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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2438/2014*, **

Communication submitted by:	A.K. et al. (represented by counsel, Dorian Matlija and Theodoros Alexandridis)
Alleged victims:	The authors
State party:	Albania
Date of communication:	4 July 2014 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 4 July 2014 (not issued in document form)
Date of adoption of decision:	8 November 2019
Subject matter:	Forced eviction of Roma
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Effective remedy; cruel, inhuman or degrading treatment; freedom of movement; unlawful and arbitrary interference with one's home and family; discrimination on the ground of ethnic origin
Articles of the Covenant:	2, 7, 17, 23, 26 and 27
Article of the Optional Protocol:	5 (2) (b)

1.1 The authors of the communication are A.K., born in 1977, V.K., born in 1956, and O.K., born in 1978, all Albanian citizens of Roma ethnicity. V.K. is the mother of the other two authors. They submit the communication on their own behalf and on behalf of their families. The authors claim that the State party has violated their rights under articles 2, 7, 17, 23, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 4 October 2007. The authors are represented by counsel.

1.2 On 4 July 2014, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested

* Adopted by the Committee at its 127th session (14 October–8 November 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Hélène Tigroudja.

the State party not to evict the authors from their homes while the communication was under consideration by the Committee.

1.3 On 10 September 2014, the Committee, again acting through its Special Rapporteur on new communications and interim measures, decided to withdraw its request for interim measures on the basis of information indicating that an agreement had been reached between the authors and the local authorities.

The facts as submitted by the authors

2.1 The authors are members of an extended family group. They are unemployed and live in a house that was built in 1993 without planning permission. In addition to the three authors, 16 others live in the house in question, including minor children.

2.2 The authors' house is on a property located opposite the stadium Rushd Bizhuta, in the city of Elbasan. A.K. and V.K. are its informal owners. The family has been living in the house for 20 years, during which time the authorities have de facto tolerated the authors' residence in the house, which is connected to the electricity grid and the water mains.

2.3 The authors submit that a significant number of houses are built without official building permissions and that the Albanian authorities have taken a series of measures to formalize these buildings. In 2006, A.K. and V.K. filed a request to have their dwelling legalized; that request was pending as of 3 July 2014.

2.4 On 27 May 2014, by a decision of the national commission for the territory, it was decided to renovate the Rushd Bizhuta stadium and to landscape the square in front of it. The authors submit that it was not clear to them to what extent their property would be affected by the renovation, as their house was located "on the other side of the road that surrounds the stadium" and not within the stadium's "immediate surrounding area".

2.5 On 30 June 2014, the Municipal Urban Construction Inspectorate of Elbasan adopted two documents entitled "Notification for vacating the property", with reference numbers 901 and 902. The two documents, which were served on A.K. and V.K. on 1 July 2014, contained an order for the recipients to vacate their home within five days. Should they fail to do so, the Municipal Inspectorate would proceed to demolish the house without ensuring for the residents any form of temporary shelter or alternative adequate accommodation. According to the documents, the demolition of the house was necessary on grounds of public interest. The authorities neither consulted the authors nor provided them with any form of assistance, compensation or alternative accommodation.

2.6 Also on 1 July 2014, V.K. and O.K. raised concerns with the Ministry of Social Welfare and Youth, which responded immediately and addressed, on the same day, a letter to the Municipal Urban Construction Inspectorate of Elbasan. The letter was also copied to the Mayor of Elbasan, the Deputy Minister of Urban Development and Tourism and the National Urban Construction Inspectorate. In its letter, the Ministry of Social Welfare and Youth drew the authorities' attention to the need to provide social assistance to the authors' families as they were under threat of eviction. The letter was not binding on the authorities. According to the authors, there was no remedy available to them to challenge the two eviction notices as the domestic legal framework on the right to housing was ineffective, if not inexistent.

2.7 The authors refer to the concluding observations of the Committee on Economic, Social and Cultural Rights on the combined second and third periodic reports of Albania, in which that Committee expressed concern about incidents of forced evictions of Roma and Egyptians from illegal settlements without provision of alternative housing, compensation, protection, education or health services (E/C.12/ALB/CO/2-3, para. 29). The authors also

refer to the jurisprudence of the Human Rights Committee in similar cases[1] and to reports of other United Nations bodies and international organizations.[2]

The complaint

3. The authors called upon the Human Rights Committee to grant, as a matter of urgency, an immediate injunction calling for the suspension of their forced eviction resulting from the demolition of their lodging (decided on 30 June 2014 and scheduled to take place from 5 July 2014 onwards) while the case was under consideration by the Committee. The authors allege that should the forced eviction resulting from the demolition of their lodgings take place without them being provided with alternative accommodation, Albania would be in violation of articles 2, 7, 17, 23, 26 and 27, read alone and in conjunction with article 2 (3), of the Covenant.[3]

State party's observations on admissibility

4.1 On 8 September 2014, the State party submitted its observations on the admissibility of the communication and requested the Committee to consider the authors' claims inadmissible. The State party states that the authors did not exhaust all available domestic remedies and did not challenge the eviction notices issued by the Municipality of Elbasan. The authors should have submitted administrative complaints and appeals to the courts. Article 135 of the Code of Administrative Procedures provides that everyone has a right to seek the revocation, repeal or modification of an administrative act that affects the rights of the citizens concerned. The authors, however, did not explore this avenue.

4.2 Pursuant to article 18 of the Constitution of Albania, everyone is equal before the law, without discrimination. Any limitations on rights and freedoms can be imposed only by law in the interests of the public or to protect the rights of other citizens. If unsuccessful in challenging the acts through administrative procedures, citizens have a right under Law No. 49/2012 to submit an appeal. In all other analogous cases involving the demolition of property, the administrative authorities and the courts have suspended the demolition. Based on the above-mentioned arguments, the complaint should be considered inadmissible under article 5 (2) (b) of the Optional Protocol.

Authors' comments on the State party's observations on admissibility

5.1 On 13 October 2014, responding to the State party's arguments on the admissibility of their communication, the authors contend that the available domestic remedies are ineffective. Firstly, they submit that they are members of a vulnerable and marginalized community. Moreover, the authors argue that it is practically impossible for them to obtain free legal aid because they live outside of Tirana, that the procedure for applying for legal aid is cumbersome and that there is a small number of legal aid lawyers. The European Commission, in its October 2014 report,[4] noted that the State party should improve the functioning of the State Commission for Legal Aid, that the judicial fees may deter citizens from applying for protection and that the application procedures are too cumbersome.

5.2 Secondly, the authors contend that the State party does not have sufficient safeguards to protect their housing rights. Albanian law does not have such provisions, especially in respect of vulnerable groups such as the Roma.

[1] See *Naidenova et al. v. Bulgaria* (CCPR/C/106/D/2073/2011) and the Committee's Views on communication No. 2241/2013, brought forward by the Cultural Association of Greek Gypsies Originating from Halkida and Suburbs "I Elpida" and Stylianos Kalamiotis against Greece (currently pending before the Committee). See also CCPR/C/ALB/CO/2, para. 23.

[2] The authors point specifically to a report of the European Commission against Racism and Intolerance.

[3] See mutatis mutandis UN HRC Communication 1799/2008, *Antonios Georgopoulos et al v. Greece*, decision made public on 14 September 2010.

[4] See https://op.europa.eu/en/publication-detail/-/publication/65636879-4fc6-11e4-a0cb-01aa75ed71a1.

5.3 Thirdly, the authors contend that they were never consulted prior to receiving the eviction notices. Residents affected by eviction orders should be consulted and alternative accommodation should be proposed before the eviction can take place.

5.4 The authors explain that, under Law No. 10433/2011, a building inspector or an inspection body can issue two types of administrative acts: an emergency measure or a regular decision. The authors argue that the Government has used emergency measures in their case and that appealing those emergency measures does not automatically trigger a suspensive effect, according to article 44.1 of Law No. 10433/2011. Moreover, the authors had only five days to appeal their eviction notices.

5.5 As for the judicial proceedings, the State party does not mention a single case in which a court suspended an eviction and subsequently found a violation of the rights of the complainants on the merits. The authors believe that no cases of courts protecting housing rights exist, as confirmed by the Committee on Economic, Social and Cultural Rights in 2013, when it recommended that the State party enact legislation that ensured the right to housing (E/C.12/ALB/CO/2-3, para. 31).

State party's observations on the merits

6.1 On 26 January 2015 and 11 February 2016, the State party provided its observations on the merits. It submits that the plan to construct a road and reconstruct a stadium was approved by the national commission for the territory on 27 May 2014 and that implementation of the plan would affect several families, including 12 families belonging to the Roma minority. The local authorities held meetings with affected residents, including Roma minority families. Specifically regarding the authors, the authorities have evidence that the Municipality of Elbasan had no disagreement or conflict with them. Subsequently, the authorities proceeded with notifying the families and requesting them to vacate the land within five days of receipt of the notice. Those steps were all based on national law and conformed with the administrative procedures in place. The State party also submits that the residents were informed and notified about the project well in advance, before the notification date of 30 June 2014.

6.2 After the notices to vacate the property had been submitted, the authors submitted documents indicating that they had initiated the process to legalize their dwellings. After verifying the documents, the Municipality of Elbasan informed the authors that the notices for the demolition of their house had been suspended. The Municipality also informed the authors that money from an established "expropriation fund" would be made available after the authors had provided their certificates of ownership. The authors were formally notified that their houses would not be demolished on 1 July 2014.

6.3 The Agency for the Legalization, Urbanization and Integration of Informal Areas or Buildings conducted on-site observations of the authors' dwelling, prepared sketches and mapping materials and concluded that the property in question fell outside the boundaries of the proposed project. The question remained as to whether the authors could continue the legalization process since their dwelling was constructed illegally. The Agency, which was in charge of the process, confirmed that the property belonging to the authors was still undergoing legalization. The State party confirms that 40 individuals filed applications under the procedure and that 30 of them had received legalization permits, 2 of whom belonged to the minority Roma community. The process of legalization was complex and delays could arise, but not for the reason of discriminating against some applicants.

6.4 In conclusion, the State party submits that the demolition notices regarding the authors had been suspended and that there were no impediments to the continuation of the legalization procedure. Should the building in question be demolished to implement projects in the public interest, the legislation on housing guaranteed alternative accommodation. The communication of the authors should therefore be declared inadmissible. Moreover, articles 7, 17, 23, 26 and 27 of the Covenant were not violated, as alleged by the authors.

Authors' comments on the State party's observations on the merits

7.1 On 1 April, 22 May and 23 June 2015, on 29 March 2016 and on 18 January and 21 August 2019, the authors, responding to the State party's observations on the merits, reiterated their position on the admissibility of their communication. The authors submit that there are no effective remedies for them to exhaust. A series of evictions of Roma and Egyptian communities had taken place in Tirana in February 2011, January 2012 and August 2013. The Government itself recognized that there were issues with the right to housing. For example, in the outcome of the Albania-European Union policy dialogue on the inclusion of Roma and Egyptian communities held on 20 and 21 February 2014, the Government acknowledged the need to review existing legislation and amend it in order to ensure the respect for the rule of law. In 2014, in its response to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the State party did not recognize housing as a human right but admitted that legislation should be adopted to formally recognize a right to adequate housing.

7.2 The authors note the State party's assertion regarding the absence of conflict between the authors and the Municipality of Elbasan but note also that the State party provided no proof to back such a statement. The authors submit that no consultations took place, as claimed by the State party, and that they were not informed in a timely manner about the planned demolitions. The State party stated that the notices for the demolition had been suspended, not annulled. Should the authors be unable to legalize their dwelling, their house could be demolished without any compensation to the authors. The suspension of the demolition without legalization could not therefore be considered a remedy to the authors' problems.

7.3 The authors also submit that it is clear from article 39 of Law No. 9482/2006 that structures that need to be demolished in the public interest cannot be legalized.

7.4 The authors are also not convinced by the State party's argument that they are entitled to alternative accommodation, should their house be demolished. The Government submits, in fact, that any compensation would be provided to the rightful owner of the land, not to the authors, unless the authors were able to buy the plot of land and secure a legal title to it.

7.5 The authors reiterate the claim already made in the communication that the decision to include their dwelling in the demolition project was the result of discrimination and submit that the State party's authorities have a record of failing to adopt measures to provide Roma and Egyptian communities living in illegal settlements with security of housing, inter alia, by not allowing them to legalize their dwellings.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules and procedure, whether it is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that domestic remedies have not been exhausted because, after receiving their eviction notices, the authors did not avail themselves of the opportunity to challenge the acts pursuant to the Code of Administrative Procedures. The Committee also notes that, based on the information provided by the parties, the authors have applied for the legalization of the dwellings where they currently reside and that the outcome of that process is not known at the time of taking a decision in the present case. The Committee takes note of the authors' argument that administrative law proceedings would be ineffective because the domestic legal order did not allow the authors to directly challenge the notice of forced eviction or request the immediate

provision of housing or other form of remedy. The Committee notes the State party's argument that even if the authors' dwellings were to be demolished, procedures existed to provide the authors with alternative housing.

8.4 While the Committee recalls that there is no obligation to exhaust domestic remedies if they have no chance of being successful, it also notes that the authors must exercise due diligence in their pursuit of available domestic remedies. Mere doubts or assumptions about the effectiveness of available domestic remedies do not absolve the authors from exhausting them.[5] In the present case, the Committee notes that the authors did not submit any complaints whatsoever before a domestic body regarding their eviction. While the authors attempted to have their property legalized, they have not shown why other administrative and judicial appeals would have been manifestly ineffective. In light of the foregoing, the Committee concludes that the authors have not exhausted domestic remedies in relation to their claims that their forced eviction would constitute a violation of their rights under articles 2, 7, 17, 23, 26 and 27 of the Covenant.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the authors.

[5] See, inter alia, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3, *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3, *García Perea et al. v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2, and *B.Z. et al. v. Albania* (CCPR/C/121/D/2837/2016), para. 6.4.