



## 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. 2582/2015\* \*\*

<i>Communication submitted by:</i>	G.I. (represented by counsel, Panayote Elias Dimitras of Greek Helsinki Monitor)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Greece
<i>Date of communication:</i>	26 January 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 6 March 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	25 July 2019
<i>Subject matter:</i>	Forced eviction from informal settlement
<i>Procedural issues:</i>	Abuse of the right of submission; admissibility – manifestly ill-founded; admissibility – victim status
<i>Substantive issues:</i>	Arbitrary/unlawful interference; cruel, inhuman or degrading treatment or punishment; discrimination; effective remedy; family rights; housing rights
<i>Articles of the Covenant:</i>	7 and 17 (1) and (2); and 23 (1), 26 and 27, each read alone and in conjunction with 2 (1), (2) and (3)
<i>Articles of the Optional Protocol:</i>	1 and 2

\* Adopted by the Committee at its 126th session (1–26 July 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, Duncan Laki Muhumuza, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi. In accordance with rule 108 of the Committee's rules of procedure, Photini Pazartzis did not participate in the examination of the communication.



1.1 The author of the communication is G.I., a national of Albania of Roma origin born on 6 August 1960. At the time the communication was submitted, the author resided in Greece; he currently resides in Albania. He claims that by forcibly evicting him from the Makrygianni settlement in Patras, Greece, in 2006, the State party has violated his rights under articles 7 and 17 (1) and (2); and 23 (1), 26 and 27, each read alone and in conjunction with articles 2 (1), (2) and (3), of the Covenant. The Optional Protocol entered into force for Greece on 5 August 1997. The author is represented by counsel.

1.2 On 6 July 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to split the consideration of the admissibility and the merits of the communication.

### **The facts as submitted by the author**

2.1 In August 2004, the author and other Albanian Roma were evicted from the Riganokampos settlement in Patras. After the eviction, the author moved to Makrygianni, another Roma settlement in Patras. The living conditions in the two settlements were similar. In Makrygianni, the author lived in a shed and had no access to electricity, sewage, garbage disposal or running water. In 2004, the Adviser on Quality of Life to the Prime Minister of Greece described Makrygianni as "the worst of the 75 settlements throughout the country" and "an insult to our humanity".

2.2 In July 2006, the author and other Albanian Roma were evicted from Makrygianni and then moved to Athens. They lived in the Roma settlement of Votanikos, but were evicted in June 2007. Subsequent evictions led them to spread around in various areas of Greater Athens and Attica. The local authorities in Patras bragged about these mass evictions, which were widely reported in the local media.

2.3 The evictions triggered an urgent visit by the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, following an invitation from the author's present counsel, who represented all Roma communities in the two settlements. The author's counsel accompanied the Commissioner to the Riganokampos and Makrygianni settlements, and on 1 December 2006 the Commissioner addressed a letter to the Minister of the Interior concerning the situation of the Roma in Greece. Regarding conditions in Riganokampos and Makrygianni, the Commissioner stated in his letter: "I saw Roma families living in very poor conditions. Also, I met with a family whose simple habitat had been bulldozed away that same morning ... I would like to request further information on the measures taken to compensate and relocate Roma families after eviction or 'administrative suspension' and on their security of tenure in current housing." The Greek authorities failed to respond to this letter, and did not respond to a subsequent letter from the Commissioner concerning the forced evictions in 2007 from Votanikos in Athens.<sup>1</sup>

2.4 On 13 December 2006, the author's counsel filed a criminal complaint with the first instance prosecutor's office in Patras, in relation to the evictions. As a result, a preliminary judicial investigation was initiated. On 11 January, 23 January and 23 February 2007, the author's counsel filed submissions for 76 Roma, including the author, to be constituted as civil claimants in the criminal proceedings. Each of the claimants sought €33 as compensation for damage. The criminal complaint named the Mayor and two Deputy Mayors of Patras as defendants and alleged that they had publicly boasted about their "cleaning operation" to evict the Roma. The Mayor and two Deputy Mayors were then indicted for alleged violations of articles 13 (a) and 263 (a) of the Criminal Code. Specifically, they were accused of having breached with malice aforethought their duty of service as State officials, with a view to bestowing an illegal benefit on others. In the indictment, it was alleged that the violation had occurred when the three defendants had formed demolition crews on 27 July 2006 in Makrygianni and on 15 September 2006 in Riganokampos and had ordered the demolition of makeshift homes inhabited by Roma in those settlements. It was also stated in the indictment that the defendants had contravened Presidential Decree 267 2/21-8/1998, which states that the demolition of illegal dwellings

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<sup>1</sup> The author cites a letter from the Commissioner dated 8 March 2010 addressed to the Deputy Minister of the Interior.

must be carried out upon orders from the appropriate town planning office. It was also stated in the indictment that the defendants had aimed to harm the Roma living in the shacks, and to beautify the area for the benefit of the non-Roma residents of the area.

2.5 On 11 December 2012, all defendants were acquitted of the charges at a trial before the First Chamber of the Three-Member Misdemeanour Court of Patras. In its judgment, the court noted that the Makrygianni settlement was located on public property. The court stated: “Regarding the makeshift home which [the author] used occasionally, it was established that he did not own it lawfully, nor was he so using it. Moreover, at the material time (27 July 2006), this makeshift home gave the impression that it was deserted, since [the author] was away for many months in Zakynthos, looking for employment. His intention to return to the settlement could not be known to any person.”

2.6 The court further stated in its judgment that the defendants had not intended to harm the Roma families or illegally provide a benefit to non-Roma residents of the area who had complained about the presence of the Roma. Rather, their actions had been motivated by public health concerns for both Roma and non-Roma residents. The court considered that the absence of sewage, running water and garbage collection posed grave dangers to the health of both the Roma and nearby residents. The court also noted that the right to housing applied to all without discrimination, and considered that there was no evidence that the defendants had aimed to frustrate the right to housing of the Roma residents. The court reasoned that the municipality of Patras had already provided rent subsidies to many Roma living in Makrygianni and Riganokampos to secure adequate living conditions for them. In addition, the municipality had provided food to the Roma through the Food Bank, and had given them grants. According to the court, this demonstrated that the municipality had an interest in the Roma as a social group, and had sought to balance the conflicting interests of the Roma who were illegally settled and were living in miserable conditions and non-Roma residents who suffered from the unacceptable sanitary conditions prevailing in the settlements next to their houses.

2.7 The author contends that despite the negative court decision, the defendants’ demolition of his home was a doubly unlawful operation insofar as: (a) no alternative accommodation was provided; and (b) the authority to demolish homes was vested in the town planning services, not in the defendants, who were municipal employees. The decision of the court failed to explain why no adequate alternative housing was offered to the author before the demolition of his home.

2.8 According to the author, the initial judicial investigation was biased, as the Patras prosecutors declined to indict high-ranking municipal officials, and the authorities hated the Roma people. During the trial, the public health rationale was set forth not by the prosecutor, but by the judges. The Greek legal framework precludes the mandatory provision of an effective remedy to the Roma, since it is within the discretion of prosecutors and judges to prosecute and convict individuals who are clearly involved in forced evictions of Roma, and since there is no specific legal provision punishing such evictions. This system explains why the Greek courts have never convicted anyone of forcibly evicting Roma individuals. The author cites various reports in support of his arguments that the Greek authorities have failed to effectively provide Roma with justice and adequate housing. The author contends that the Committee should follow the approach it took in its Views on *Georgopoulos et al. v. Greece* (CCPR/C/99/D/1799/2008), which involved nearly identical facts.

2.9 The author has exhausted domestic remedies because it is not possible to appeal against the decision of the Three-Member Misdemeanour Court of Patras. Moreover, there is no legal remedy that would have allowed the author to avoid eviction or to obtain government compensation or emergency alternative accommodation.

### **The complaint**

3.1 The author submits that by arbitrarily evicting him from the Makrygianni settlement on 27 July 2006, demolishing his home, and failing to provide him with emergency alternative accommodation or compensation, the State party violated his rights under

articles 7 and 17 (1) and (2); and 23 (1), 26 and 27, each read alone and in conjunction with articles 2 (1), (2) and (3), of the Covenant.

3.2 Regarding article 7 of the Covenant, the author refers to the decision of the Committee against Torture in *Dzemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000), where the Committee found that the destruction of houses belonging to Roma constituted “cruel, inhuman or degrading treatment”. The author also refers to the jurisprudence of the Human Rights Committee, indicating that the destruction of houses may constitute, under certain circumstances, inhuman and degrading treatment.<sup>2</sup> Moreover, the author asserts that after the Magistrates’ Court of Patras issued its decisions Nos. 312/2005 and 323/2005, he felt relieved that the threat of eviction had passed. However, his hopes were dashed when his home was destroyed. As a result, the author experienced feelings of inferiority and debasement, as well as anxiety concerning both his and his family’s future. He could not understand why the authorities had failed to provide him with suitable accommodation and had tried to evict him when he was not present, thus preventing him from taking any self-help measures.

3.3 In violation of article 17 of the Covenant, the eviction arbitrarily and unlawfully interfered with the author’s family and home. The administrative requirements set forth in domestic law (namely the issuing and serving of a protocol of eviction) were not met, and domestic law did not provide him with any protection from forcible eviction. Moreover, the non-provision of effective remedies under domestic law in regard to demolition of Roma informal houses constitutes a violation of article 17, read in conjunction with article 2 (1), (2) and (3), of the Covenant.

3.4 Because no remedies were available to the author (such as pre-emptive legal action to prevent his eviction, or legal mechanisms for requesting compensation and the provision of emergency housing), and because only Roma face such problems, the State party violated the author’s rights under article 23, read in conjunction with article 2 (1), (2) and (3), of the Covenant.<sup>3</sup>

3.5 Regarding articles 26 and 27, each read alone and in conjunction with article 2 (1), (2) and (3) of the Covenant, the author argues that Roma are the only group in Greece that are frequently subjected to forced evictions, due to their particular socioeconomic condition. Due to the author’s ethnic origin, he has been subjected to discrimination, forcibly evicted, and deprived of any remedy. These practices constitute a recurring pattern affecting Roma tent-dwellers throughout Greece.<sup>4</sup>

3.6 As a remedy, the author requests from the State party compensation for the failure to provide him with proper accommodation, for the moral and material damage he suffered due to the forcible evictions, and for the failure to provide him with an effective remedy for these violations. He also requests the State party to closely examine the implementation of anti-racism and anti-discrimination criminal law provisions, to identify the reasons why they are barely applied, and to take appropriate measures to ensure their full application. The author further requests the State party to: (a) facilitate the filing of complaints by individuals who allege that they are victims of racism or discrimination; (b) pursue and intensify human rights training for prosecutors and judges; (c) raise awareness among local authorities of the need to respect the rights and culture of the Roma; (d) ensure, before carrying out any planned forced evictions, that all feasible alternatives are explored in consultation with the persons affected, with a view to avoiding or at least minimizing the use of force; (e) take all legislative and administrative measures to ensure that adequate alternative housing and/or compensation is available to the persons affected; and (f) ensure that all evictions are carried out in compliance with international human rights law and with the principles of reasonableness and proportionality.

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<sup>2</sup> The author cites *Georgopoulos et al. v. Greece* (CCPR/C/99/D/1799/2008).

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

<sup>4</sup> *Ibid.*

### State party's observations on admissibility

4.1 In its observations on admissibility dated 6 May 2015, the State party maintains that the communication is inadmissible on four grounds. First, the communication does not provide sufficient information about the author and his circumstances. Specifically, although the author claims that he was evicted and was unable to find alternative accommodation, he does not provide details about the alleged evictions and his current housing situation. Moreover, the author does not specify his current address. Although he claims to be experiencing continuing economic and social deprivation, he does not provide information about his current economic and social situation. Although he claims to have suffered interference with his family, he provides no information about his family.

4.2 The communication is also inadmissible because it constitutes an abuse of the right of submission. There were several long delays in the proceedings, and they are solely attributable to the author and/or his counsel. Firstly, the author submitted the communication almost eight and a half years after the alleged demolition, even though the issue of eviction without alternative accommodation being provided calls for a prompt response. Although the criminal investigation relating to the events in the Makrygianni area ended in 2012, counsel for the author stated in *Georgopoulos et al. v. Greece* that instituting criminal proceedings against individuals deemed responsible for the demolition of a makeshift house was not a legal option that would allow the author to return to the plot of land from which he had been evicted.<sup>5</sup> Thus, the criminal proceedings are irrelevant to the analysis at hand. Secondly, the author's counsel made initial submissions for a communication about the Riganokampos eviction in June 2007 and February 2008,<sup>6</sup> whereas he waited until January 2015 (more than seven years later) to submit the present communication. Counsel claims that the circumstances in both cases are identical. Four and a half years have elapsed since the Committee issued its Views on the communication concerning the Riganokampos eviction. Thirdly, two years elapsed between the time when the author gave his counsel authorization to represent him in proceedings before the Committee (in January 2013) and the submission of the present communication (in January 2015). Finally, the communication was submitted more than eight months after counsel was advised to split the author's claims from those in *Georgopoulos et al. v. Greece* and to present them separately. Counsel's explanation that the latter delay was attributable to workload and resource constraints is unconvincing, since counsel only had to resubmit the author's communication separately.

4.3 In addition, the communication is inadmissible because it is unsubstantiated and lacks a concrete factual basis. The author is litigating by analogy. Instead of presenting the facts at hand in a clear and detailed manner, he merely likens the present communication to *Georgopoulos et al. v. Greece* and requests the Committee to reach the same conclusion. The *Georgopoulos* case involved different authors whose makeshift home had been demolished in a different area of Patras on different dates. The authors of that case pursued their claim immediately after the events. The present communication does not describe the circumstances under which the alleged eviction took place. Moreover, there are significant inconsistencies between the communication and the statement that the author gave before the Three-Member Misdemeanour Court of Patras. In the communication, the author states that after the July 2006 eviction he resettled in the Roma settlement of Votanikos in Athens. However, he testified before the court that after the July 2006 eviction, he resettled in the Makrygianni area until 2007, when his new shack was demolished. The court found that the author had not lawfully owned his makeshift home, and had not been lawfully using it, as he had only used it occasionally. The court also found that the home appeared to be abandoned, because the author had been away for many months working on a nearby island. The court also considered that the author's alleged intent to return to the settlement could not be known to any person. The author does not contest the aforementioned findings of the court, nor does he advance a different factual narrative.

4.4 Finally, the communication is inadmissible because the author's claims on behalf of Roma people exceed the scope permitted by individual communications.

<sup>5</sup> The State party cites *Georgopoulos et al. v. Greece*, para. 3.1.

<sup>6</sup> *Georgopoulos et al. v. Greece*.

**Author's comments on the State party's observations on admissibility**

5.1 In comments dated 1 June 2015, the author contests the State party's claim that the communication contains insufficient information. The author's whereabouts after his eviction from the Votanikos area in Athens in June 2007 are irrelevant. It is routine practice for non-governmental organizations to provide their own addresses for correspondence, given that the individuals they represent are in precarious situations and move often. In any case, the author was registered with the regional and central government authorities for his residence permit. When the communication was submitted, the author was living with his family in the Athens area.

5.2 Regarding the alleged abuse of the right of submission, the author maintains that his counsel filed complaints on behalf of the author and other Roma in a timely manner, and that those complaints led to the criminal trial several years later. The complaint filed in December 2006 was initially closed in April 2009, when the appeals court prosecutor of Patras issued a final decree archiving the case. However, in April 2011, the author's counsel filed a request to reopen the criminal case "for all Roma". In June 2011, the request was granted, and the author thus again became a civil claimant in the criminal proceedings against the alleged perpetrators of his eviction. He had no reason to seek another remedy until the trial concluded through the issuance of a final judgment in December 2012. That is when the author's time limit for submitting a communication began to run. Counsel also responds to the State party's other claims concerning the alleged abuse of the right of submission.

5.3 The communication is substantiated and has merit and a concrete factual basis. The circumstances of the eviction were clearly presented and were accepted by the domestic court, which never stated that the facts were unclear, but considered instead that the eviction had not been conducted in accordance with standard legal procedures for reasons of public health. Moreover, any alleged discrepancies between the Greek-language court minutes and the content of the English-language communication are explained by the fact that court minutes are not verbatim transcripts, but are instead mere summaries. The State party has not provided an English translation of the court minutes.

5.4 The author acknowledges that at the time of the eviction, he was residing in Zakynthos for the summer. However, this was also the case for the authors in *Georgopoulos et al. v. Greece*. Moreover, neither the authors in the *Georgopoulos* case nor the author of the present communication owned the homes from which they were evicted.

**State party's observations on the merits**

6.1 In its observations dated 20 November 2015, the State party reiterates its previous arguments and adds the following claims. It was proven during domestic proceedings that during the eviction in the Makrygianni settlement on 27 July 2006, at least 6 of the 10 sheds that had been torn down belonged to individuals who had definitively abandoned them after having accepted a rental subsidy to find alternative accommodation. Moreover, it was established before the Patras court that after the departure of the subsidy beneficiaries, the settlement gave a general impression of abandonment, and was partly covered with debris of demolished and semi-demolished sheds that needed to be cleared away in order to protect public health. Moreover, it was also indicated that certain makeshift houses had been completely or partly torn down by unidentified persons who were probably looking for building materials. Thus, the cleaning services of the municipality of Patras reasonably believed, when tearing down the shed which the author did not lawfully own, that they were not demolishing a house in use and evicting a resident. The shed did not appear to be inhabited by any person, nor by the author in particular. The author himself had provided a different address for his residence permit and did not present himself to any authorities to protest against the destruction of this "home". He was thus completely unknown to the municipality's authorities. The only information available about the author was that provided during the criminal proceedings before the Three-Member Misdemeanour Court of Patras, and the author did not even present himself during that trial, either.

6.2 In view of the above-mentioned facts, it was not possible for the authorities to consider offering alternative accommodation to the author or otherwise supporting him. On

this issue, counsel for the author does not explain why neither the author nor his counsel has contacted the appropriate authorities. The State party disputes the author's argument that it is pointless for lawfully resident foreign nationals such as the author to seek assistance from municipal authorities.

6.3 The communication contains no substantiated information about the author's housing situation after the disputed events of 2006. This information is relevant in ascertaining whether the author became homeless after the alleged eviction. This is all the more important given that the author has never submitted in person any request to the appropriate authorities regarding his housing situation. It is misleading of the author to portray himself as a victim of successive evictions pursuant to a State policy of forced evictions targeting Roma. These allegations are not corroborated. The author's request for renewal of his residence permit, which expired on 7 August 2008, was denied on 5 March 2014 because the author had not provided the required documents. As a result, the author was requested to voluntarily leave the country.

6.4 The demolition of a makeshift home, reasonably assumed to have been abandoned by the author, who was absent from the settlement for several months, does not constitute treatment contrary to article 7 of the Covenant. Regarding articles 26 and 27 of the Covenant, the author did not provide any evidence of discrimination on any ground. The alleged evictions were unrelated to the author's ethnic origin. With respect to article 2 of the Covenant, the author did not in any way pursue domestic remedies before a judicial or non-judicial authority, with the exception of his request to be admitted as a civil party in criminal proceedings against the officials of the municipality, for moral damages only. The author has not lodged an action to seek material damages. During domestic proceedings, counsel claimed that the material damage allegedly sustained was of the order of €100. The amount that the author actually sought, for moral damages, did not exceed €40.

6.5 The author's statement that he lived with his family in the Athens area when the communication was submitted is vague. It appears he is withholding relevant information regarding his address. In a similar communication submitted by the same counsel, counsel stated the current place of residence of the individual authors.<sup>7</sup>

6.6 The author's explanations for the delays in submitting the communication are unconvincing. This is particularly true regarding the seven-year delay following the submission of the nearly identical *Georgopoulos* communication. The author states that he would not have had any reason to submit the communication if the municipal officers had been convicted during domestic proceedings. It therefore appears that the author's true purpose in submitting the communication is not to challenge his alleged eviction, but rather to contest the decision to acquit the criminal defendants. It is not reasonable that the author waited for the conclusion of criminal proceedings to submit the present communication, which concerns an urgent matter of alleged forced eviction without relocation.

#### **Author's comments on the State party's observations on the merits**

7.1 In comments dated 22 February 2016, the author reiterates his arguments and maintains that his case is virtually identical to the *Georgopoulos* matter: there, one criminal trial was held for both cases. The court concluded that evictions had taken place, including the demolition of the homes of the two families, and that those evictions had been carried out by unauthorized municipal authorities, who had disregarded the applicable laws. However, the court acquitted the defendants, citing an alleged overriding public health concern that supposedly absolved the municipal authorities of their actions. This demonstrates extreme anti-Roma racism. A public health threat should be resolved through infrastructure and other works to improve living conditions, not through arbitrary demolition of Roma housing. In a decision on 11 December 2009, the European Committee of Social Rights considered that the forced evictions of Roma in Patras, Votanikos and Chania had violated article 16 of the European Social Charter, insofar as there was no prior consultation, adequate notice or provision of alternative accommodation in many of the

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<sup>7</sup> The State party refers to *I Elpida et al. v. Greece* (CCPR/C/118/D/2242/2013).

cases.<sup>8</sup> The European Committee of Social Rights also considered that legal remedies were not sufficiently accessible, and that due to the special circumstances of Roma families threatened by eviction, special support had to be provided to them, including targeted advice on the availability of legal aid and on appeals.

7.2 The Roma residing in Riganokampos and Makrygianni were lawful residents of those areas, and not unlawful residents as the State party claims. Indeed, the Magistrates' Court of Patras, through its decisions Nos. 312/2005 and 323/2005, decided that the Roma in those areas were permitted to remain there, because the appropriate State authorities and in particular the municipality of Patras had not designated an area where the Roma of Patras could live in humane conditions.

7.3 In a newspaper interview on 2 February 2007, the then-Deputy Prosecutor to the Greek supreme court indicated that the problem of the Roma living in Makrygianni had been resolved, and stated: "It is not possible that Patras should become a 'gyp' town." The Greek authorities never investigated these racist statements, despite assurances that they would do so.

7.4 The author disputes the State party's claim that he has not provided sufficient information regarding the eviction. The domestic court concluded that the author's makeshift home had been torn down on 27 July 2006. Whereas the State party points to the availability of a rent subsidy, the author asserts that this is misleading, because the rent subsidy programme concerned only those Roma who were registered in the Patras municipal population registries. It did not apply to Greek Roma who were residing in Patras but were registered in other municipalities, or Albanian Roma who were residing in Patras. Moreover, although the State party claims that the authorities could not have known that the inhabitants of the settlement would return, during the criminal proceedings the president of the Makrygianni Cultural Association, Spyros Marinis, stated: "Every year in May, the area was being deserted. The Roma were leaving to seek seasonal work elsewhere, and returned in the fall. During the summer, few were staying behind." Thus, the author's intention to return to the settlement was well known to the authorities. Whereas the court considered that the author was using the shed "occasionally", in fact he was using it "seasonally". The State party's assertion that the settlement gave a general impression of abandonment is false and misleading. In sworn testimony during the criminal trial, the chief of garbage collection of the municipality of Patras stated: "Roma were present during the operation. We did not touch any of the sheds of the Roma." Moreover, on 3, 4 and 5 August 2006, all Roma living in the Makrygianni area were served with two summonses each to appear before the first instance court prosecutor on 7 August 2006, in response to two requests for interim measures that had been filed by the State agency that owned the plot of land, and the municipality of Patras. In its request dated 1 August 2006, the municipality of Patras stated that the Roma in the settlement "refused to leave it". Thus, it is clear that the municipality was aware, during the July 2006 eviction, that the Makrygianni settlement was not in fact abandoned.

7.5 The author provides additional information on the 2004 and 2006 evictions. The author settled in Riganokampos in 2000. In 2004, according to a letter dated 3 September 2004, from the municipality of Patras to Western Greece Region, 35 Albanian Roma families, including the author, were evicted by the municipality of Patras, and their sheds were torn down. When the author returned to the area, he was informed of the eviction by other Roma who had been present at the time. The eviction took place during the Olympic Games of 2004 that were being held in Athens.

7.6 By the end of March 2006, officials had made public statements that evictions would occur in Makrygianni and Riganokampos, and court proceedings had been initiated over the preceding year against "some or all" of the Roma living in those two settlements. Thus, on 30 March 2006, the author's counsel and two other non-governmental organizations wrote a letter to the relevant municipal and regional authorities to request information on relocation of the Roma families living in Makrygianni and Riganokampos. They never received a

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<sup>8</sup> The author refers to the European Committee of Social Rights decision in *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece* (complaint No. 49/2008).



reply. On 20 June 2006, the author's counsel filed a complaint with the Greek Ombudsman. As a result, on 28 June 2006, the Ombudsman wrote to the Greek authorities, reminding them of their obligation to respond to the letter dated 30 March 2006.

7.7 The evictions in Makrygianni and Riganokampos in 2006 took place during the Patras European Cultural Capital event. On 27 July 2006, at 6 a.m., the police searched numerous sheds in Makrygianni in the presence of a prosecutor. According to Greek Roma who were present at the time of the operation, the prosecutor told them to vacate the sheds within 30 minutes. The Roma refused to leave until the authorities had informed them where they would be relocated to. Incensed, the prosecutor left. The houses of the Roma who were present were not demolished, due to their protests. The police log from the operation indicates that at 8.40 a.m., several Roma in the area assaulted the driver of the bulldozer, but fled before police could arrest them. Over the next few hours, the sheds of the Albanian Roma who were not present were demolished. The author provides photographs allegedly depicting demolished sheds belonging to Albanian Roma, and two sheds belonging to Greek Roma who stopped the demolition of their homes.

7.8 On 2 May 2007, representatives of the Patras Health Directorate visited the Makrygianni settlement, and later issued a report stating that because their living conditions were unacceptable, the Roma had to be relocated. However, the authorities took no action in response to the report. Heavy construction work taking place in the settlement rendered the living conditions even more difficult, and on 16 September 2007, bulldozers demolished the homes there as part of a public works project. The scores of Roma living there packed and left between 9 and 14 September 2007. The Makrygianni settlement was therefore eliminated, and most of its residents were evicted without receiving alternative accommodation or compensation.

7.9 Concerning article 7 of the Covenant, the State party was aware of the author's presence in Patras, because during the criminal trial, one of the defendants stated that on the basis of a police order, the author should have been appearing at the Fifth Patras Police Station from September 2005 to October 2006. Although the State party claims that the author has not provided information about his living situation after the eviction, he has stated that he merely moved from one destitute settlement to another destitute settlement, from which he was also evicted.

7.10 Regarding article 17 of the Covenant, the author pursued his claim administratively and judicially. The author's counsel (acting on behalf of all evicted Roma, including the author) repeatedly contacted the Greek authorities, including the Greek Ombudsman, before and after the July 2006 eviction.

7.11 With respect to article 23 of the Covenant, the author lived in his shed with his wife and children. The eviction orders used by the Government of Greece do not name all family members, only one. Thus, the author did not name his family members when contesting the eviction.

7.12 Concerning articles 26 and 27 of the Covenant, the State party has not provided any information on homes of non-Roma that were torn down during their absence for seasonal work in the same manner as the author's home, without provision of alternative accommodation.

7.13 The author currently resides in his home village of Shijak in Albania. He suspects that the State party insisted on obtaining his current address in order to expel him from Greece after the expiration of his residence permit.

## **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 of procedure, whether the communication 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, and that it is not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication.

8.3 In the absence of objections from the State party regarding the exhaustion of domestic remedies by the author, the Committee considers that article 5 (2) (b) of the Optional Protocol does not constitute a barrier to the admissibility of the communication.

8.4 The Committee notes the State party's claim that the communication constitutes an abuse of the right of submission due to the lapse of time between various stages of proceedings. The Committee recalls that according to rule 99 (c) of its rules of procedure, a communication may constitute an abuse of the right of submission when it is submitted after five years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.<sup>9</sup> The Committee notes that as relevant to the present case, on 11 December 2012 the First Chamber of the Three-Member Misdemeanour Court of Patras acquitted the Mayor and Deputy Mayors of Patras of the charges relating to the author's eviction from Makrygianni on 27 July 2006. The Committee notes that the State party considers this date to be irrelevant because the criminal proceedings could not have led to an outcome whereby the author would have been permitted to return to his claimed plot of land in Makrygianni. However, the Committee observes that in order to exhaust domestic remedies, the author is not necessarily required to have sought restitution to restore himself or herself to the position that he or she held prior to the commission of the alleged violation. Rather, the author must have raised, through all effective and available domestic mechanisms for redress, the substance of the claims that are the subject of the communication before the Committee.<sup>10</sup> The Committee also notes that the State party has not alleged that the author did not exhaust domestic remedies, or that he exhausted them on a different date. The Committee therefore considers that the author's communication, presented on 26 January 2015, was submitted within five years from the exhaustion of domestic remedies on 11 December 2012, and does not constitute an abuse of the right of submission.

8.5 The Committee notes the State party's argument that the communication is inadmissible due to a lack of substantiation, and that the author's claims on behalf of the Roma people are inadmissible *ratione materiae*. The Committee notes the author's claim under article 27 of the Covenant, that the State party frequently forcibly evicts Roma tent-dwellers due to their particular socioeconomic condition and ethnic origin. The Committee recalls its jurisprudence stating that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless either an act or an omission of a State party has already adversely affected his or her enjoyment of the claimed right, or such an effect is imminent, for example on the basis of existing law and/or judicial or administrative decision or practice.<sup>11</sup> At the same time, the Committee recalls its general comment No. 23 (1994) on the rights of minorities, in which it recognizes that "although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion".<sup>12</sup> In the present case, the Committee observes that the author does not specify why he considers that the State party violated his individual rights, considered in a collective dimension, to enjoy his own culture, profess his religion or use his language in community with other members of a minority group. It therefore considers that the author's claim under article 27 of the Covenant is insufficiently substantiated and is therefore inadmissible under articles 1 and 2 of the Optional Protocol.

8.6 The Committee notes the author's claims that the State party violated his rights under article 17 (1) and (2) of the Covenant by arbitrarily evicting him from his home in Makrygianni. The Committee notes the serious concerns the author raises with regard to the general situation of Roma in the Riganokampos and Makrygianni settlements. Still, while the Committee is concerned by the author's allegations of successively being evicted from

<sup>9</sup> See also *J.B. v. Australia* (CCPR/C/120/D/2798/2016), para. 7.7.

<sup>10</sup> See, inter alia, *Parra Corral v. Spain* (CCPR/C/83/D/1356/2005), para. 4.2.

<sup>11</sup> See, inter alia, *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), para. 4.3.

<sup>12</sup> See para. 6.2. See also *Käkkäläjäjärvi et al. v. Finland* (CCPR/C/124/D/2950/2017).

different settlements in both Patras and Athens, it may only examine the author's rights with respect to the eviction from Makrygianni in 2006, for which the author pursued a domestic remedy and which forms the subject of the present communication. Accordingly, the preliminary issue before the Committee is not the general housing situation of Roma or the author in the Greek settlements, but the specific situation of whether the author has substantiated his claim that the shed in Makrygianni constituted his home on 27 July 2006, for the purposes of article 17 of the Covenant.

8.7 The Committee recalls that the concept of "home" within the meaning of article 17 of the Covenant refers to the place where a person resides or carries out her or his usual occupation.<sup>13</sup> A "home" is therefore not limited to premises which are lawfully occupied or which have been lawfully established under domestic law, nor is it limited to traditional residences or fixed abodes.<sup>14</sup> The Committee refers to its jurisprudence indicating that whether a place of residence or usual occupation constitutes a "home" that attracts the protection of article 17 depends on the factual circumstances, namely, the existence of continuous, unchallenged occupation of the specific place in question.<sup>15</sup> While daily physical presence at the home is not required, an individual must demonstrate credible evidence of occupation of the home.<sup>16</sup> If the individual is voluntarily absent at the time of the alleged interference, it must be shown that ties to the home have not been severed. Moreover, in the absence of any claim to a legal interest in the home, the individual's links to the home must arise from evidence of unchallenged occupation or carrying out of his usual occupation for a period of time.<sup>17</sup>

8.8 In assessing whether the shed in Makrygianni constituted the author's "home" for the purposes of article 17, the Committee notes the author's statements that he had moved to Makrygianni two years before the demolition, had been using the shed seasonally, and was residing for the summer on the island of Zakynthos at the time of the demolition. The Committee takes note of the author's assertion that it was customary for some Roma to leave the settlement during the summer, and that the State party's authorities knew he would return to it. However, the Committee notes that the author had not informed the authorities that he was living in the Makrygianni settlement, and had provided to the authorities a different address for his residence permit. The author has not explained why he did not inform the municipal authorities that he was living there, before or after the demolition. The Committee also notes that the author has not provided information to contradict the finding of the Three-Member Misdemeanour Court of Patras that the shed, in which he did not have a legal interest, appeared to have been deserted at the time of the demolition. The author has not alleged that he left at the shed any personal belongings or other signs of occupation to indicate that it was claimed as a residence at the material time. While noting the author's information that one of the Deputy Mayors stated during the criminal trial that the author should have been reporting to the police in Patras during 2005 and 2006, the Committee considers that the author has not provided sufficient information to demonstrate that the authorities knew or should have known that he resided in the Makrygianni settlement. The Committee also notes the State party's uncontested argument that the author's civil claim in the context of the criminal proceedings was for moral, not material, damages. The Committee observes that the author has not asserted that he suffered material damages, and has not alleged to have developed strong community ties linking him to Makrygianni. While the author relies upon the Committee's Views in *Georgopoulos et al. v. Greece*, the Committee notes that the authors in that case had been born in the settlement from which they were evicted, had always lived there apart from for seasonal employment elsewhere, and had immediately contacted the municipal authorities to seek an administrative remedy after learning of their eviction.

<sup>13</sup> See the Committee's general comment No. 16 (1988) on the right to privacy, para. 5. See also *I Elpida et al. v. Greece*, para. 12.3.

<sup>14</sup> *I Elpida et al. v. Greece*, para. 12.3.

<sup>15</sup> *Ibid.*; and *Naidenova v. Bulgaria* (CCPR/C/106/D/2073/2011), para. 14.2.

<sup>16</sup> *I Elpida et al. v. Greece*, para. 12.3.

<sup>17</sup> *S.I.D. et al v. Bulgaria* (CCPR/C/111/D/1926/2010), para. 8.4; *I Elpida et al. v. Greece*, paras. 12.3 and 12.6; and *Naidenova v. Bulgaria*, para. 14.2.

8.9 The Committee notes that while the author contends that the authorities acquiesced to occupation of the settlement by issuing decision No. 323 in 2005, according to the Three-Member Misdemeanour Court of Patras this decision reflected a temporary measure to allow the authorities to provide alternative accommodation to the residents of Makrygianni, and the municipal authorities subsequently provided rent subsidies to the residents who were registered with the municipality. The Committee notes the court's determination that many individuals then definitively abandoned the settlement to seek alternative accommodation. The Committee also notes the author's statement that by the end of March 2006, public officials had issued statements advising that evictions would be carried out in Makrygianni, and that court proceedings had been recently initiated against "some or all" of the Roma living in those two settlements. The Committee also notes that the author has not indicated that basic public services were being provided to the settlement so as to indicate that the authorities had in effect consented to its existence. Indeed, the Committee notes the court's finding that at the time of the demolition, the lack of sewage, garbage collection, running water and so on in Makrygianni posed serious threats to the health of both the Roma and non-Roma residents. While the Committee notes the author's assertion that the court used this public health rationale as a pretext for evicting Roma, it notes that the author has not provided information contradicting the public health concerns, and has stated that the year after the demolition, the Patras health directorate issued a report declaring that living conditions in Makrygianni were unacceptable.

8.10 In the light of the totality of the aforementioned circumstances, the Committee considers that the information the author has provided is insufficient to substantiate his claims that at the time of the demolition, the shed constituted his home within the meaning of article 17 of the Covenant. In addition, with reference to the same circumstances, the Committee considers that the author has not provided adequate information to indicate that the authorities subjected him to cruel, inhuman or degrading treatment, knew or should have known of the existence of his family life in Makrygianni, or discriminated against him. Accordingly, the Committee considers that the author's claims under articles 7, 17 (1) and (2), 23 and 26 are inadmissible due to a lack of substantiation, pursuant to article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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