General Policy Recommendation no. 13 on combatting anti-Gypsyism and discrimination against Roma, adopted on 24 June 2001, the European Commission against Racism and Intolerance (ECRI) recommends that the governments of the Member States, in particular, combat anti-Gypsyism in the field of housing and the right of respect for the home, and accordingly, ensure that Roma are not forcibly evicted without prior notice and without the possibility for relocation to decent accommodations.

45. In its fourth report on the Russian Federation adopted on 20 June 2013, ECRI notes that, in the area of housing, evictions and the destruction of unlawful camps have stopped in the past few years, although the threat still remains. The Report indicates that land claims are often rejected and that, while the majority of Roma now have decent housing, some are still living in slums.

2. The United Nations

46. In its final observations on the fifth periodic report by the Russian Federation on the application of the International Covenant on Economic, Social and Cultural Rights adopted on 20 May 2011 (E/C.12/RUS/CO/5), the Committee on Economic, Social and Cultural Rights noted:

> "The Committee is concerned at the continued absence of a federal plan of action to address the social and economic marginalization of the Roma. The Committee also remains concerned at the lack of adequate response to its request (presented in the list of issues to be addressed) to provide detailed information on the situation of Roma settlements, and the eviction of Roma from their homes, and the destruction of these dwellings in certain cities and regions of the State party, often ordered without provision of alternative housing (art. 2, para. 2).
>
> The Committee encourages the State party to adopt a national programme of action to promote the economic, social and cultural rights of Roma, and to allocate sufficient resources for its effective implementation. The Committee also recommends that the State party review its policy on the eviction and destruction of Roma housing, in line with its General Comment no. 7 (1997) 'on the right to adequate housing: forced evictions'."

THE LAW

I. PRELIMINARY QUESTIONS

47. The Government argues that the individuals who have expressed the desire to pursue the application on behalf of the deceased persons and the missing applicant do not have standing to take their place. It notes in this regard that the rights protected by Article 8 of the Convention, upon which the applicants have based their arguments, are of a personal and non-transferable nature.

48. The Court refers to the general principles set out in *Hristozov and others v. Bulgaria* (nos. 47039/11 and 358/12, §§ 71 and 73, ECHR 2012 (excerpts), and the cases-law cited therein). Where the applicant dies after the request is introduced, a close family member or heir may in principle pursue the proceedings where they have a sufficient interest in the case.

49. The Court notes that the family members of the deceased applicants and the missing applicant, who are also applicants, are pursuing the case on their behalf. The Court is of the view that the family members have a sufficient interest in pursuing the application and to substitute themselves for the deceased applicants and the missing applicant (see, in a similar context, *Winterstein and others v. France* (just satisfaction) no. 27013/07, § 14, 28 April 2016).

50. However, no heir or family member of Mr Vitautas Mikolo Kasperavichus (the thirtieth applicant) or Mr Graf Viktorovich Kasperavichus (the thirty-second applicant) expressed their intention to o continue the proceedings on their behalf in accordance with Article 37 § 1 a) of the Convention.

51. In light of the foregoing and in the absence of any special circumstances with respect to the rights protected by the Convention and the Protocols, the Court finds that it is no longer justified to pursue the examination of the applications of Mr Vitautas Mikolo Kasperavichus (the thirtieth applicant) or Mr Graf Viktorovich Kasperavichus (the thirty-second applicant) within the meaning of Article 37 § 1 *in fine* of the Convention and that their cases should be struck out.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. The applicants allege that their eviction from their houses and the demolition thereof constitutes a violation of their right to respect for private and family life and home and cite Article 8, which states:

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

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

53. The Government is opposed to this argument.

A. Admissibility

1. The parties' submissions

(a) The Government

54. The Government argues that the case is inadmissible on the grounds that domestic remedies have not been exhausted, there is an abuse of the right to individual petition and the victim status of certain applicants is questionable.

55. First, the Government is of the view that all claims made by applicants who did not appeal the judgments against them by the Gurievsk District Court should be dismissed, for failure to exhaust domestic remedies.

56. Second, the Government asks the Court to reject the claims made by Mrs Elena Bagdonavichute (the fourth applicant) and Ms Anna Bagdonavichute (the seventh applicant) for abuse of the right to individual petition. The Government argues that the seventh applicant only entered Russian territory in March 2007 and that the fourth applicant attempted to enter Russian territory via the Lithuanian border between 1 and 2 March 2007. In support of this argument, they refer to the information communicated by the Russian federal migration service. The Government concluded that they were not living in the same house as the first applicant at the time of the demolition and that they had deliberately provided the Court with false information in this regard.

57. Lastly, the Government argues that only the ten applicants who participated as defendants in the civil cases on the demolition of the houses (see table in Paragraph 29 above) can claim to be directly affected by the measures at issue. The Government notes that the other applicants who did not act as defendants in the civil cases brought by the prosecutor have failed to prove that they actually resided in the houses under dispute at the time of demolition. On the basis of the data on the official registration of the applicants' domicile produced by the federal migration service, the Government states that the home addresses of thirteen of the applicants were never officially registered in the Kaliningrad Region and the addresses of the two other applicants (the first and the second) were registered outside the village of Dorozhnoye.

(b) The applicants

58. The applicants argue that their requests for family members of to act as parties to the civil cases were rejected by the domestic courts on the grounds that neither the composition of their household nor the official registration of some of the applicants' in the village of Dorozhnoye are relevant to the illegality of the contested constructions. They allege that the formalist approach of the domestic courts to the situation of their families has made this legal remedy ineffective in practice. The applicants ask the Court, when considering the question of the exhaustion of domestic remedies, to take account of the particular circumstances of the case, i.e. the vulnerable position of the applicants as members of the Roma community and the discriminatory attitude of the local authorities towards them.

59. The applicants further state that the fourth and seventh applicants were living in the first applicant's house and that they were present in Russia in 2006. They cite the fact that in the month of May 2006, the fourth applicant signed a power of attorney to file the present application with the Court. According to the applicants, the Government's allegations that the fourth and seventh applicants crossed the border in 2007 do not contradict with the facts as presented by the applicants as regards the demolition of the houses which took place during the month of May 2006.

60. Finally, regarding the absence of official registrations of the home addresses or the registration of an address outside the village of Dorozhnoye, the applicants respond that these facts have no bearing in determining their actual place of residence and maintain that they were all residing in houses located in the village of Dorozhnoye.

2. The Court's assessment

(a) Exhaustion of domestic remedies

61. The Court recalls that the purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. That provision, however, only requires exhaustion of those remedies which are likely to be effective and available, that is to say those that are sufficiently certain and capable of directly remedying the alleged violation of the Convention. An applicant cannot be considered to have failed to exhaust domestic remedies if he or she can show, by providing relevant domestic case-law or any other relevant evidence, that an available remedy which he or she has not used was bound to fail (*Kleyn and others v. The Netherlands* [GC], nos. 39343/98, 39651/98, 43147/98 and 46664/99, § 156, ECHR 2003-VI).

62. In the present case, four of the applicants did not appeal the respective judgments of the court of first instance (see table in Paragraph 29 above). However, the Court notes that Kaliningrad Regional Court, to which

six other applicants submitted an appeal, expressly refused to take into account their arguments related to the composition of their household and the absence of any other housing, on the grounds that these circumstances had no bearing on the substance of the case. The Court fails to see how any appeal by the four other applicants could have given rise to a different decision. Therefore, the Court takes the view that in the particular circumstances of the case, any such appeal would be have been bound to fail.

63. In these circumstances, the application cannot be rejected for failure to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention and the Government's plea of inadmissibility cannot be granted.

(b) Abuse of the right of petition

64. The Court notes that, except in exceptional cases, an application may only be rejected as abusive if it is knowingly founded on contrived facts (*Akdivar and others v. Turkey* 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1206, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, ECHR, 6 April 2000, *Aslan v. Turkey*, application no. 22497/93, decision of the Commission of 20 February 1995, Decisions and reports (DR) 80-B, p. 138, *Assenov and others v. Bulgaria*, request no. 24760/94, decision of the Commission of 27 June 1996, DR 86-B, pp. 54, 68).

65. In the present case, the Government relies on the information on the crossing and attempted crossing of the Russian border in March 2007 by the seventh and fourth applicants respectively, drawing the conclusion that they deliberately submitted false information as to their addresses at the time of the demolition of the house of the first applicant. The Court notes that the Government has not provided any documents in support of its claim. Hence, the Court is of the view that no evidence has been provided which demonstrates that the applicants knowingly founded their request on contrived facts.

66. The Government's objection is therefore rejected.

(c) Victim status

67. The Court is of the view that the plea relating to the victim status of those among the applicants who failed to prove they actually lived in the houses at issue at the time of their demolition is so closely linked with the substance of the complaint based on Article 8 of the Convention that it should be considered with the merits of the case.

(d) Conclusion as regards admissibility

68. Noting that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 a) of the Convention and that no other grounds for inadmissibility, the Court declares it admissible.

B. Merits

1. The parties' submissions

(a) The Government

69. The Government argues that the decisions of the domestic courts meet the requirements of Article 8 of the Convention.

70. The Government indicates that the measures at issue were taken pursuant to the version of Article 222 of the Civil Code in force at the time of the facts giving rise to the case. Paragraph 3 of said Article provided for the possibility of recognising the title to an unauthorised construction if the owner of the land on which the unlawful construction was erected gave their approval to grant the land. The domestic courts established that the municipality of Gurievsk, as the owner of the lands on which the houses were constructed, did not intend to grant the land to the applicants. Citing the decision in *Burton v. United Kingdom* (no. 31600/96, decision of the Commission of 10 September 1996), the Government argues that Article 8 of the Convention may not be interpreted as imposing an obligation to grant travelling people land where they can settle on held by third parties. The Government also contends that Decree no. 450 of 5 October 1956 by the USSR Council of Ministers does not confer such a right on the applicants either.

71. Regarding the interference with the applicants' right to respect for the homes, the Government argues, first, that their intervention was to ensure the protection of the free enjoyment of the rights of the land owner and, second, the protection of public health and morals, in particular the fight against drug trafficking.

72. Regarding the first ground relied on, the Government indicates that, according to the land use plan, the land occupied by the applicants' houses was located in an industrial zone and that the aim of the contested demolition measures ordered by the domestic courts was to bring land use into line with the land use plan. In that regard, the Government cites the decision in *Saliba v. Malta* (no. 4251/02, §§ 44-47, 8 November 2005).

73. As regard to the second ground, the Government argues that since 1996, the village of Dorozhnoye had become a significant drug trafficking centre in which twelve of the applicants were directly involved. The Government submits statistics on the number of criminal prosecutions for the unlawful sale or possession of drugs committed in the village of Dorozhnoye between 2000 and 2008 as well as the number of deaths by overdoses between 2004 and 2005. In particular, it notes that between 2000 and 2005, 60% of offences linked to drug trafficking in the Kaliningrad Region were committed in the village of Dorozhnoye. Between 2006 and 2008, only 5 to 8% of these offences were recorded there, and it went down to 0% in 2008. The Government relies on these figures to distinguish the present case from

the case of *Yordanova and others v. Bulgaria* (no. 25446/06, § 141, 24 April 2012), in which the Court found that the Bulgarian authorities had not demonstrated that they had taken steps to investigate the offences committed and punish the alleged perpetrators.

74. Referring to the judgment in *Chapman v. United Kingdom* [GC] (no. 27238/95, § 102, ECHR 2001-I), the Government further argues that to determine if a requirement that an individual leave his or her home is proportionate to the legitimate aim pursued, whether or not the home was established unlawfully is highly relevant, and if so, the position of the individual objecting to an order to move would be weaker.

75. The Government stresses that, as the Court held in the case of *Coster v. United Kingdom* [GC] (no. 24876/94, § 113, 18 January 2001), neither Article 8 of the Convention nor the case-law of the Court recognise as such the right to be provided with a residence. Whether the State provides funds to enable everyone to have a home is a political not judicial decision. Further, the Government distinguishes the present case from the case of *Yordanova and others* cited above, in which the Court ruled that the Bulgarian authorities had failed in their obligation to take adequate measures to rehouse members of the Traveller community. In the Government's opinion, by adopting Order no. 228 of 28 April 2006, the Kaliningrad regional authorities took special measures to set up a housing fund to rehouse the applicants. According to the Government, none of the applicants submitted a request for housing to the Gurievsk authorities. The Government further argues that Article 8 of the Convention does not confer the right to choose a particular type of housing and refers in this regard to the decision of the Court in the case of *Codona v. United Kingdom* (no. 485/05, 7 February 2006).

76. The Government takes the view that the applicants' allegations, that after the demolition of their houses, they had to live in shacks, tents or converted carriages are unsubstantiated, as, in its view, three of the applicants were owners of other homes before the demolition of their houses and others became owners of residential homes *a posteriori*. The Government relies on the declarations made by certain applicants in interviews conducted in 2014, concerning official registration data of their homes and data obtained from the property registry (Paragraphs 36, 38 and 39 above).

77. Lastly the Government states that none of the applicants contested the actions of the bailiffs on the execution of the court decisions in question, either in criminal or civil proceedings.

(b) The applicants

78. The applicants ask the Court to find that the State has interfered with their right to respect for their private and family life and their home. They stress that the Government is taking the same formalist approach as the domestic courts, i.e. an approach based on the irregular status of the houses, without assessing the proportionality of the interference with their right as

protected by Article 8 of the Convention. They allege that, following the execution of the court decisions taken against them, they found themselves in an extremely difficult situation, without adequate housing, in many cases separated from their close family. They contend that the demolition of almost an entire village has resulted in the destruction of their community.

79. The applicants argue that the interference in their right to respect for their home was illegal, in view of the lack of procedural safeguards during the legal proceedings to which some of them were party. The applicants argue that the national courts, in authorising the demolition of their houses, failed to take into account their vulnerability as members of the Roma community, or the length of time they had lived in the village of Dorozhnoye.

80. The applicants reject the Government's arguments that the demolition of the houses in the village of Dorozhnoye served to protect the rights of the landowner and to combat drug trafficking. On the latter point, they argue that the argument itself is based on a stereotype and discriminatory representation of Roma as people involved in criminal activity. According to their own analysis of the statistical data submitted by the Government, they indicate that the number of drugs offences reached a peak in 2001 and then followed a downward trend until 2004, and the authorities did not consider demolishing the village during that period. For the applicants, it was in 2005 that, following the position taken by the Governor of the Region, that a change in regional policy took place with respect to the residents of the village of Dorozhnoye. This change in attitude is also reflected in the increase in the number of criminal prosecutions brought in 2005 for offences allegedly committed in the village of Dorozhnoye. Although the number of prosecutions by the Public Prosecutor almost doubled compared with 2004, less than half of the cases led to criminal convictions and the number of convictions was lower than the number of convictions handed down the previous year.

81. The applicants further indicate that Order no. 288 by the Governor of the Kaliningrad Region of 28 April 2006 specifies neither the housing allocation procedure nor the application procedure to obtain housing. The amount of the subsidy provided for in the order, calculated on the basis of the number of residents in the village of Dorozhnoye according to the data submitted by the Government, would amount to 500 euros (EUR) per person. The applicants contend that this amount is manifestly insufficient to provide them with satisfactory alternative housing. Furthermore, the order was adopted at the end of the month of April, shortly before the demolition of the applicants' houses, without advance consultation with the residents of the village of Dorozhnoye. According to the applicants, after the demolition of the houses, certain village residents were informed of the possibility of receiving compensation, but no concrete information was given on the matter.

(c) Third-party interveners

82. Minority Rights Group International "MRG" and the European Roma Rights Center "the ERRC" stress that the problem of forced evictions of travelling people, as one of the aspects of their social exclusion, has grown in recent years across Europe, particularly in France, Italy, Romania and Slovakia.

83. For the third-party interveners, the case-law of the Court, particularly in the cases of *Yordanova and others* and *Winterstein and others* cited above, are in line with international standards, according to which the members of the Roma communities are entitled to protection of their home, notwithstanding their location on unlawfully occupied lands. They refer in this regard to the opinions of the United Nations Human Rights Committee in the cases of *Naidenova and others v. Bulgaria* (Communication no. 2073/2011, 30 October 2012) and *Georgopoulos v. Greece* (Communication no. 1799/2008, 14 September 2010).

84. The MRG and ERRC also draw on General Comments no. 4 and no. 7 by the United Nations Committee on Economic, Social and Cultural Rights, which holds that forced eviction decisions are *prima facie* contrary to the provisions of the International Covenant on Economic, Social and Cultural Rights and may only be justified in the most exceptional of cases and must be done in accordance with the applicable principles of international law. The third-party interveners cite in particular Paragraphs 14 and 15 of General Comment no. 7 which provide that, where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principle of proportionality; furthermore, procedural safeguards must be applied: a) an opportunity for genuine consultation with those affected; b) adequate and reasonable notice for all affected persons; c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, made available within a reasonable time to all those affected; d) especially where groups of people are involved, government officials or their representatives be present during an eviction; e) all persons carrying out the eviction to be properly identified; f) evictions should not to take place in particularly bad weather or at night unless the affected persons consents; g) provision of legal remedies; h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

85. Lastly, the third-party interveners invite the Court to strengthen its existing case-law with regard to vulnerable groups, in particular Roma, and expressly state that in cases of interference with the right to respect for the home in the form of an eviction, the decision-making process must include protection measures similar to those set out above.

2. The Court's assessment

(a) As to whether the houses under dispute are the applicants' "homes"

86. The Court notes that the Government does not contest that the following applicants were residents of the demolished houses: Mr Leonas Ionon Bagdonavicius, Mr Aleksandras Andreyaus Arlauskas, Mrs Zhguleva, Mr Nikolay Ivanovich Aleksandrovich, Mrs Tamara Alekseevna Alexandrovich and Mr Vitautas Mikolo Kasperavichus.

87. However, the Government does contest the residency of the other applicants. The Government argues that they have not demonstrated that they were actually living in the houses at the time of demolition. To support this argument, it relies on the fact that their homes were officially registered elsewhere and that some were owners of other properties at the time of facts giving rise to the case (Paragraph 57 above).

88. The Court notes that the notion of "home" within the meaning of Article 8 of the Convention is not limited to a legally occupied or established home, but is an autonomous concept which is independent of its definition in domestic law. The question of whether a particular property constitutes a "home", protected by Article 8 depends on the factual circumstances, in particular the existence of sufficient and continuous links with a specific place (*Buckley v. United Kingdom*, 25 September 1996, § 54, *Collection of judgments and decisions* 1996-IV, *McCann v. United Kingdom*, no. 19009/04, § 46, ECHR 2008, *Prokopovitch v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (excerpts), and *Orlić v. Croatia*, no. 48833/07, § 54, 21 June 2011).

89. In the present case, the fact that the houses at issue do not correspond to the officially registered homes of the applicants is not the decisive factor. This is particularly so, given that the domestic courts have indicated that such registration was not possible where the housing in question was an unauthorised construction. Moreover, the Government contradicts itself to some extent by invoking that fact, while acknowledging that Mr Leonas Iono Bagdonavicius was living in one of the houses. As to the fact that certain applicants were owners of property located elsewhere, this does not necessarily mean that they had established their home there.

90. The Court further notes that the domestic courts failed to comply with the requests to intervene by the family members of the six applicants referred to in Paragraph 86 in the proceedings related on the demolition of their houses and the registration of the members of their households (Paragraph 33 above). In doing so, they deprived themselves the opportunity to clarify the situation as to which individuals lived in these houses and in particular, to determine whether, as the Government argues, some of the individuals did not actually live in them. In the Court's view, it would be particularly excessive under these circumstances, to place the burden of proof entirely on the applicants.

91. Having noted that, the Court finds that the six applicants mentioned above were, in most cases, the father, mother, grandfather or grandmother of the other applicants, some of whom were minors at the time of the facts giving rise to the case. In view of the direct and close family ties between the applicants, the Court finds the applicants's allegations that they were living together as a family in the houses at issue as credible.

92. Thus, in the particular circumstances of the case, in the absence of evidence contradicting the applicants' statements, (see, *mutatis mutandis, Orphanides v. Turkey*, no. 36705/97, § 39, 20 January 2009), the Court considers that there is sufficient evidence that they all had their "home", within the meaning of Article 8 of the Convention, in those houses. It follows that the Government's preliminary argument that they cannot claim to be victims of an Article 8 violation should be rejected.

(b) Existence of an interference

93. The Court finds that, in the present case, the judicial decisions ordering the demolition of the houses have become final and further, they have been executed by the bailiff services (Paragraph 77 above), which is not contested by the Government. The Court considers that, in view of both of these facts, the existence of an interference is beyond debate.

(c) Interference prescribed by law

94. It is apparent from the decisions of the domestic courts that Article 222 of the Russian Civil Code was used as the legal basis for the order to demolish the applicants' houses. The Court finds that this provision is accessible, clear and foreseeable and concludes that the interference was prescribed by law, within the meaning of Article 8 § 2 of the Convention.

(d) Legitimate aim

95. The Court notes that the Government put forward two aims for the interference: protection of the rights of the landowners, namely, the municipality of Gurievsk, and the protection of public health and morals, with the fight against drugs (Paragraph 71 above).

96. The Court is prepared to accept that the protection of the right of the municipality of Gurievsk to recover land occupied by the houses constructed without authorisation may constitute a legitimate aim within the meaning of Article 8 of the Convention (*Yordanova and others*, cited previously, § 111 with the references included therein). Under these circumstances, the Court does not deem it necessary to address the second aim invoked by the Government, i.e. the fight against drug trafficking.

(e) Necessity of the interference

i. General principles

97. The Court has recently set out the general principles applicable to respect for the home in the context of the eviction of a settled Roma community from lands they had occupied for a number of years in the case of *Winterstein and others* cited previously:

> "147. An interference will be considered 'necessary in a democratic society' to achieve a legitimate aim if it answers a 'pressing social need' and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are 'relevant and sufficient'. While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention (see *Chapman*, cited above, § 90, and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101).
>
> 148. A margin of appreciation must be left to the competent national authorities in this assessment. The breadth of this margin varies and depends on a number of factors, including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference (see *Chapman*, cited above, § 91; *S. and Marper*, cited above, § 102; and *Nada*, cited above, § 184). The following points emerge from the Court's case-law (see *Yordanova and others*, cited above, § 118):
>
> α) In spheres involving the application of social or economic policies, including as regards housing, the Court affords the authorities considerable latitude. In this area it has found that '[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation' (see *Buckley*, cited above, § 75 *in fine*, and *Ćosić*, cited above, § 20), although the Court retains the power to find that the authorities have committed a manifest error of assessment (see *Chapman*, cited above, § 92).
>
> β) On the other hand, the margin of appreciation left to the authorities will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of fundamental or 'intimate' rights. This is the case in particular for Article 8 rights, which are rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, among many other authorities, *Connors*, cited above, § 82).
>
> γ) It is appropriate to look at the procedural safeguards available to the individual to determine whether the respondent State has not exceeded its margin of appreciation in laying down the regulations. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, § 76, and *Chapman*, cited above, § 92). The requirement for the interference to be 'necessary' raises a question of procedure as

well of substance (see *McCann*, cited above, § 49).

δ) Since the loss of one's home is a most extreme form of interference with the right under Article 8 to respect for one's home, any person at risk of being a victim thereof should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he has no right of occupation (see *Kay and Others v. the United Kingdom*, no. 37341/06, § 68, 21 September 2010, and *Orlić*, cited above, § 65). This means, among other things, that where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic legal proceedings, the domestic courts should examine them in detail and provide adequate reasons (*Orlić*, cited above, §§ 67 and 71).

ε) When considering whether an eviction measure is proportionate, the following considerations should be taken into account in particular. If the home was lawfully established, this factor would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of the home was unlawful, the position of the individual concerned would be less strong. If no alternative accommodation is available the interference is more serious than where such accommodation is available. The evaluation of the suitability of alternative accommodation will involve a consideration of, on the one hand, the particular needs of the person concerned and, on the other, the rights of the local community to environmental protection (see *Chapman*, cited above, §§ 102-104).

ζ) Lastly, the vulnerable position of Roma and travellers as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases (see *Chapman*, cited above, § 96, and Connors, cited above, § 84); to this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the way of life of the Roma and travellers (see *Chapman*, cited above, § 96, and the case-law cited therein)."

98. In the case of *Winterstein and others* cited above, the Court also relied on the *Yordanova and others* judgment cited above, as follows:

"151. In order to conclude, in the case of *Yordanova and others*, that the requirement of proportionality arising from Article 8 § 2 had not been complied with, the Court first took into consideration the fact that, the municipal authorities, in accordance with applicable domestic law, had not mentioned any grounds other than the unlawful occupation of the lands in the eviction order and, furthermore, that the domestic courts refused to hear the arguments by the applicants on proportionality and the long period of peaceable occupation of the land by them and their families (§ 122)."

ii. Application to the present case

99. The Court finds that the applicants have not demonstrated that they had any title to the lands where their homes were located. The Court notes that, in the context of the legal proceedings launched by Mr Kasperavichus (the thirtieth applicant) and Mr Samulaytis (the twenty-sixth applicant), the

domestic courts refused to grant acquisitive prescription (*usucapio*) to the applicants with respect to their houses as they had no title to their respective lands (Paragraphs 22 and 25 above). In the context of the legal proceedings taken by the Public Prosecutor, the domestic jurisdictions also refused to grant the applicants the benefit of Article 222 § 3 of the Civil Code on the grounds that the conditions necessary for its application were not met (Paragraph 33 above). Accordingly, the Court takes the view that the present case closely resembles the case of *Yordanova and others* insofar as the applicants were occupying the municipal lands unlawfully (*Yordanova and others*, cited above, § 111).

100. However, in the judgment in the case of *Yordanova and others*, the Court found that, while the authorities had the right in principle to evict applicants occupying municipal land unlawfully, they took no steps in that direction for many years and had *de facto* tolerated this unlawful occupation. Hence, the Court takes the view that this fact is highly relevant, and ought to have been taken into consideration. Whereas the occupants without title cannot claim to have a legitimate expectation to stay on the land, the lack of action by the authorities led to the applicants developing close ties with the village where they had established a community. The Court concluded that the principle of proportionality requires that such situations, where an entire community is settled over a long period, should be treated in an entirely different manner from the typical situations where an individual is evicted from a property they were occupying unlawfully (*Yordanova and others*, cited above, § 121).

101. The Court is of the view that this approach can be adopted in the present case. The occupation of the lands in the village of Dorozhnoye by unauthorised constructions, including the applicants' houses, was sufficiently longstanding and dated from the Soviet period (Paragraph 10 above). The applicants had therefore developed sufficiently close ties with the village and established life as a community there. Therefore, the Court must assess whether the circumstances mentioned above were sufficiently taken into account by the national courts.

102. The Court notes that the domestic courts ordered the demolition of the applicants' houses without invoking any grounds other than the lack of a building permit and the unlawful occupation of the land. The Court notes in this regard that the loss of one's home is among the most extreme forms of interference with the right to respect for the home and any person at risk of being a victim thereof should in principle be able to have the proportionality of the measure determined by a tribunal. In particular, where arguments related to the proportionality of the interference are raised, the national courts must examine them in detail and offer an adequately reasoned response (*Winterstein and others* §148 (δ)). In the present case, the domestic courts ordered the demolition of the applicants' houses without analysing the proportionality of the measure: once it had been established that the

constructions were unlawful, this aspect was given overriding importance, and was not balanced against the arguments invoked by the applicants. The domestic courts expressly rejected not only the arguments based on the longstanding occupation of the municipal lands by the applicants, but also those related to the composition of their home, and for many of them, the absence of any other accommodation (Paragraph 33 above). The Court reiterates that such an approach is in itself problematic and fails to meet the requirements of the principle of proportionality: the interference of the authorities in the form of the demolition of the applicants' houses, may only be deemed to be "necessary in a democratic society" if it answers a "pressing social need" subject first to an assessment by the national courts (*Winterstein and others*, cited above, § 156). In the present case, this question was all the more relevant given that the national courts gave no explanation or argument as to the "necessity" for the interference.

103. The Court therefore concludes that no examination of the proportionality of the interference was carried out during the proceedings on the demolition of the applicants' houses in accordance with the requirements of Article 8.

104. The Court also recalls, as laid down in the judgements in *Yordanova and others*, cited above, § 126, and *Winterstein and others*, cited above, § 159, that particular attention should be given to the consequences of the eviction of a member of the Roma community from their homes and the risk of homelessness, given the longstanding occupation of the land by the applicants, their families and the community they had formed. Citing various international materials and texts adopted in the institutional framework of the Council of Europe, the Court has stressed the need to provide Roma and travelling people with housing in the event of forced evictions, save in cases of force majeure. The Court has also reaffirmed the principle that applicants' membership in a socially disadvantaged groups and their particular needs in this regard must be taken into account in the proportionality test that the national authorities are required to carry out, not only when they are seeking solutions to the unlawful occupation of the land, but also if eviction is necessary, when they decide on the date, the procedures and where possible, alternative housing (*Winterstein and others*, cited above, § 160). The Court further notes that both the Council of Europe and the UN have called on Russia to implement these principles (Paragraphs 44-46 above).

105. In the present case, as the Court notes above, the potential consequences of the demolition of the houses under dispute and the forced eviction of the applicants were not taken into account by the domestic courts either during or after the legal proceedings launched by the Public Prosecutor. As regards the eviction date and procedures, the Court notes that the Government has not demonstrated that the applicants were duly informed of the intervention of the bailiffs responsible for the demolition of the houses or the details thereof.

106. As to alternative housing, the Government argues that the Kaliningrad regional authorities adopted Order no. 228 of 28 April 2006 to establish a special fund to relocate the applicants and, therefore, the national authorities had fulfilled the obligation to provide alternative housing. However, the Government has not demonstrated that Order no. 228 was implemented in practice, i.e. that its adoption was followed up by the actual establishment of funding for housing, and that such housing units were made available and actually offered to the applicants. More generally, nothing has been submitted to indicate that the national authorities held a genuine consultation with those affected on the possibilities for alternative accommodation (see, *a contrario*, *Winterstein*, cited above, §§ 33-37), which, although not necessarily at no cost, would have taken into account of the situation of the families and their needs, and the Court would stress, ought to have been conducted prior to the demolition of the houses. In that context, the alleged passivity of the applicants who, according to the Government, had not submitted requests for alternative housing cannot be held against them.

107. The Court therefore finds that the national authorities did not carry out a genuine consultation with those affected as to the possibility of alternative housing suited to their needs prior to the forced eviction.

iii. Conclusion

108. Having regard to all the evidence, the Court concludes that there has been a violation of Article 8 of the Convention as the legal proceedings related to the demolition of the applicants' houses, failed to review the proportionality of the interference in accordance with the requirements of Article 8, and the authorities failed to carry out a genuine consultation with those affected on possibility of alternative housing prior to their forced eviction.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

109. The applicants claim that the demolition of their houses and furniture during the forced eviction constitutes a violation of their right to respect for property. They invoke Article 1 of Protocol No. 1 which states:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other

contributions or penalties."

1. The parties' submissions

110. Firstly, the Government argues that the section of the claim relating to the demolition of the applicants' houses is inadmissible and refers to the inadmissibility objections made under Article 8 (Paragraphs 57-56 above). In the alternative, the Government cdisputes that there has been any violation of the Article invoked. The Government argues that the legal basis for the demolition of the houses under dispute is Article 222 of the Civil Code and it pursued the aim of bringing the land into line with the land use plan (see the arguments set out in Paragraphs 70 and 72 above). It argues that the applicants were aware of the fact that their houses were constructed on unlawfully occupied land. It adds that the tolerance of the presence of these houses by the municipality of Gurievsk did not confer on the applicants a legitimate expectation of acquiring any rights over those houses. According to the Government, the domestic courts were best placed to choose the most appropriate measure to protect the rights of the landowners, with a wide margin of appreciation to defend the public interest. On this basis, the Government argues that the measures taken by the domestic courts were proportional to the aim pursued. In that regard, it refers to the conclusions of the Court in the cases of *Hamer v. Belgium* (no. 21861/03, ECHR 2007-V (excerpts)), *Depalle v. France* [GC] (no. 34044/02, 29 March 2010), and *Brosset-Triboulet and others v. France* [GC] (no. 34078/02, 29 March 2010).

111. Regarding the claim related to the demolition of property, the Government asks the Court to reject it for failure of the applicants to exhaust domestic remedies, as none of them had filed a complaint or instituted proceedings to contest the action of the bailiffs or to seek compensation for any resulting damage.

112. The applicants argue that the interference with their right of respect for their property was disproportionate. They contest the interpretation of domestic law by the national courts and submit that there were grounds for a legitimate expectation that their property rights to the houses under at issue would be recognised. In any case, they submit that the absence of title to the land and houses should not be a decisive factor in determining the proportionality of the interference where the authorities deliberately destroy houses, leaving the occupants homeless. In this regard they refer to the judgment in *Ayder and others v. Turkey* (no. 23656/94, §§ 119-120, 8 January 2004).

2. The Court's assessment

113. The Court does not consider it necessary to rule on each of the inadmissibility arguments raised by the Government as it finds the complaint to be manifestly ill-founded for the following reasons.

(a) Houses under dispute

114. The Court notes at the outset it is not the Court's function to deal with errors of fact or law allegedly committed by the domestic courts, unless such errors they may have infringed on rights and freedoms protected by the Convention (*Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I), and that it is for the national courts to resolve problems of interpretation and application of domestic legislation (*X v. Latvia* [GC], no. 27853/09, § 62, ECHR 2013). In the present case, the applicants allege that the domestic courts failed to correctly apply domestic law by refusing to recognise their right to acquisitive prescription under Article 234 of the Civil Code. However, the Court is not of the view that it was arbitrary or unreasonable for the domestic courts to interpret Article 234 such that the parties concerned may not enjoy acquisitive prescription in the absence of valid title to the lands on which the houses had been constructed (Paragraphs 22, 23, 25 and 26 above). The Court therefore does not see any reason to deviate from the conclusions of the domestic courts and takes the view that the applicants did not have valid title to the houses under national law. Furthermore, the applicants do not contest that the finding that they had no title to the land on which their houses were constructed.

115. The Court further recalls that in a number of cases involving the occupation of land not owned by the applicants, it found that the applicants had a proprietary interest in their houses, which was sufficiently recognised and of a sufficient nature to constitute a "possession" (*Öneryıldız v. Turkey* [GC], no. 48939/99, § 129, ECHR 2004-XII, *Hamer*, cited above, § 76, *Depalle*, cited above, § 68, et *Brosset-Triboulet*, cited above, § 71).

116. In the *Öneryıldız* case, the Court found that the proprietary interest of the applicant was of a sufficient nature and sufficiently recognised to constitute a substantive interest, and hence a "possession" within the meaning of Article 1 of Protocol No. 1, taking into account the fact that the applicant had been subject to council tax and had been provided with public services, for which he was charged (*Öneryıldız*, cited above, §§ 105 et 127). It further took account of the failure of the Turkish authorities to respond in a reasonable time to the risk posed by dangerous economic activity and the uncertainty in Turkey at the time when implementating the laws to curb illegal settlements (*idem*, § 128). As regards the case in *Hamer*, the Court in arriving at the same conclusion regarding the applicability of Article No. 1 of Protocol No. 1, also took into account the payment of taxes by the applicant and her father for more than twenty-seven years and the time elapsed before the violation of the urban planning rules had been established and thereafter (*Hamer*, cited above, § 76). Lastly, in the cases of *Depalle* and *Brosset-Triboulet*, the Court found that the property titles held by the applicants were not disputable under the domestic law because the applicants could legitimately consider themselves to be in a situation of "legally

certainty" in respect of the validity thereof (*Depalle*, cited above, § 64, and *Brosset-Triboulet*, cited above, § 67).

117. However, the present case may be distinguished from the cases mentioned above in several respects. First, the applicants, in the present case had no valid title to the houses under dispute and could not have believed themselves to be in a situation of "legally certainty". Secondly, there is no evidence that they have ever paid any taxes related to the possession of the houses or that they received public services for which they were charged. Thirdly, the Court did not find any uncertainty as to the applicability of Article 222 of the Russian Civil Code that could have given rise to any expectation by the applicants that their houses would not fall within its scope. The failure of the authorities to respond for some time could not have given the applicants the impression that they would not be subject to proceedings which were held in 2005 and 2006. Lastly, the length of time the houses were occupied, unless combined with other factors listed above, is not sufficient to constitute a proprietary interest that is "sufficiently recognised and of a sufficient nature".

118. Having regard to all of the above, the Court takes the view that the property interests of the applicants in their dwellings were not of a sufficient nature and sufficiently recognised as to amount to a substantial interest and hence to "possessions" within the meaning of Article 1 of Protocol No. 1.

119. It follows that the part of the claim based on Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and should be rejected in accordance with Article 35 § 4.

(b) Properties

120. As regards the part of the claim regarding the destruction of the applicants' houses as part of the operation to demolish houses in the village of Dorozhnoye, the Court observes that the applicants did not file a complaint with regard to the destruction of their houses, nor bring a claim to seek compensation. It follows that this part of the claim must be dismissed for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

121. The applicants allege that the interviews conducted by the police with certain applicants on 26 and 27 August 2014 constituted an interference with the exercise of their right to individual petition protected by Article 34 of the Convention. That provision as it applies to the present case is as follows:

> "The Court may receive applications from any person... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the

Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

122. The applicants submit that they were summoned to the interviews directly, without consultation with their court representatives, on the pretext that compensation or alternative housing might be offered. According to them, the questions asked by the police were not limited to updating information about their situation, but also to what happened in 2006. Lastly, the applicants argue that the Government used the information obtained during these interviews to undermine their arguments. In the applicants' view, the purpose of these interviews was to put pressure on them.

123. The Government indicates that the interviews in question were carried out on the request of the Representative of Russia to the Court in order to collect information about the situation in the village of Dorozhnoye during the demolition of the houses in 2006, the behaviour of the officials at the time, as well as the applicants' housing location after these events. The applicants responded to the questions asked and signed the report without expressing any objections. The Government concludes that the Russian authorities in no way interefered with the exercise by the applicant of their right to individual petition.

B. The Court's assessment

124. The Court has repeatedly stressed that in principle, it is hardly ever appropriate for the defending State authorities to make direct contact with an applicant concerning a case which has been submitted to the Court *(Riabov v. Russia*, no. 3896/04, §§ 59-65, 31 January 2008, *Akdeniz and others v. Turkey*, no. 23954/94, §§ 118-121, 31 May 2001, *Assenov and others v. Bulgaria*, 28 October 1998, §§ 169-171, *Collection* 1998-VIII, and *Ergi v. Turkey*, 28 July 1998, § 105, *Collection* 1998-IV). In particular, if the government has reason to believe that in a given case the right to individual petition has been abused, it must alert the Court, and inform it of its misgivings. Questioning by the local authorities could well be interpreted by the applicant as an attempt to intimidate them (*Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 131-133, ECHR 1999-IV).

125. However, the Court stresses this does not mean that any investigation by the authorities with respect to an application pending before it will be regarded as an "intimidation" measure. For example, the Court has found that contact between the authorities and the applicants with a view to seeking an amicable resolution to the case did not constitute a interferance with the exercise of the right to individual petition, on the condition that the measures taken by the State in the context of such negotiations involve no

form of pressure, intimidation or coercion (*Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 168-174, 27 January 2011). In other cases where applicants were subject to questioning by the local authorities on the circumstances giving rise to the application, the Court, in the absence of evidence indicating pressure or intimidation, also did not find that the applicant had been hindered in the exercise of their right to individual petition (*Manoussos v. Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002, and *Matyar v. Turkey*, no. 23423/94, §§ 158-159, 21 February 2002).

126. As to the circumstances in the present case, the Court finds that the sole purpose of the interviews was with a view to preparing the Government's submissions to the Court, to collect information on events that took place seven years before the request was notified to the defending government, as well as on the applicants' addresses after these events. The reports submitted by the Government do not show that the applicants expressed any objection or comments as to the organisation of the interviews or the behaviour of the police officer who conducted them. The Court is of the view that nothing in these interviews indicates that they were designed to pressure the applicants to withdraw or modify their application or to hinder in any other way the exercise of their right to individual petition, nor did they have such an effect. The authorities of the defending State cannot have appeared to have hindered the applicants in exercising their right to individual petition. Hence, the defending State has not failed to fulfill its obligations under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

127. The applicants further allege that they have been victims of violations of their rights under Article 14 and taken in conjunction with Article 8 of the Convention.

128. The Court finds that this claim is related to the claim examined under Article 8 of the Convention and must therefore be held admissible. However, in light of the finding with respect to Article 8 (Paragraph 108 above), the Court takes the view that there is no need to examine separately whether Article 14, combined with Article 8 of the Convention have been violated.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Under the terms of Article 41 of the Convention,

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

A. Damages

130. The applicants seek, for the material damage that they allege to have suffered:

– various sums of between EUR 49,000 to EUR 215,000 per family for the destruction of their houses;

– sums of between EUR 8,400 and EUR 30,720 per applicant or per group of applicants for rehousing expenses incurred after the demolition of their houses;

– EUR 8,000 per family for the destruction of their personal effects.

Furthermore, they also seek EUR 35,000 each and an additional EUR 5,000 for all applicants who were minors at the time of the facts giving rise to the case.

131. The Government argues, first, that no compensation is due for the destruction of the applicants' houses. In the alternative, the Government contests the calculation method used by the applicants to determine the price of the houses in question indicating that such an evaluation cannot be based on the same methods applicable to legally constructed properties. Regarding the expenses incurred in renting accommodations after the destruction of the applicants' houses and the cost of personal effects allegedly destroyed during the eviction, the Government stresses the absence of any document to support the sums claimed. Lastly, the Government contests the existence of non-pecuniary damage.

132. In the present case, the violation of Article 8 found by the Court relates to the fact that the domestic courts ordered the demolition of the applicants' houses without having analyzed the proportionality of the measure and that the domestic authorities failed to carry out a genuine consultation with the applicants on the possibilities for alternative accommodation. While it is not possible to speculate on what the outcome of the case would otherwise have been, the Court considers it probable that despite the fact that the land was occupied unlawfully, the decision to evict the applicants could have been accompanied by a notice period and safeguards allowing them to prepare for their departure in better conditions. However it is clear form the document before the Court that the applicants left in haste following the eviction procedure. As the houses were demolished within a short period of time, the applicants had to bear the immediate costs for their relocation. The Court therefore takes the view that their pecuniary damage is linked to the violation found and that the applicants should be compensated. However, the Court observes that not all of the applicants'claims as to the losses they suffered are supported by any document justifying the amount claimed. Nonetheless, and notwithstanding the difficulties involved in determining precisely the loss suffered, the Court takes the view that the applicants have suffered some pecuniary damages and

decides to allocate a fixed amount of EUR 500, with the exception of those designated in Point 1 of the operative part of the present judgment.

133. In addition, having regard to the violation of Article 8 of the Convention, the Court takes the view that the applicants necessarily suffered non-pecuniary damage that is not sufficiently compensated by the finding of violation. Nonetheless, the Court takes the view that the sums claimed for non-pecuniary damage are excessive. Having regard to all the evidence available and ruling on an equitable basis, the Court rules that it is reasonable to grant EUR 7,500 in non-pecuniary damages to each of the applicants, with the exception of those designated in Point 1 of the operative part of the present judgment.

B. Costs and expenses

134. The applicants did not submit a request to recover costs and expenses.

C. Default interest

135. The Court deems it appropriate to set the default interest rate in line with the marginal lending facility of the European Central Bank, plus three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that the application as it relates to the applicants listed in nos. 30 and 32 of the Annex to the present judgment should be struck out, within the meaning of Article 37 § 1 a) of the Convention;

2. *Dismisses*, unanimously, the inadmissibility arguments raised by the Government for failure to exhaust domestic remedies and for the abuse of the right to individual petition with respect to the claim under Article 8 of the Convention;

3. *Joins to the merits*, unanimously, the Government's preliminary objection as to the lack of standing of the victims under Article 8 of the Convention and *dismisses* it;

4. *Holds*, unanimously, that the application is admissible with respect to the claim pursuant to Articles 8 and 14 of the Convention and inadmissible with respect to the claim pursuant to Protocol No. 1 to the Convention;

5. *Holds*, unanimously, that there has been a breach of Article 8 of the Convention;

6. *Holds*, unanimously, that the defending State did not fail to fulfill its obligations under Article 34 of the Convention;

7. *Holds*, by a majority of six to one, that there is no need to examine the merits of the claim under Article 14 taken in conjunction with Article 8 of the Convention;

8. *Holds*, unanimously,

a) that the defending State is to pay each of the applicants, with the exception of those designated in Point 1 of the operative part of the present judgment, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the currency of the defending State, at the exchange rate applicable at the time of payment:

i. EUR 500 (five hundred euros), plus any applicable taxes, in respect of pecuniary damage;

ii. EUR 7,500 (seven thousand five hundred euros), plus any applicable taxes, in respect of non-pecuniary damage;

b) that from the expiry of the above-mentioned period until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses*, by a majority of six to one, the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 11 October 2016, pursuant to Article 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis Lopez Guerra
President

The separate opinion of Judge Keller is annexed to the present judgment, in accordance with Articles 45 § 2 of the Convention and 74 § 2 of the Rules of Court.

L.L.G.
J.S.P.

ANNEX: List of the applicants per family

The BAGDONAVICIUS family

1. Leonas Iono BAGDONAVICIUS, born on 16/11/1950, of Lithuanian and Russian nationality.
2. Magdalena BAGDONAVICIENE, born on 06/02/1953, is a Lithuanian national. She is the spouse of the first applicant.
3. Aleksandr BAGDONAVICIUS, born on 14/03/1978, is a Lithuanian national. He is the son of the first applicant.
4. Helena BAGDONAVICIUTE, born on 13/04/1972, is a Lithuanian national. She is the daughter of the first applicant.
5. Olegas BAGDONAVICIUS, born on 14/02/1970, is a Lithuanian national. He is the son of the first applicant.
6. Tamila BAGDONAVICIUTE, born on 16/01/1988, is a Lithuanian national. She is the granddaughter of the first applicant and the daughter of the fourth applicant.
7. Ana BAGDONAVICIUTE, born on 28/09/2004, is a Lithuanian national. She is the granddaughter of the first applicant and the daughter of the fourth applicant.
8. Leonid Olegovich ALEKSANDROVICH, born on 06/05/1998, is a Russian national. He is the grandson of the first applicant and the son of the fifth applicant.
9. Nikita Olegovich ALEKSANDROVICH, born on 14/03/2000, is a Russian national. He is the grandson of the first applicant and the son of the fifth applicant.
10. Nataliya Antano ALEKSANDROVICH, born on 07/08/1978, was a Russian national. She was the wife of the fifth applicant. She died on 2 September 2013. Her father in law, the first applicant, is pursuing the case on her behalf.

The ARLAUSKAS family

11. Aleksandras Andreyaus ARLAUSKAS, born on 15/05/1956, was a Russian national. He died on 5 January 2013. His widow, the twelfth applicant, is pursuing the procedure on his behalf.
12. Mariya Savelyevna ARLAUSKENE, born on 08/04/1958, is a Russian national. She was the wife of the eleventh applicant.
13. Anastasiya Aleksandrovna ARLAUSKAYTE, born on 26/02/1981, was a Russian national. She was the daughter of the eleventh applicant. She died on 15 August 2006. Her mother, the twelfth applicant, is pursuing the procedure on her behalf.
14. Mikhail Aleksandrovich ARLAUSKAS, born on 25/11/1976, is a Russian national. He is the son of the eleventh applicant.

15. Angela Aleksandrovna ARLAUSKAYTE, born on 22/08/1983, is a Russian national. She is the daughter of the eleventh applicant.
16. Mikhail Mikhaylovich ARLAUSKAS, born on 14/06/1995, is a Russian national. He is the grandson of the eleventh applicant and the son of the fourteenth applicant.
17. Vanya Aleksandrovich ARLAUSKAS, born on 10/04/2001, is a Russian national. He is the grandson of the eleventh applicant and the son of the fifteenth applicant.
18. Olga Aleksandrovna ARLAUSKAYTE, born on 13/04/2002, is a Russian national. She is the granddaughter of the eleventh applicant and the daughter of the fifteenth applicant.
19. Rustam Alekseyevich ARLAUSKAS, born on 06/05/2002, is a Russian national. He is the grandson of the eleventh applicant and the son of the thirteenth applicant.

The ZHGULEV family

20. Nonna Alekseyevna ZHGULEVA, born on 26/12/1970, is a Russian national.
21. Dinari Arunovich ZHGULEV, born on 21/04/2002, is a Russian national. He is the son of the twentieth applicant.

The ALEKSANDROVICH family

22. Nikolay Ivanovitch ALEKSANDROVICH, born on 05/05/1946, was a Russian national. He died on 17 January 2008. His widow, the twenty-third applicant, is pursuing the case on his behalf.
23. Tamara Alekseyevna ALEKSANDROVICH, born on 17/11/1949, is a Russian national. She was the wife of the twenty-second applicant.
24. Margarita Alekseyevna MATULEVICH, born on 22/03/1969, is a Russian national. She is the daughter of the twenty-second applicant. She has been missing since August 2006. Her mother, the twenty-third applicant, is pursuing the procedure on her behalf.
25. Lyubov Grafovna MATULEVICH, born on 10/04/1992, is a Russian national. She is the granddaughter of the twenty-second applicant and the daughter of the twenty-fourth applicant.

The SAMULAYTIS-PETRAVICHUTE family

26. Konstantin Sergeyevitch SAMULAYTIS, born on 04/08/1961, is a Russian national. He is the brother of the twenty-seventh applicant.

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

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

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

The KASPERAVICHUS family

30. Vitautas Mikolo KASPERAVICHUS, born on 10/10/1951, was a Russian citizen. He died on 13 December 2006.

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

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

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

DISSENTING OPINION OF JUDGE KELLER

1. I fully agree with the majority's position in favour of a violation of Article 8 of the Convention on the grounds that, first, an adequate review of the proportionality of the interference was not carried out in the judicial proceedings with respect to the demolition of the applicants' houses, and second, the Russian authorities failed to consult with the applicants on the possibilities for alternative accommodation prior to the forced eviction. However, with all due respect to the majority, I cannot subscribe to its reasoning on the examination of Article 8 read in combination with Article 14, as in my view this is required in the case at hand.

2. In Paragraph 128 of the majority judgement, the Court confirms the previous case-law according to which, once a substantive provision of the Convention has been invoked both on its own and together with Article 14 and the Court has expressly found that the substantive Article has been breached, it is not generally necessary for the Court to also examine the case under Article 14, unless "clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case" (see in particular *Dudgeon v. United Kingdom*, 22 October 1981, § 67, Series A, no. 45). In my opinion, the latter condition is met in the present case. I will address, in turn, the questions of whether or not the applicants have presented an arguable complaint (I.) and whether the national authorities have exhibited stereotyped conduct (II.) to reach the conclusion there has been a violation of Article 14 in combination with Article 8 of the Convention (III.).

I. The *prima facie* existence of arguable complaints

3. It appears to me, unlike the majority, that the applicants have put forward an arguable complaint as the attitude of the Russian authorities is indicative of a generally discriminatory policy towards the Roma community in Dorozhnoye, which, to me, constitutes a fundamental aspect of the case. It must be recognized with regret that the applicants were treated differently because they belong to an ethnic minority. The prohibition on discrimination and the right to housing have been manifestly breached in the present case, insofar as an entire specific community (the Roma community), through their eviction and destruction of their property, was subject to harsher treatment by the Russian authorities than any other category of individuals[1]. In that regard,

[1] See, similarly, the Recommendation of the Commissioner for Human Rights of 30 June 2009 on the implementation of the right to housing, CommDH(2009)5 pt. 4.2, p. 15.

the increasing social and economic marginalisation of Roma living in Russia could not be more clear.[2]

4. The Court itself has solemnly acknowledged that, owing to their turbulent history and constant uprooting, the Roma have become a particularly disadvantaged and vulnerable minority[3], and hence require greater protection from the national authorities (see in particular *Horvath and Kiss v. Hungary*, 29 January 2013, no. 11146/11, § 102, and particularly *Oršuš and others v. Croatia* [GC], 16 March 2010, no. 15766/03, § 147, ECHR 2010, *Alajos Kiss v. Hungary*, 20 May 2010, no. 38832/06, § 42, and *D.H. and others v. Czech Republic* [GC], 13 November 2007, no. 57325/00, § 182, ECHR 2007-IV) which might have legitimately been afforded to the applicants in the present case. Conversely, the legalistic approach taken by the Russian authorities when the applicants attempted to regularise their situation (by obtaining *inter alia* valid property titles and official registration of their address with the town) in no way resembles the special treatment they should have received, but rather points to excessive formalism.

5. In accordance with settled case-law, it is not uncommon for the Grand Chamber "in certain cases of alleged discrimination... to require the respondent Government to disprove an arguable allegation of discrimination, and – if they fail to do so – find a violation of Article 14 of the Convention." (See, for example, the judgment in the case of *Nachova and others v. Bulgaria* [GC], 6 July 2005, no. 43577/98 and 43579/98, § 157, ECHR 2005-VII, and more recently, *D.H. and others v. Czech Republic* [GC], 13 November 2007, no. 57325/00, § 179, ECHR 2007-IV). Hence, the burden of proof should logically have been placed on the defending State, who should have been required to demonstrate that the local authorities did not act in a discriminatory manner against the applicants. The outcome for the applicants was clearly dependent on the discretion of the Russian authorities, particularly for the issue of property titles.

II. The stereotype-based approach by the national authorities

6. The applicants appear to have made out a *prima facie* case of

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[2] Along with NGOs, the UN Committee on Economic, Social and Cultural Rights expressed its misgivings and concerns as to the current situation, characterised by "the continued absence of a federal plan of action" (see, on this point, the concluding observations of the Committee, annexed to the fifth periodic report on the Russian Federation on the implementation of the International Covenant on Economic, Social and Cultural Rights, adopted on 20 May 2011 (E/C.12/RUS/CO/5)).

[3] See, on this point, the General Comments in Recommendation no. 1203 (1993) of the Parliamentary Assembly on Gypsies in Europe, as well as Point 4 of Recommendation no. 1557 (2002) of the Parliamentary Assembly on the legal situation of Roma in Europe.

discrimination against them. This claim is supported by various factual elements indicative of a stereotype-based outlook on the part of the national authorities. First, the defending government attempts to justify the forced eviction of the applicants and their families from their houses, as well as the demolition, with reference to considerations related to the fight against drug trafficking. This reasoning regards the Roma community as a whole as a criminal organisation. This way of thinking should not be accepted by the Court, particularly in the context of the extreme vulnerability of Roma populations and hence, their need for special protection (Paragraph 4 above).

7. In the circumstances of this case, the police and judicial authorities should have made targeted arrests and taken proceedings against those accused of drug trafficking. Instead, the competent authorities evicted the residents of the village of Dorozhnoye, most of them of Roma origin, and demolished their dwellings. This extreme attitude gives rise to a sense of injustice – the objective here was clear – to inflict *a collective sanction on the Roma community* of Dorozhnoye. At this stage, the discrimination appears to be clear and is at odds with the Court's established case-law[4]. Among the Roma community in Dorozhnoye, only two convictions for drug trafficking were handed down in the three years prior to 2006. At the time of the facts giving rise to this case, the individuals convicted were aged 16 and 17 and have since served their sentence. Consequently, the defending government's allegation, which consists of a vision of the Roma community of Dorozhnoye as a centre of criminality lacks credibility.

8. From a strictly quantitative standpoint, it appears that during the demolition only two dwellings were spared. Those dwellings appear to have belonged to Russian families. Thus, all the Roma dwellings were destroyed, even though some of them had been brought into line with the law[5]. There can be no doubt as to the different, and clearly discriminatory treatment of the applicants, on the basis of their ethnicity. Furthermore, it is strange, to say the least, that for decades[6] the allegedly unlawful (yet forced) settlement of the Roma community in the village of Dorozhnoye was fully tolerated and then, suddenly, in order to bring the use of the land into line with the land-use plan, the municipality decided, within a short period of time and despite the lack of

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[4] According to which "the vulnerable position of Roma/Gypsies means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases" (*Chapman v. United Kingdom* [GC], 18 January 2001, no. 27238/95, § 96, ECHR 2001-I, and *Connors v. United Kingdom*, 27 May 2004, no. 66746/01, § 84).

[5] Including the houses belonging to the Samulaytis and Kasperavichus families, for example.

[6] Decree no. 450, issued by the USSR Council of Ministers on 5 October 1956, criminalised the nomadic way of life and forced the Roma to settle. Following this Decree, the village of Dorozhnoye served as a place of settlement for the Roma community, who occupied the lands peaceably for a number of decades, without any objection from the Russian authorities.

any pressingly urgent circumstances, to demolish the applicants' dwellings. Yet again, the authorities demonstrated subjectivity verging on racism.

9. Lastly the particularly disturbing declarations also lend weight to the presumptions of discrimination. First, the interview granted by the Governor of the Kaliningrad Region on 20 February 2006 contains cloaked and somewhat racist, or at least controversial, declarations. The Governor clearly attributes the rise in criminality in the Kaliningrad Region to the Roma community[7]. He does not hesitate in describing the residents of Dorozhnoye as notorious drug traffickers, yet offers no evidence to support that assertion. The words used leave no room for doubt: the tone is clearly military in nature and is accompanied by terminology suggestive of confrontation. Reestablishing order appears to be the absolute top priority[8]. The applicants also submit an excerpt from an online journal, published on 16 January 2006, which relays a press release from the department of the Kaliningrad Region of the local branch of the Federal Drug Enforcement Agency. The excerpt speaks of a "purge" of the village of Dorozhnoye, which constitutes a "the most problematic drug trafficking centre" (Paragraph 17 of the Judgment). Given that the majority of the population in the village concerned is Roma, it is beyond objectionable to equate the village residents with a group of individuals who mainly earn their living from drug trafficking, thus we are clearly dealing with discrimination in the present case.

III. Conclusion

10. In light of all of the foregoing considerations, it is clear that the Court should have examined the case under Article 14 of the Convention. The issue of discrimination remains a key aspect to the present case and would have merited separate consideration. Clearly, the fact that the applicants are "Roma" was a decisive factor in the attitude of the national authorities. The substance of Article 8, the violation of which was rightly found in the present case, is very different from Article 14. The case undoubtedly involves discrimination which should have led the Court to sanction the violation of Article 14 in combination with Article 8 of the Convention.

11. As to just satisfaction, a finding that Article 14 of the

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[7] For example, with respect to the village of Dorozhnoye. "What we are doing is weeding out a drugs haven, and fighting resolutely against illegal drugs in all their forms, which we will eradicate." (Paragraph 16 of the Judgment).

[8] Further,,the following statements were made: "Is it right or not to take measures to enforce the law and restore order? My opinion on this topic is clear and unequivocal: we will enforce the law and restore order everywhere, and that includes the village of Dorozhnoye. Wherever there is drug trafficking, we will eliminate it" (Paragraph 16 of the Judgment).

Convention had been breached would have allowed for a larger award non-pecuniary damages to the applicants, which seems to me to be more closely aligned to the true extent of the damage suffered.