



# 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. 2444/2014\*\* , \*\*\*

<i>Communication submitted by:</i>	A.S. et al. (represented by counsel, Theodoros Alexandridis)
<i>Alleged victims:</i>	The authors and their families
<i>State party:</i>	Albania
<i>Date of communication:</i>	21 July 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 7 December 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	8 November 2019
<i>Subject matter:</i>	Forced eviction of Roma
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Effective remedy; cruel, inhuman or degrading treatment; freedom of movement; unlawful and arbitrary interference with one's home and family; discrimination on the grounds of ethnic origin
<i>Articles of the Covenant:</i>	2 (1) and (3), 7, 17, 23, 26 and 27
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The authors of the communication are A.S., born in 1957, A.L., born in 1968, Ar. S., born in 1977, D.S., born in 1984, N.S., born in 1966, and S.S., born in 1968, all nationals of Albania. They are submitting the communication on behalf of themselves and their families. The authors claim that the forced and unjustified eviction that they were facing was in breach of articles 7, 17, 23, 26 and 27, read alone and in conjunction with article 2 (3), of

\* Reissued for technical reasons on 16 December 2019.

\*\* 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 V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany and Hélène Tigroudja.



the Covenant. The Optional Protocol entered into force for Albania on 4 January 2008. The authors are represented by counsel.

1.2 On 21 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 the State party not to evict the authors from their homes while their communication was under consideration by the Committee.

1.3 As the eviction orders were revoked after the Committee's request for interim measures, the authors' counsel asked on 6 August 2014 that the request be lifted.

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

2.1 The authors are of Roma origin, living in Elbasan, Albania. They are all unemployed and live with their families, numbering 32 people including children, in impromptu houses built without permission in the early 1990s. All authors have filed requests for the legalization of their dwellings. The authors have been living there for more than 20 years. Throughout this period, the authorities have de facto tolerated if not acknowledged the authors' residence there, and the houses are connected to the main electricity grid and to the municipal water mains.

2.2 On 2 July 2014, the Council of Ministers decided (decision No. 432) that one of the main roads in Elbasan – Qemal Stafa Street – should be extended and widened as part of renovations of the football stadium. On 16 July 2014, the Elbasan municipal urban construction inspectorate served the authors with notices to vacate their properties within five days. According to these documents, the demolition of the houses was necessary on the "grounds of public interest".<sup>1</sup> The authorities neither consulted with the authors nor provided them with any form of assistance, compensation or alternative accommodation.

2.3 The authors argue that no remedy was available for them to challenge the eviction notices, as domestic law explicitly states that administrative or judicial appeals against an eviction order do not have suspensive effect. Furthermore, the Agency for the Legalization, Urbanization and Integration of Informal Zones and Buildings determined that while A.L.'s home was eligible for legalization,<sup>2</sup> the homes of the other authors were not because their legalization would interfere with the construction work on Qemal Stafa Street, which was a public interest project. While an open mayoral meeting was held on 18 July 2014 explaining the evictions and the possibility of granting the authors alternative accommodation in the form of partial rental subsidies, the State party began to provide assistance to the authors only after they had filed the present complaint. No alternative accommodation was guaranteed before the date of eviction, and no reference was made to whether the evictions were to be suspended. The rental subsidies did not cover the full rent and there was no indication as to how long the subsidies would be provided. The municipal council had not yet agreed to any of the mayoral schemes, and the release of funds for these remedies would not happen quickly.

2.4 After the authors reluctantly acceded to the State party's offer of alternative accommodation, the State party demolished all but A.L.'s house on 5 August 2014. The authors accepted a rental subsidy of 50 per cent.<sup>3</sup>

2.5 The authors refer to concluding observations of the Committee on Economic, Social and Cultural Rights on Albania and of the Committee on the Elimination of Racial Discrimination, in which the Committees expressed their concern regarding incidents of forced evictions of Roma and Egyptian people from illegal settlements without the provision of alternative housing, compensation or adequate legal safeguards.<sup>4</sup> The authors

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<sup>1</sup> No further details are provided in this regard.

<sup>2</sup> However, 100 square metres of A.L.'s property were not eligible for legalization as the land was needed for part of the road-widening project.

<sup>3</sup> These facts occurred after the registration of the case before the Committee. Subsequently, on 6 August 2014, the counsel asked that the request for interim measures be lifted.

<sup>4</sup> E/C.12/ALB/CO/2-3, para. 29, and CERD/C/ALB/CO/9-12, paras. 19–20 and 27–28.

also refer to the Committee's concluding observations and jurisprudence in similar cases,<sup>5</sup> and to reports of international organizations.<sup>6</sup>

### The complaint

3.1 The authors contend that the State party has violated articles 7, 17, 23, 26 and 27, read alone and in conjunction with article 2 (3), of the Covenant.<sup>7</sup>

3.2 Referring to the jurisprudence of the Committee and to the international case law of other bodies, the authors argue that the destruction of houses belonging to Roma amounts to cruel, inhuman or degrading treatment, contrary to article 7 of the Covenant. The authors were forced to live in inhuman conditions, which had a highly adverse impact on their family life.

3.3 Referring to *Naidenova et al. v. Bulgaria* (CCPR/C/106/D/2073/2011), the authors allege that their eviction will amount to interference with their homes, contrary to article 17 of the Covenant. The authorities never consulted with the authors or apprised them of the planned extension of the road, nor have they given any reason as to why the authors' eviction has to be effected with such haste. Moreover, the authorities have not provided an effective long-term housing solution for the authors in another area of Elbasan. Rather, the State party has only provided the authors with temporary alternative housing in the form of partial rental subsidies. While the State party has stated that it will work with the authors regarding the legalization of their properties, only one of the authors' properties has been deemed eligible for legalization as the others stand in the way of a public interest project.

3.4 The authors argue that their right to protect their family unit as a fundamental block of society was violated through the eviction notice and the destruction of their homes, in violation of article 23 of the Covenant. The authors and their families were forced to live in inhuman conditions that impacted their family life, in direct violation of article 23. Furthermore, the apartments in which they are currently living as they await the State party's assistance to obtain permanent housing do not meet their differing family needs. The State party has treated large and small families alike, and has not considered how the Roma culture affects the authors' housing needs.

3.5 The authors also argue that they were discriminated against on the basis of their Roma ethnicity, in violation of article 26 of the Covenant. The eviction notices of 16 July 2014 affected only Roma citizens. Roma and Egyptian citizens are the only Albanians affected by such forced evictions.

3.6 The authors allege that their rights as protected under article 27 of the Covenant were violated. Given systemic indirect discrimination against Roma citizens, they do not have the same opportunity to secure tenure of land and are particularly vulnerable to forced evictions. As stated above, the housing in which the authors currently reside does not accommodate their Romany culture.

3.7 Lastly, the authors claim that the lack of effective domestic remedies to suspend their eviction constitutes a violation of article 2 (1) and (3) of the Covenant.

### State party's observations on admissibility

4.1 On 22 September 2014, the State party submitted its observations on admissibility. The State party argues that the authors has not exhausted all available domestic remedies. The domestic legal framework for challenging forced evictions was not utilized by the

<sup>5</sup> See CCPR/C/ALB/CO/2, para. 23; *A.K. et al. v. Albania* (CCPR/C/127/D/2438/2104), in which the Committee granted interim measures based on virtually identical circumstances; *Naidenova et al. v. Bulgaria* (CCPR/C/106/D/2073/2011); and *I Elpida and Kalamiotis v. Greece* (CCPR/C/118/D/2242/2013).

<sup>6</sup> Report of the European Commission against Racism and Intolerance, available at [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Albania/ALB-IFU-IV-2013-003-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Albania/ALB-IFU-IV-2013-003-ENG.pdf).

<sup>7</sup> See, *mutatis mutandis*, *Georgopoulos et al. v. Greece* (CCPR/C/99/D/1799/2008).

authors. The authors did not bring a claim before an administrative body or court.<sup>8</sup> While the State party recognizes that challenging an eviction order before domestic courts does not automatically stay an eviction, it asserts that the courts do have the power to order that an eviction be stayed.<sup>9</sup> For this reason, the State party argues that the authors should have challenged the eviction order in a domestic court, requesting a stay of eviction in the process.

4.2 Regarding the authors' discrimination claims, the State party asserts that under Law No. 10 221, the Government aims to ensure that the rights of all persons are protected equally and that all persons are equal before the law. Under that law, the Commissioner for Protection from Discrimination has jurisdiction over complaints regarding discrimination. According to the State party, the authors should have availed themselves of this mechanism at the domestic level.

4.3 The State party explains that the Constitution and domestic legislation guarantee the fundamental rights and freedoms, equality before the law and the right of individuals to appeal before the administrative and judicial bodies. Specifically, the Constitution provides that the fundamental human rights and freedoms are indivisible, inalienable and inviolable and stand at the base of the entire legal order, and that the bodies of public power, in fulfilling their duties, must respect the fundamental rights and freedoms and contribute to their realization (art. 15). According to article 18 of the Constitution, everyone is equal before the law, without discrimination. Restriction of the rights and freedoms provided for in the Constitution may be imposed only by law, in the public interest or for the protection of the rights of others, and the restriction must be proportionate to the situation that has dictated it (art. 17). Under article 42 of the Constitution, the rights recognized in the Constitution and by law may not be infringed without due process, and all persons, in order to protect their legal and constitutional rights, freedoms and interests or in the case of charges brought against them, have the right to a fair and public trial within a reasonable time period by an independent and impartial court specified by the law. Article 43 of the Constitution guarantees the right of individuals to appeal against a judicial decision to a higher court, unless otherwise provided by the Constitution.

4.4 Lastly, the State party implies that the authors lack standing to bring a complaint, as they have been provided with alternative accommodation in the form of subsidized rent and their eviction notices were revoked.

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

5.1 In their comments of 29 October 2014 and 1 April 2015, the authors assert that they are victims despite the provision of alternative accommodation in the form of subsidized rent and the non-demolition of A.L.'s house. The authors argue that they were offered remedies only after the Committee issued of its request for interim measures. No agreement had been made available to the authors at the time when the notice of demolition was served, nor was any alternative accommodation offered at any point before their attempted eviction. Furthermore, the authors contend that the alternative housing offered by the State party is not an effective form of redress. The State party has never stated when the authors will be provided with housing that they will own. The authors have been forced into rented accommodation that does not take into consideration the different needs of their families, with subsidies that are not adjusted according to family size, and the State party has not ensured that the authors will not be threatened with eviction by the landlord. The authors state that because the subsidy given by the State party covers only 50 per cent of the rent, if the authors fail to pay the rent they will be unable to challenge an eviction. According to

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<sup>8</sup> The State party points out that an individual may seek revocation, repeal or modification of administrative acts such as the authors' eviction notice. The State party also notes that under the Civil Procedure Code, the authors could have sought recourse in a court.

<sup>9</sup> The State party draws on article 14 of Law No. 9780, as amended in 2013, noting that administrative and judicial appeal cases expressly offer the possibility of submitting administrative complaints and obtaining compensation for damages, including eviction stays. The State party also notes that under the Civil Procedure Code, individuals may ask the court to suspend the enforcement of the act, and that the court may allow the suspension when there is a risk of causing serious and irreparable harm to the plaintiff.

the authors, the issue raised in the present complaint has therefore not been addressed, and the authors assert that they do have standing to bring a complaint.

5.2 The authors argue that they should not be penalized for having accepted the offer of alternative accommodation made by the State party after the request for interim measures had been issued. The authors were forced to accept the offer due to the non-existence of any legal remedy that would have allowed them to challenge their eviction and because they were told that their houses could not be legalized.<sup>10</sup>

5.3 Regarding the exhaustion of domestic remedies, the authors point to statements made by the State party about the lack of effective remedy for forced evictions of Roma and Egyptian communities living in informal settlements, which are not eligible for legalization.<sup>11</sup> The authors argue that because of the State party's previous assertions regarding the situation of Roma and Egyptian communities and regarding housing as a human right,<sup>12</sup> the State party is estopped from claiming that the domestic legal framework is effective now.

5.4 The authors note that effective recourse such as compensatory awards is payable only if the Government has acted unlawfully and if the property is legalized. Squatters such as the authors have no legal right to compensation for expropriation and are entitled to alternative accommodation only. The Government has not made it clear at any point whether the expropriation funds are available to the authors, and the authors were informed of alternative housing only after interim measures had been granted for the present communication.<sup>13</sup> Furthermore, even if alternative accommodation is an option in the State party, there is no guarantee in practice that those affected will be provided with alternative accommodation before their houses are demolished. The authors note that the relevant procedures are cumbersome and lengthy.

5.5 Lastly, the authors note the State party's silence on the issue of lack of access to effective legal aid with a view to challenging their forced eviction. The ongoing discrimination against Roma communities in the State party affects their ability to obtain legal representation. Because Roma victims of eviction are more likely to have low legal literacy skills,<sup>14</sup> effective legal aid is necessary.

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

6.1 On 22 September 2014, the State party provided its observations on the merits. The State party notes that the road project under which the eviction notices were given to the authors also affected non-Roma citizens. The Elbasan municipal urban construction

<sup>10</sup> The authors note that A.L. is an exception.

<sup>11</sup> The authors cite the final conclusions of Albania–European Union policy dialogue seminar on inclusion of Roma and Egyptian communities, held on 20 and 21 February 2014. The authors also call attention to another report, in which, the authors argue, the State party explicitly acknowledges deficiencies in the applicable domestic framework on evictions.

<sup>12</sup> The authors refer to the State party's response to the questionnaire on the responsibilities of subnational governments with respect to the right to adequate housing, issued by the Special Rapporteur on the adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (November 2014), in which it stated the following: "Due to the fact that housing is not considered as a human right, there are [no] standards established to fulfill this right." The authors also point to opinions of the European Court of Human Rights on the same issue – see, for example, *Eglantina Bakiu and Others against Albania and 16 other applications*, Application No. 43928/13, Statement of Facts, 29 January 2015 – and a recent order issued by the Minister of Urban Development and Tourism on 23 December 2013. In 2018, the Committee on the Elimination of Racial Discrimination expressed concern over forced evictions of Roma and Egyptian people in the context of major infrastructure projects, calling upon the State party to provide remedies and adequate housing (CERD/C/ALB/CO/9-12, paras. 27–28).

<sup>13</sup> The authors point to other cases, such as the situation of Roma in Selitë, Albania, where no alternative housing or subsidy was provided to evicted Roma in an identical situation to that of the authors in the present communication. The author also points to the eviction of Roma who had been living close to an artificial lake in Tirana.

<sup>14</sup> See United Nations Development Programme (UNDP), *Survey on Access to Justice in Albania* (2017), according to which "[i]ndividuals have a fairly low level of awareness of their rights: more than a quarter of those surveyed cannot name a single constitutional right or freedom. ... The low level of legal literacy is most pronounced among the Roma community."

inspectorate oversaw the eviction notification process for the vacation of houses and land, in accordance with the Code of Administrative Procedure. Notice was given to the authors on 16 July 2014 to vacate their private property within five days of receipt, in accordance with domestic legislation and in conformance with administrative procedures. The State party thus contends that discrimination claims are without merit.

6.2 The State party notes that it tried to accelerate and facilitate the process legalizing the housing and obtaining certificates of ownership for all persons affected by the project, including the authors, in order to compensate them for their loss. The State party has provided an expropriation fund for the affected individuals' houses. The State party notes that the Agency for the Legalization, Urbanization and Integration of Informal Zones and Buildings investigated the authors' illegal dwellings. The agency found that only A.L.'s dwelling would not be affected by the project and could thus be legalized. The State party thus argues that there is no legal obstacle for the continuation of the legalization process for A.L.'s house. According to the State party, the remaining authors' houses are disqualified from the legalization because of the implementation of the project and pursuant to the law on legalization.

6.3 The State party argues that under the domestic legal framework, individuals are provided with alternative accommodations or temporary shelter. There are special funds for expropriation that were created prior to the vacation of properties, of which the authors could have availed themselves. The authors' claim that the State party is evicting them without compensation or alternative accommodation is thus baseless. The authors have had the opportunity to seek alternative housing and compensation through the avenues listed above. Specifically, the authors voluntarily signed agreements, on 5 August 2014, to vacate their houses on the condition that the State party provide them with a monthly housing benefit.<sup>15</sup>

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

7.1 In their comments of 1 April 2015, 23 June 2015 and 18 January 2019, the authors point to relevant treaty body reports regarding the treatment of Roma in the State party with reference to their discrimination claims.<sup>16</sup> To counter the State party's arguments that the authors were not discriminated against in the present case on the basis of their Roma ethnicity, the authors point to the State party's own action plans to dispel discrimination against Roma.

7.2 In their comments of 1 April 2015 and 2 November 2015, the authors reiterate that they had been told by the State party that their homes, with the exception of A.L.'s, were not eligible for legalization. Because of the lack of an appropriate remedy, the authors argue that there is a clear violation of articles 7 and 17 of the Covenant, which the State party has not addressed.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

8.1 Before considering any claims 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

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<sup>15</sup> Each author individually signed an agreement with the Mayor of Elbasan on 5 August 2014.

<sup>16</sup> E/C.12/ALB/CO/2-3, paras. 12–13, 24, 29 and 34; and CERD/C/ALB/CO/9-12, paras. 19–30. See also European Court of Human Rights, *Case of Yordanova and Others v. Bulgaria*, Application No. 25446/06, Judgment, 24 April 2012, paras. 135–137; and UNDP, "Housing policies and practice for Roma in Albania: background study" (2013), p. 14.

themselves of the opportunity to challenge the acts pursuant to the Code of Administrative Procedure. The Committee notes that the authors tried to have their housing legalized and that all but one of the authors' houses were deemed ineligible for legalization because of the road project, the reason for the authors' eviction. The Committee also notes the authors' argument that administrative law proceedings would be ineffective because the domestic legal order at the time of the eviction did not allow the authors to directly challenge their forced eviction or request the immediate provision of housing or other form of remuneration.

8.4 The Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no chance of being successful, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.<sup>17</sup> 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 properties legalized, the Committee notes that they have not shown why other administrative or 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 constituted a violation of their rights under articles 7, 17, 23, 26 and 27, read alone and in conjunction with article 2 (3), 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.
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<sup>17</sup> See, *inter alia*, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *Zsolt Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3; and *García Perea and García Perea 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.