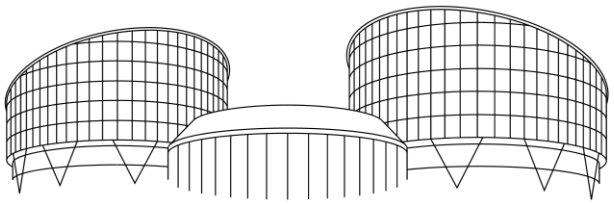

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF YORDANOVA AND OTHERS v. BULGARIA

(Application no. 25446/06)

JUDGMENT

This version was rectified on 5 June 2012
under Rule 81 of the Rules of Court

STRASBOURG

24 April 2012

Request for referral to the Grand Chamber pending

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

In the case of Yordanova and Others v. Bulgaria,

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 7 February 2012 and 3 April 2012,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25446/06) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-three Bulgarian nationals whose names are listed in the annex to this judgment ("the applicants"), on 23 June 2006.

2. The applicants were represented by Ms M. Ilieva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms S. Atanasova and Ms M. Kotzeva, of the Ministry of Justice.

3. The applicants alleged, in particular, violations of Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1, taken alone and in conjunction with its Articles 13 and 14, in relation to the authorities' decision to remove them from their homes in Batalova Vodenitsa.

4. On 8 July 2008 the Court indicated interim measures to the Bulgarian Government under Rule 39 of the Rules of Court. Upon receipt of assurances from the Bulgarian Government, on 23 July 2008 the Court lifted those measures (see paragraphs 49-53 below). By a decision of 14 September 2010, the Court declared the application partly admissible and partly inadmissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1) on the merits. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The relevant background

1. The applicants' homes

6. The applicants are residents of Batalova Vodenitsa, a neighbourhood of Sofia. They describe themselves as being of Roma origin.

7. Unlike some other European countries, where the Roma often have an itinerant way of life, in Bulgaria, at least since the 1960s, the great majority of the Roma live a settled life. Typically, Bulgarian towns feature one or more predominantly Roma neighbourhoods in non-central areas.

8. Some of the applicants or their parents and in some cases their grand-parents moved to Batalova Vodenitsa at the end of the 1960s and in the 1970s. Others are more recent arrivals who settled there in the 1990s.

9. In the 1960s land in the neighbourhood in question was expropriated by the State and cleared in the context of the authorities' housing construction policy. A number of blocks of flats were constructed there, but the plots currently inhabited by the applicants remained vacant, having been earmarked for a green area, which was never landscaped.

10. The applicants' families built their homes on State land without any authorisation. The area thus gradually developed into a small Roma settlement. It appears that between 200 and 300 persons live there.

11. Most of the buildings are single-storey houses. There is no sewage or plumbing. The inhabitants use water from two public fountains.

12. Most applicants' registered addresses are at their homes in Batalova Vodenitsa. Many of them are registered at one and the same address although they live in separate buildings which do not figure on any official area plan. Most of the applicants live in their houses with their families, including young children or grandchildren.

13. The applicants never sought to regularise the buildings they had constructed. This was in principle possible through applications for building permits and planning approval. According to the applicants, making such applications was difficult for them as they are poor and live their lives in the Roma community, isolated from the rest of society.

14. It is undisputed by the parties that the applicants' homes do not meet the basic requirements of the relevant construction and safety regulations and cannot be legalised without substantial reconstruction.

15. In 1987 the local building plan was amended and the construction of dwellings was envisaged on the plots in question. The plan was never implemented.

16. Following a legislative reform, in 1996 the land occupied by the applicants became the property of the Sofia municipality.

17. Until 2005, the State and municipal authorities never took steps to remove the applicants and their families.

18. Under the relevant law the applicants cannot obtain ownership of the land they occupy. Until 1996 the provisions on acquisitive prescription did not apply in respect of State and municipal land. Since 1996, these provisions, under which a ten-year period of possession may suffice for the acquisition of real property, apply to most categories of municipal land. However, in 2006, shortly before the expiry of ten years after the 1996 amendment, Parliament suspended the running of prescription periods in respect of State and municipal land. The suspension has been extended several times and is currently in force until 31 December 2014 (sections 79 and 86 of the Property Act and the transitional provisions thereto).

19. According to a statement by a Mr B. T., a Roma resident of Batalova Vodenitsa, his parents are the lawful owners of their house there and possess a notarial deed. A copy of the notarial deed has not been submitted by the applicants. Neither Mr B.T. nor his parents were among the addressees of the removal order of 17 September 2005 (see paragraph 31 below).

2. Complaints by third persons, public declarations, protests and media coverage

20. From the beginning of the 1990s tension grew in several regions of Sofia between the inhabitants of Roma settlements and their non-Roma neighbours. The issue of Roma settlements, often referred to as "ghettos", was widely debated in the media. Many commentators urged the emptying of all "Roma ghettos" in Sofia. This line was supported by a number of leading politicians. Occasionally, the views of Roma organisations were also published.

21. Between 2003 and 2006 several demonstrations were held by non-Roma residents of different areas in Sofia seeking the eviction of their Roma neighbours. Other demonstrations were held by non-Roma persons protesting at news of plans by the authorities to resettle in their neighbourhoods Roma families to be removed from other parts of the city.

22. It appears that on an unspecified date non-Roma residents of Batalova Vodenitsa formed an association with the aim to bring pressure to bear on the authorities in relation to the applicants' unlawful settlement.

23. Most complaints against the Roma inhabitants of Batalova Vodenitsa concerned sanitary risks and repulsive odours caused by the absence of sewage and the fact that the inhabitants kept animals (allegedly including

sheep, pigs, hens and horses). Also, many non-Roma residents of the area believed that the Roma inhabitants were responsible for numerous offences, including physical assault, theft and damage to public and private property. The protesters also resented on aesthetic grounds the presence of unsightly shanty houses in the area.

24. The municipal authorities in Sofia perceived as a serious problem the fact that since 1990 many Roma had moved to Sofia and settled in illegal Roma settlements, thus increasing their overpopulation and generating more illegal construction and sanitary problems.

B. The decision to remove the applicants and the ensuing judicial proceedings

25. In March 2000 an unspecified number of individuals, apparently persons who had obtained decisions restoring their property rights over expropriated land in the Batalova Vodenitsa area, complained to the Sofia municipal council that "persons of Roma origin" were unlawfully occupying land in the area. Having examined the matter, on 11 December 2000 the municipal council decided to offer the restored owners other municipal land in exchange for their land. It also invited the mayor of Sofia to develop a plan for the resolution of the "problem as a whole". No such plan appears to have been adopted.

26. In 2003 the local building plan in Batalova Vodenitsa was modified by the municipal authorities, who planned to develop the area.

27. On 2 March 2005 the Sofia municipal council approved in principle the transfer of title to plots of land in Batalova Vodenitsa to Mr K., a private investor. The transfer was effected on 16 May 2006. The plots of land in question were adjacent to the land occupied by the applicants. It is unclear whether Mr K. ever realised any development project.

28. On 29 August 2005 municipal officials visited the Batalova Vodenitsa neighbourhood and issued a document certifying that the applicants and other persons occupied the land.

29. On 8 September 2005, Ms S., the district mayor, invited all or almost all residents – approximately 180 Roma, including the applicants – to leave their homes within seven days as they were occupying municipal land unlawfully. The text referred to section 65 of the Municipal Property Act and contained a list of the names of its addressees and also a warning that failure to comply would result in removal by the police.

30. The applicants filed an appeal. On 15 September 2005 municipal officials issued a document certifying that the residents concerned had not left the area.

31. As a result, on 17 September 2005 the mayor ordered their forcible removal on 27 September 2005. The order listed individually the names of all those concerned. The mayor also stated her intention to secure a decision

for the demolition of the applicants' houses in accordance with the Building Planning Act (*Закон за устройство на територията*).

32. The applicants asked the Sofia City Court to stay their removal pending the examination of their appeal against the removal order. The court granted their request.

33. On 28 September 2005 a committee representing the Roma residents of the area signed an agreement with the municipal authorities in Sofia according to which the municipality would offer alternative housing to the persons registered as Batalova Vodenitsa residents, whereupon they would be removed. No action was taken by the municipality in execution of this agreement.

34. The agreement also provided that the committee of representatives would take measures to improve hygiene in the Roma settlement. They also undertook to organise the removal of unauthorised domestic animals kept by residents and keep better order. According to the Government, the situation did not improve.

35. In the judicial proceedings against the mayor's order, on 12 January 2006 the Sofia City Court ruled that the removal order was lawful. The applicants appealed. On 12 June 2006, the Supreme Administrative Court upheld the City Court's judgment.

36. The courts found that the fact that the applicants had not shown a valid legal ground for occupying the land was sufficient to establish that the removal order was lawful. If the applicants considered that they had property rights, it was for them to seek notarial deeds or bring civil proceedings to establish those alleged rights. They had not done so. In these circumstances and having regard to section 92 of the Property Act, their houses were owned by the municipality.

37. The courts also stated that the applicants' allegations about violations of the Convention and discrimination were groundless.

38. The courts ignored as irrelevant under domestic law the applicants' argument that they should not be removed because they had lived in the area for decades with the authorities' acquiescence, and their arguments based on the principle of proportionality.

C. Attempt to remove the applicants in 2006

39. On 21 June 2006, the municipal authorities announced their intention to evict the unlawful residents of Batalova Vodenitsa, including the applicants, by 28 June and to demolish their homes. On 22 June 2006 the district mayor was reported in the press as having stated that the removal order had been issued as a result of numerous complaints by neighbours in relation to the unlawful settlement.

40. As a result of political pressure, mainly from members of the European Parliament, the authorities did not proceed with the eviction.

41. In their public declarations the municipal authorities apparently took the stand that the removal of the Batalova Vodenitsa residents was overdue but could not be done immediately because of pressure "from Europe". Divergent opinions were expressed as to whether the municipality should try to find alternative housing for the residents of Batalova Vodenitsa. In public declarations the mayor of the district stated that this was not possible because the residents concerned had not been registered as persons in need of housing and the municipality could not give them priority over other people who had been on the waiting list for many years.

42. On an unspecified date shortly after 12 June 2006, Ms S., the mayor of the relevant district, participated in a televised debate concerning the fate of the Roma settlement in Batalova Vodenitsa. She stated, *inter alia*, that the Roma inhabitants there did not have the right to be registered as persons in need of housing because they were occupying municipal land unlawfully. For that reason, she would not offer them the tenancy of municipal dwellings, there being many other families on the waiting list. The district mayor further stated that the agreement of 28 September 2005 between the mayor of Sofia and a committee of representatives of the Roma families "had been concluded in a pre-electoral period" and that she did not consider herself bound by it. She also stated that the removal order had been upheld by the courts and must be enforced; the fact that the persons concerned had nowhere to go was irrelevant. The mayor further stated that she had received complaints by non-Roma inhabitants of the area and was under a duty to act.

43. Most of the applicants have not tried to make arrangements to find new homes for their families. Between 2004 and 2007 three of the applicants registered at addresses in other areas of Sofia. In 2005 one of the applicants declared an address in the town of Sandanski as her official address. According to these four applicants, although for short periods they lived outside Batalova Vodenitsa, in dwellings occupied by relatives, their only real home had remained Batalova Vodenitsa.

44. It appears that after June 2006 negotiations continued between the Roma inhabitants and the municipal authorities regarding possible relocation in temporary municipal housing of those persons in the applicants' position who had been registered as resident in Batalova Vodenitsa before 1996. Non-governmental organisations defending the rights of the Roma and Government representatives also took part.

45. Information about intentions to resettle the Batalova Vodenitsa unlawful residents have met with strong opposition from inhabitants of neighbourhoods where such relocation was envisaged. It appears that no viable resettlement plan has ever been elaborated.

46. In interviews and statements, local officials supported the non-Roma population. In a radio interview in November 2006, the mayor of Ovcha Kupel district in Sofia stated that "the nuisance that a Roma settlement

would create [if Roma families were to move into his district] would surpass by far the inconvenience that a refuse tip would create". He also stated that "Roma families could not expect to live among the citizens as they did not have the necessary culture".

D. Attempt to remove the applicants in 2008 and developments since then

47. On 27 June 2008 the municipal authorities served a notice on the inhabitants of the area, including the applicants, requiring them to leave their houses by 10 July 2008, failing which they would be evicted forcibly on 11 July 2008.

48. The notice was issued in execution of the removal order of September 2005, which was final and enforceable.

49. On 8 July 2008 the Court indicated to the Government of Bulgaria, under Rule 39 of the Rules of Court, that the applicants should not be evicted from their houses until 23 July 2008, pending receipt by the Court of detailed information about any arrangements made by the authorities to secure housing for the children, elderly, disabled or otherwise vulnerable individuals to be evicted.

50. The Government submitted a copy of a statement by Ms S., the district mayor, who indicated that two local social homes could provide five rooms each and that several elderly persons could be housed in a third home. There was no information about any possibility to house families together.

51. Also, it appears that none of the applicants was willing to be separated from the community and housed in such conditions, not least because it was impossible, according to them, to earn a living outside the community.

52. On 22 July 2008 Ms S., the district mayor, stated that she had suspended the enforcement of the removal order "pending the resolution of the housing problems of the Batalova Vodenitsa residents". The order was not quashed.

53. In the light of this information, the President of the Court's Fifth Section decided on 23 July 2008 to lift the interim measure of 8 July 2008, specifying that the decision was taken on the assumption that the Court and the applicants would be given sufficient notice of any change in the authorities' position for consideration to be given to a further measure under Rule 39 of the Rules of Court.

54. On 23 July 2008 the National Council for Cooperation on Ethnic and Demographic Issues, which includes representatives of non-governmental organisations and is presided over by the Director of the Ethnic and Demographic Matters Directorate at the Council of Ministers, discussed the issue. Representatives of the Sofia municipality were advised to refrain

from measures seeking to resolve the problem in Batalova Vodenitsa at the expense of creating tension in other areas. The majority view was that the Roma families living in Batalova Vodenitsa should not be evicted and their homes should not be demolished before a lasting solution was found.

55. According to a letter from the Director of Ethnic and Demographic Matters, sent in January 2009 in connection with the present application, the Sofia municipality was working on a programme for the revitalisation of Roma neighbourhoods. It was envisaged to construct temporary housing on several municipal plots of land. Partial initial financing of the construction work could be provided by the Government but other sources were needed as well. It was envisaged to encourage the Roma applying for housing to take jobs in the construction work under the relevant social employment schemes. The project's elaboration, including architectural plans, was allegedly under way. The project concerned Roma families who moved to Batalova Vodenitsa before 1996. Those who settled there more recently had "to return to their previous homes".

56. On 12 January 2010, in reply to a letter from residents protesting against the authorities' failure to evict their Roma neighbours from Batalova Vodenitsa, Ms S., the district mayor, stated that the enforcement of the 2005 eviction order had been postponed under pressure from members of the European Parliament and that the applicants had started proceedings in the European Court of Human Rights. The letter did not mention plans to secure alternative housing for the persons to be evicted.

57. According to media reports, in May 2010 plans to resettle the inhabitants of Batalova vodenitsa on other State or municipal property were discussed by the municipal authorities.

58. In their latest submissions of December 2010 the parties have not reported any progress in the realisation of such projects.

59. According to the applicants, the resettlement plans mentioned by the authorities are nothing more than empty promises.

E. Other relevant facts

60. In March 2006 a ten-year National Programme (2005-2015) for the Improvement of the Housing Conditions of Roma in Bulgaria was adopted by the Council of Ministers in the context of the international initiative entitled Decade of Roma Inclusion 2005–2015.

61. In September 2007, the Sofia municipal council adopted a plan for the implementation of the ten-year national programme in Sofia for the period 2007-2013. The document includes an analysis of the existing situation in respect of housing.

62. According to this analysis, overpopulated Roma settlements had formed over the years in Sofia and nothing had been done by the authorities in the past to address the ensuing problems. Having always been a

marginalised group with minimal resources, the Roma cannot in practice acquire real property. Traditionally they occupy vacant land and construct makeshift huts. Although most of them, being persons in need of housing, meet the relevant criteria for tenancy of municipal housing, this option does not work in practice owing to several factors, including the limited number of available municipal dwellings and unwillingness on the part of many Roma families to resettle in municipal flats. Their unwillingness could be explained partly by the lack of the necessary resources to cover the related expenses, such as utility bills, and partly by the animosities which often erupt between non-Roma residents of blocks of flats and Roma families moving in.

63. The ten-year National Programme and the 2007-2013 Sofia plan provide for the following actions, among others: elaborating municipal housing programmes, legalising buildings if they meet the relevant construction standards, constructing sewage and water-supply facilities in Roma neighbourhoods and providing information and assistance to those who apply for municipal housing.

64. The 2010 Monitoring report on the implementation of the Decade of Roma Inclusion 2005–2015 programme does not mention any progress having been made in respect of Roma housing. The concluding text of the report contains a recommendation to the relevant institutions and stakeholders to make timely use of the possibilities under Article 7(2) of Regulation (EC) No. 1080/2006 on the European Regional Development Fund.

65. According to media reports, in several regions in Bulgaria construction works are under way for the building of dwellings intended to house Roma who have been removed or are to be removed from land which they occupy unlawfully.

II. RELEVANT DOMESTIC LAW AND PRACTICE

66. Section 65 of the Municipal Property Act empowers the mayor to order the repossession of real property belonging to the municipality and occupied by others if they have no legal right to occupy it. The mayor's order is amenable to judicial appeal. Its enforcement is effected by the police.

67. The new paragraph 5 of section 65, added in May 2008, provides that persons occupying municipal real property without a legal basis cannot avail themselves of sections 72-74 of the Property Act, which bestow certain rights on holders of property belonging to another (under certain conditions, the right to reimbursement for improvements, and to withhold the property pending such reimbursement).

68. According to section 92 of the Property Act, read in conjunction with its other provisions, buildings belong to the owner of the land except

where the right to construct a building has been lawfully conveyed by the owner to another person. Prior to 1996 it was not possible under Bulgarian law to acquire State or municipal property through adverse possession. Since 1996, state and municipal property, if it is of the category of "private state property", may in principle be acquired by private persons through adverse possession, under a number of conditions. Through a transitory provision introduced in 2006, the running of the ten-year prescription period was suspended and the suspension is still in force.

69. The categorisation of persons in need of housing and the possibility of applying for municipal housing are governed by municipal regulations issued by each municipality in accordance with section 45a of the Municipal Property Act. These regulations, which differ from city to city, usually require candidates to have had their registered address in the town for more than five years, to have no real property of their own, and to have resources that do not exceed a certain maximum. Typically the application must be made in writing on a form and be accompanied by a number of documents. The decision whether to recognise the need is taken by a municipal commission and is amenable to judicial appeal. Among the candidates recognised as being in need of housing, homeless persons and those living in dangerous and unhealthy conditions have priority.

70. In accordance with sections 43 and 45 of the Municipal Property Act, an emergency stock of municipal flats may be used to house for up to two years persons whose dwellings are unsafe as being in danger of collapsing and persons with severe social or health problems.

71. Under sections 4 and 5 of the Protection against Discrimination Act, in force since 1 January 2004, racially offensive statements may be considered discriminatory. The victim may file a complaint with the Commission for Protection against Discrimination (see, for example, Decision no. 178 of 25 July 2008, where that commission established that the anti-Roma language used in a television broadcast of 24 February 2007 amounted to prohibited discrimination) or bring an action in court. Racially offensive statements may be criminally punishable under Articles 146 and 148 of the Criminal Code. The proceedings must be initiated by the victim. Separately, incitement to racial hatred is an offence punishable under Article 162 of the Criminal Code.

72. At the time when the removal order of 17 September 2005 was issued and reviewed by the domestic courts, Bulgarian administrative procedure law did not enshrine the principle of proportionality. Since July 2006, when the Code of Administrative Procedure entered into force, this principle is set out in Article 6 of the Code.

III. RELEVANT INTERNATIONAL MATERIAL

A. The Council of Europe

73. On 18 October 2006 the Council of Europe's European Committee of Social Rights delivered a decision on the merits of a complaint against Bulgaria brought by the European Roma Rights centre, a non-governmental organisation. The Committee found, *inter alia*, that "the lack of legal security of tenure and the non-respect of the conditions accompanying eviction of Roma families from dwellings unlawfully occupied by them constitute[d] a violation of Article 16 of the Revised European Social Charter, taken together with Article E". Article 16 concerns the right of families to "appropriate social, legal and economic protection" and Article E prohibits discrimination in the enjoyment of the rights set forth in the Charter.

74. To reach its conclusion, the Committee found that the Bulgarian legislation allowing the legalisation of illegal constructions set conditions "too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families", a situation recognised by the Bulgarian Government. The Committee also considered that the authorities had tolerated the unlawful Roma settlements for long periods and were accordingly obliged to carefully balance town planning measures against "the right to housing and its corollary of not making individual[s] homeless". The Committee further found that by failing to take into consideration the specificity of the living conditions of Roma and strictly applying the rules on legalisation of buildings to them, Bulgaria had discriminated against Roma families, whose situation differed not least as a consequence of State non-intervention over a certain period. Similarly, there was discrimination on account of the authorities' failure to take into account that Roma families ran a higher risk of eviction, and the authorities' failure systematically to find alternative accommodation for the evicted families.

75. On 5 September 2007 the Committee of Ministers of the Council of Europe adopted a resolution in the case in which it noted, *inter alia*, the Bulgarian delegation's statement before it that Bulgaria intended to amend the Territorial Planning Act to allow for easier legalising of existing buildings and construction of social housing.

76. In its 2005 Recommendation on improving the housing conditions of Roma the Committee of Ministers of the Council of Europe called upon member States, *inter alia*, to use proportionate response to illegal Roma settlements and seek, where possible, solutions acceptable for all parties. Also, eviction measures should include consultation with the community or individual concerned, reasonable notice, provision of information, a guarantee that the eviction will be carried out in a reasonable manner and

alternative housing measures. As to daily life in existing settlements, the authorities should provide the same level of services as to other groups of the population and should, beyond that, promote better management including adequate management of neighbourhood conflicts. Housing policies should be tailored to the specific situations of the Roma communities.

77. In its 2008 Recommendation on policies for Roma and/or Travellers in Europe, the Committee of Ministers of the Council of Europe called upon Member States, *inter alia*, to ensure that decisions adopted by local authorities in the relevant area would not have a discriminatory effect on Roma.

78. In its Resolution 1740(2010) on the situation of Roma in Europe and relevant activities of the Council of Europe, the Parliamentary Assembly of the Council of Europe noted with concern that the process of Roma integration in Europe had not reached its objectives over the last twenty years, that Roma people were still regularly victims of intolerance, discrimination and rejection based on deep-seated prejudices and that the situation of Roma with regard to education, employment, housing, health care and political participation was far from satisfactory. The Assembly stated that adopting national strategies was insufficient in the absence of implementation measures at local and regional levels. It urged member States, *inter alia*, to promote a positive image of diversity, address stereotypes and prejudices, react strongly to racist discourse by public officials and tackle hate speech vis-à-vis Roma, be it in the media, politics or in civil society. As regards housing, the Assembly urged member States to take urgent measures to prevent forced evictions of Roma camps and settlements and – in cases of unavoidable evictions – ensure that such evictions were carried out only when all procedural protections required under international human rights law were in place, including the provision of adequate alternative housing and compensation for expropriation and losses of moveable possessions damaged in the process of eviction and, in the absence of such procedural protections in the existing domestic law, introduce legislation on evictions providing safeguards and remedies in accordance with international standards.

79. The Council of Europe's Commissioner for Human Rights, in his 2009 Recommendation on the implementation of the right to housing stated, *inter alia*, that States should specify in legislation that positive measures are justified in order to promote full and effective equality provided that there was an objective and reasonable justification for such measures.

B. The European Union

80. In October 2009 the EU Agency for Fundamental Rights issued a comparative report on the housing conditions of Roma and travellers in the EU.

81. According to the report, significant numbers of Roma in Europe live in unauthorised settlements. For example, in 2002 an estimated 70% of houses in urban Romani developments in Bulgaria were illegally built, in 1999 in Greece approximately 63,000 Roma lived in unregulated encampments and in 2008 in France most Roma groups lived in squalid shantytowns.

82. The report also mentioned cases of forced evictions of such encampments, in particular in Italy and Greece.

C. The United Nations Organisation

83. The United Nations Committee on Economic, Social and Cultural Rights, in its General Comment no. 7 concerning forced evictions and the right to adequate housing under the International Covenant on Economic, Social and Cultural Rights, stated, *inter alia*, that evictions should not render persons homeless or more vulnerable to human rights violations. Also, evictions must meet a number of conditions, such as prior consultation with the persons to be evicted, the giving of adequate and reasonable notice as to when the eviction will take place and the availability of judicial remedies. If those evicted cannot provide for themselves, States should take all reasonable measures, utilising all available resources, to ensure the provision of adequate alternative housing.

THE LAW

I. ALLEGED VIOLATIONS OF THE CONVENTION IN THE EVENT OF ENFORCEMENT OF THE ORDER OF 17 SEPTEMBER 2005

84. The applicants alleged that if the order of 17 September 2005 was enforced and they were removed from their homes in Batalova Vodenitsa, that would amount to inhuman and degrading treatment contrary to Article 3 and violate their right to respect for their homes under Article 8. They further complained, relying on Article 13, that the authorities failed to consider proportionality issues and, relying on Article 14, that their removal would be discriminatory. They also complained that Article 1 of Protocol No. 1 would be violated.

A. The parties' submissions

1. *The applicants*

85. The applicants submitted that the houses where they lived and had their registered address were their homes regardless of the fact that they had not been built lawfully. Nothing had been done for decades to remove the applicants. For people as desperately poor and outcast as them the expectation that the inactivity would last was a basis to build lives on. The applicants had the right to respect for their homes and deprivation of one's home was a most extreme form of interference with this right.

86. The applicants considered that the real aim pursued by the authorities was to free the terrain so that it could be leased or sold to a private entrepreneur for development and to "rid" the district of an unwanted Roma "ghetto". Those were illegitimate aims.

87. In the applicants' view, the Government's attempt to use the neighbours' protests to justify the eviction order was based on the fallacious assumption that the disorder and lack of sanitation complained of could not be remedied as long as the applicants' community was present. This was to assume that a Roma community such as the applicants' inherently produced disorder and pollution and could not be controlled by ordinary policing. The racist nature of this assumption which underlay the Government's argument was evident. While the issues raised in complaints by ethnic Bulgarian neighbours were serious and a cause for concern, it was unacceptable to seek to solve them through collective expulsion, without regard to individual conduct. That would be nothing less than collective punishment on the basis of ethnic origin.

88. The applicants stated that the authorities had never considered the applicants' personal circumstances, never consulted them before issuing a removal order and never considered proportionality even in theory. On the contrary, the authorities had openly and publicly asserted that the applicants had no rights at all and that it had been necessary to defend the rights of the non-Roma inhabitants who wished to have the "ghetto" removed. On two occasions, in 2006 and in 2008, the authorities had sought to evict the applicants, despite the September 2005 agreement under which they had undertaken to provide shelter to the families concerned. That agreement had always remained a dead letter. The history of the problem and the authorities' actions since 2005 had shown beyond doubt that the majority public opinion and the authorities were in favour of eviction, and that talk about a consensus towards helping the Roma families concerned was without substance.

89. The applicants protested against the Government's reliance on private complaints in terms that disclosed clear racist prejudice, presenting the problems in the neighbourhood as rooted in the racial opposition

between Roma and Bulgarians and seeking the unconditional "return of the Roma to their native places". Moreover, in the applicants' view, the Government's submissions (see paragraphs 92-99 below) were replete with statements disclosing racial prejudice, such as their admission that the authorities sought to avoid "concentration of large groups of Roma population", as if Roma people were a pest of sorts which needed to be kept to a minimum. The Government assumed gratuitously that Roma people had fraudulently taken advantage of municipal housing, or would do so. They relied on racist initiatives such as a petition condemning "discrimination against the Bulgarians". The Government's appeal to the Court to bow to majority public opinion, which was in favour of evicting the applicants, not only conflicted with fundamental human rights principles but also showed that the Bulgarian authorities were sensitive to, if not supportive of, public prejudice against the Roma.

90. In the applicants' view, the Government's argument that demolition of illegal constructions happened everywhere in Bulgaria, regardless of ethnic origin, was not convincing. The examples given by the Government concerned business properties or holiday retreats owned by persons far wealthier than the applicants, not poor persons' only homes. The relevant question was whether the authorities would order the collective eviction of a non-Roma community of two hundred persons, including children, without compensation and without alternative shelter, leaving them on the street. In the applicants' view, it was inconceivable that this should happen. The manner in which the applicants were being treated was clearly linked to their ethnic origin.

91. Lastly, the applicants stated that the houses they had built and their belongings were "possessions" within the meaning of Article 1 of Protocol No. 1 despite the fact that they did not own the land.

2. The Government

92. The Government submitted that while for many years nothing had been done to remove the Roma families who started settling in Batalova Vodenitsa towards the end of the 1960s, it had always been clear that they were occupying State and municipal land unlawfully. They did not own the land and could not claim ownership on the basis of the fact that they had built makeshift houses without authorisation and in violation of building rules. The applicants could not claim, therefore, that they had an expectation to be allowed to remain in Batalova Vodenitsa. For long periods the authorities had not implemented the urbanisation plans for the area, other matters having had priority. This delay did not mean that the applicants' illegal presence was tolerated.

93. The matter had become urgent when citizens living in the neighbourhood had started complaining about the Roma families' behaviour. In support of the above, the Government submitted copies of

handwritten complaints by non-Roma residents of Batalova Vodenitsa. Most of them were addressed personally to the Government's agent in the proceedings before the Court and were apparently drafted for the purposes of the present proceedings on unspecified dates at the end of 2008 or the beginning of 2009. They were entitled "complaints by the Bulgarians living in Batalova Vodenitsa" and started with the following words: "We complain against the Roma ...". The grievances made were that the Roma disposed of their waste in various places, thus littering the area, kept animals, dried their laundry by hanging it out for everyone to see, engaged in stealing and disorderly and aggressive behaviour, drank and used drugs. According to the text of the complaints, the signatories appealed to have the Roma removed and "returned to their native places", although on visual examination of the copies submitted to the Court it appears that these last words may have been added by the author of the main text, either before or after the text had been signed by the signatories.

94. The Government further maintained that the relevant authorities had established that the applicants' makeshift buildings posed a sanitary risk, might collapse and did not meet fire safety requirements. Having considered the matter, the Sofia municipality had decided to remove the Roma settlement and go ahead with the plans to construct blocks of flats in the area. Referring to the Court's judgment in the case of *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII, the Government considered that had the Bulgarian authorities remained inactive in the face of the safety and sanitary risks that the applicants' settlement represented, they would have risked liability under the Convention for failure to discharge their positive obligation to protect life and health.

95. The Government further stated that problems in the integration of the Roma population were not uncommon and Bulgaria was not alone in this respect. The authorities had demonstrated their determination to secure equal rights for all citizens, irrespective of their origin. The National Council for Cooperation on Ethnic and Demographic Issues, which included representatives of non-governmental organisations and was presided over by the Director of Ethnic and Demographic Matters at the Council of Ministers, had dealt with the problems in Batalova Vodenitsa. Detailed plans to help Roma families find housing and jobs existed and were in the process of implementation in many towns in the country, including districts of Sofia. A relevant example was the creation in June 2008 of a special working group at the Sofia municipality to deal with the demolition of social dormitory buildings in another area, known as Selishte na Stroitelia and Vietnamski Obshtezhitia. The buildings had been damaged by their lawful and unlawful occupants, predominantly of Roma origin, and the working group was seeking possibilities of finding housing for them in separate districts of Sofia, "in order to avoid large concentrations of Roma people".

96. The Government thus stated that the relevant authorities were working to find a lasting solution to the housing problem of the Roma families concerned before reclaiming the municipal land they occupied in Batalova Vodenitsa.

97. The Government also submitted that the decision to remove the applicants' houses was motivated solely by the need to enforce the law on illegal constructions and put an end to a situation which posed a sanitary risk and disfigured the city landscape. The authorities in any European capital would do as much. The applicants were not entitled to privileged treatment because of their ethnic origin or traditional lifestyle. They were not being treated in a discriminatory manner, measures against illegal occupation being undertaken regardless of the ethnicity of the persons concerned. The Government submitted information about orders for the demolition of illegal constructions in different parts of the country. Moreover, in their view, the one-sided presentation of the problems of the Roma population in Bulgaria by their self-appointed representatives seeking popularity stirred tension and provoked reactions from other ethnic groups. The Government were against such attempts to incite ethnic hatred. The reality was that there were two sides in the dispute: the lawful residents of the neighbourhood and the applicants, who occupied municipal land without title and "whose way of life is in contradiction with public norms and rules and in this sense generates tensions in society".

98. The Government also appealed to the Court to take into account, in deciding the case, the reaction a finding of a violation of the Convention would prompt in Bulgarian society, precisely because Bulgarian society expected to see the law applied equally to persons from all ethnic groups.

99. Lastly, noting that for short periods four of the applicants had registered at addresses outside Batalova Vodenitsa, the Government submitted that such changes could also be observed in respect of other Roma inhabitants. Therefore, in the Government's view, the supposition could be made that some of the persons concerned had "acquired flats", sold them and then again registered in Batalova Vodenitsa with the aim of obtaining municipal flats.

B. The Court's assessment

100. Considering that the central issues in the present case concern the applicants' rights under Articles 8 and 14 of the Convention, the Court will examine these complaints first.

1. Article 8 of the Convention

101. This provision reads, in so far as relevant:

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

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

(a) Whether the enforcement of the removal order would interfere with rights protected by Article 8

102. It is undisputed that the applicants and their families have lived for many years in the makeshift houses they or their ancestors built on State or municipal land in Batalova Vodenitsa. While for unspecified limited periods four of the applicants had their registered addresses outside that area, it is not disputed that they returned (see paragraphs 8, 12, 17, 43 and 99 above). The Government's suggestion that some of the Roma living in the area may have registered there with the aim of obtaining municipal flats is not supported by any evidence.

103. In these circumstances, the applicants' houses in Batalova Vodenitsa are their "homes" within the meaning of Article 8. This classification is a matter of fact independent of the question of the lawfulness of the occupation under domestic law (see *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008). It follows that the applicants' complaints concern their right under Article 8 to respect for their homes.

104. There is no doubt that the 2005 removal order, if enforced, would result in the applicants' losing their homes and that, therefore, there would be an interference with their right to respect for their homes (see *Ćosić v. Croatia*, no. 28261/06, § 18, 15 January 2009).

105. Having regard to the fact that the case concerns the expulsion of the applicants as part of a community of several hundred persons and that this measure could have repercussions on the applicants' lifestyle and social and family ties, it may be considered that the interference would affect not only their "homes", but also their "private and family life" (see, similarly, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 73, ECHR 2001-I).

106. The Court must examine, therefore, whether such interference, if it materialises, would be lawful and necessary in a democratic society for the achievement of one or several of the legitimate aims set out in paragraph 2 of Article 8.

(b) Lawfulness

107. The Court is satisfied that the impugned removal order has a valid legal basis in domestic law (see paragraphs 29 and 66 above).

108. The question whether the applicable domestic legal framework and procedures meet the relevant Convention requirements appears to be in dispute. The Court will examine it below in the context of the question

whether the interference, if it materialises, would be justified under Article 8 § 2.

(c) Legitimate aim

109. The applicants alleged in essence that the removal order did not pursue a legitimate aim but was intended to benefit a private entrepreneur and to satisfy racist demands to free the area of an unwanted Roma settlement. The Government's position was that the aim of the measure was to recover illegally occupied municipal land, realise plans for urban development and put an end to a situation involving safety and health risks which had given rise to complaints.

110. The Court observes that the order of 17 September 2005 did not contain a statement about its aim. It was based on a legal provision which concerns recovering a real property from persons who are not authorised to hold it (see paragraph 66 above). As it transpires from statements made by the mayor of the relevant district and from the Government's submissions (see paragraphs 39, 42 and 92 above), putting an end to the unlawful occupation of the land by the applicants was, apparently, the main aim pursued by the impugned order.

111. As the Court has previously stated, it is legitimate for the authorities to seek to regain possession of land from persons who did not have a right to occupy it (see *McCann v. the United Kingdom*, cited above, § 48 and *Connors v. the United Kingdom*, no. 66746/01, § 69, 27 May 2004).

112. Furthermore, it is undisputed that the Batalova Vodenitsa settlement comprises buildings which do not meet the relevant construction requirements (see paragraphs 10-14 above). While it is true that the Government have not submitted evidence of concrete and imminent construction projects, there was a general intention on the part of the authorities to use the land occupied by the applicants for urban development. In particular, such plans for Batalova Vodenitsa had been made and amended several times in the past, including well before 2005 (see paragraphs 9, 15 and 26 above).

113. Unlike the applicants, the Court fails to see an indication of improper motives in the authorities' plans to transfer the land to a private investor for development purposes (see paragraph 27 above). Improvement of the urban environment by removing unsightly and substandard buildings and replacing them with modern dwellings meeting the relevant architectural and technical requirements is a legitimate aim in the interests of economic well-being and the protection of the health and the rights of others and may in principle justify interference with rights under Article 8 of the Convention (see a similar approach in *Buckley v. the United Kingdom*, 25 September 1996, §§ 62 and 63, *Reports of Judgments and Decisions* 1996-IV, and *Chapman*, cited above, §§ 80-116).

114. The Court observes, in addition, that it is undisputed that the applicants' homes lack sewage and sanitary facilities. The Government also alleged that there was a risk of some makeshift houses collapsing. In the Court's view, while there is no clear evidence of the authorities having considered these issues from the point of view of the needs of those most concerned – the applicants –, it must be acknowledged that there is a legitimate public interest in taking measures to cope with hazards such as those that may stem from an unlawful settlement of makeshift houses lacking sewage and sanitary facilities. Indeed, this was admitted by representatives of the Batalova Vodenitsa residents in the text of the agreement which they signed with the municipal authorities on 28 September 2005 (see paragraphs 11 and 34 above).

115. Lastly, the Court finds unconvincing the applicants' argument that the authorities envisaged building plans as a mere pretext and that the real aim of the removal order was nothing more than a racist attempt to rid the area of the presence of all Roma. As noted above, there is sufficient evidence of genuine plans for urban development in the area and health and safety hazards and it is legitimate for the authorities, in the interests of economic well-being and the protection of health and of the rights of others, to seek to address these problems.

116. It follows that the impugned measure, if enforced, would have a legitimate aim under Article 8 § 2 of the Convention. The salient issue in the present case concerns "necessity in a democratic society" within the meaning of that provision and the Court's case-law.

(d) Necessity in a democratic society

i. General principles

117. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, among other authorities, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, §§ 88, ECHR 1999-VI).

118. In this regard, a margin of appreciation must be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the

nature of the aim pursued by the restrictions. The Court has noted the following relevant considerations in this respect:

(i) In spheres involving the application of social or economic policies, including as regards housing, there is authority that the margin of appreciation is wide, as in the urban or rural planning context where the Court has found that "[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation" (see, for example, *Buckley*, cited above, p. 1292, § 75 *in fine*, and *Ćosić*, cited above, § 20);

(ii) On the other hand, the margin of appreciation left to the authorities will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Since Article 8 concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (see, among many others, *Connors*, cited above, § 82);

(iii) The procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley*, cited above, pp. 1292-93, § 76, and *Chapman*, cited above, § 92). The "necessary in a democratic society" requirement under Article 8 § 2 raises a question of procedure as well of substance (see *McCann*, cited above, § 26);

(iv) Since the loss of one's home is a most extreme form of interference with the right under Article 8 to respect for one's home, any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8, notwithstanding that, under domestic law, he has no right of occupation (see *Kay and Others v. the United Kingdom*, no. 37341/06, § 67-8 and 74, 21 September 2010 and *Orlić v. Croatia*, no. 48833/07, § 65, 21 June 2011). This means, among other things, that where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic judicial proceedings, the domestic courts should examine them in detail and provide adequate reasons (*ibid.*, §§ 67-69);

(v) Where the national authorities, in their decisions ordering and upholding the applicant's eviction, have not given any explanation or put

forward any arguments demonstrating that the applicant's eviction was necessary, the Court may draw the inference that the State's legitimate interest in being able to control its property should come second to the applicant's right to respect for his home (*ibid*).

ii. Application of those principles to the facts of the case

α) The Court's approach in the present case

119. Seeing that the applicants have been ordered to leave under a final binding removal order but its enforcement has been postponed and a significant period has elapsed since then (see paragraphs 35, 52 and 56 above), the Court must examine separately (i) whether the removal order, as it was issued and reviewed by the courts in 2005-2006, was justified under Article 8 § 2 and (ii) whether other events or measures taken by the authorities since then may affect the Court's conclusion on what is necessary in a democratic society.

β) Whether the order of 17 September 2005 was justified under Article 8 § 2

120. There is no doubt that the authorities are in principle entitled to remove the applicants, who occupy municipal land unlawfully (see paragraph 111 above).

121. The Court notes, however, that for several decades the national authorities did not move to dislodge the applicants' families or ancestors and, therefore, *de facto* tolerated the unlawful Roma settlement in Batalova Vodenitsa (see paragraphs 8, 17 and 92 above). In its view, this fact is highly pertinent and should have been taken into consideration (see, for example, *Orlić v. Croatia*, § 70, cited above). While the unlawful occupants cannot claim any legitimate expectation to remain, the authorities' inactivity has resulted in the applicants' developing strong links with Batalova Vodenitsa and building a community life there. The principle of proportionality requires that such situations, where a whole community and a long period are concerned, be treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property.

122. The impugned removal order was based on section 65 of the Municipal Property Act, under which persons unlawfully living on municipal land can be removed regardless of any special circumstances, such as decades-old community life, or possible consequences, such as homelessness. Under the relevant domestic law, as in force at the time, the municipal authorities were not required to have regard to the various interests involved or consider proportionality (see paragraphs 38, 66 and 72 above). Relying on this legal framework, the municipal authorities did not give reasons other than to state that the applicants occupied land unlawfully and, in the judicial review proceedings, the domestic courts expressly

refused to hear arguments about proportionality and the lengthy period during which the applicants and their families had lived undisturbed in Batalova Vodenitsa (see paragraphs 29-31 and 36-38 above).

123. In cases such as the present one, this approach is in itself problematic, amounting to a failure to comply with the principle of proportionality. Under Article 8 of the Convention, the removal order against the applicants can only be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued (see the case-law cited in paragraphs 121 and 122 above).

124. The Court further observes that it is undisputed that the houses of most applicants do not meet basic sanitary and building requirements, which entails safety and health concerns. It considers, however, that in the absence of proof that alternative methods of dealing with these risks have been studied seriously by the relevant authorities, the Government's assertion that the applicants' removal is the appropriate solution is weakened and cannot in itself serve to justify the removal order.

125. Indeed, the Bulgarian authorities have recognised, as can be seen from their long-term programmes and declarations on Roma inclusion and housing problems, as well as from projects realised in other parts of Sofia or elsewhere in the country, that a wide range of different options are to be considered in respect of unlawful Roma settlements. Among those are legalising buildings where possible, constructing public sewage and water-supply facilities and providing assistance to find alternative housing where eviction is necessary (see paragraphs 60-63, 65, 69, 70, 73-83 and 95 above). While some of these options are directly relevant to achieving appropriate urban development and removing safety and health hazards, the Government have not shown that they were considered in the case at hand.

126. In addition, it is noteworthy that before issuing the impugned order the authorities did not consider the risk of the applicants' becoming homeless if removed. They attempted to enforce the order in 2005 and 2006 regardless of the consequences and, while they signed an agreement containing an undertaking to secure alternative shelter, they later disregarded it and declared that the risk of the applicants' becoming homeless was "irrelevant" (see paragraphs 27-42 above). The Court considers, however, that in the specific circumstances of the present case, in view, in particular, of the long history of undisturbed presence of the applicants' families and the community they had formed in Batalova Vodenitsa, the principle of proportionality required that due consideration be given to the consequences of their removal and the risk of their becoming homeless.

127. The Court also notes that there is no indication that the construction plans invoked by the Government ever moved close to the stage of implementation. The Government have not shown, therefore, that the land

was urgently needed for the public need they mentioned. Proportionality in cases such as the present one is inextricably linked to the use for which the authorities seek to recover the land. In principle, in cases where the domestic authorities have considered these matters, the Court would normally accept their conclusion unless manifestly unreasonable. As there is no evidence of such an attempt, the Court cannot but attach less weight to the alleged importance of the development plans for the land currently occupied by the applicants.

128. Furthermore, it transpires from statements made by municipal officials and the Government's submissions before the Court that at the local level, in the present case, the authorities have refused to consider approaches specially tailored to the needs of the Roma community on the ground that such an attitude would amount to discrimination against the majority population. In this connection, in the Court's view, there would appear to be a contradiction between, on the one hand, adopting national and regional programmes on Roma inclusion, based on the understanding that the applicants are part of an underprivileged community whose problems are specific and must be addressed accordingly, and, on the other hand, maintaining, in submissions to the Court, as the respondent Government did in this case, that so doing would amount to "privileged" treatment and would discriminate against the majority population (see paragraphs 41, 60-63 and 95-98 above).

129. The latter argument fails to recognise the applicants' situation as an outcast community and one of the socially disadvantaged groups (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 182, ECHR 2007-IV, with further references). Such social groups, regardless of the ethnic origin of their members, may need assistance in order to be able effectively to enjoy the same rights as the majority population. As the Court has stated in the context of Article 14 of the Convention, that provision not only does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them but, moreover, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of Article 14 (see *D.H. and Others v. the Czech Republic*, cited above, § 175; *"Case relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits)*, judgment of 23 July 1968, Series A no. 6, § 10; *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-...). In the context of Article 8, in cases such as the present one, the applicants' specificity as a social group and their needs must be one of the relevant factors in the proportionality assessment that the national authorities are under a duty to undertake.

130. The above does not mean that the authorities have an obligation under the Convention to provide housing to the applicants. Article 8 does

not in terms give a right to be provided with a home (see, *Chapman*, cited above, § 99) and, accordingly, any positive obligation to house the homeless must be limited (see *O'Rourke v. the United Kingdom* (dec.), no. 39022/97, ECHR 26 June 2001). However, an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 of the Convention in exceptional cases (*ibid.*; see, also, *mutatis mutandis*, *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

131. It is also true that the applicants themselves have not been active in seeking a solution (see paragraphs 13, 43 and 51 above). It appears that they are reluctant to seek social housing at least partly because they do not want to be dispersed, find it difficult to cover the related expenses and, in general, resent the radical change of their living environment that moving into blocks of flats would entail. However, Article 8 does not impose on Contracting States an obligation to tolerate unlawful land occupation indefinitely (see *Chapman*, cited above, § 96, which concerns a very specific and relatively narrow positive obligation to facilitate itinerant way of life which is determinative of an identity).

132. The relevant point in this case is, nonetheless, that the disadvantaged position of the social group to which the applicants belong could and should have been taken into consideration, for example, in assisting them to obtain officially the status of persons in need of housing which would make them eligible for the available social dwellings on the same footing as others. This has been recognised by the Bulgarian authorities in their national and regional programmes but that did not result in practical steps being taken in the present case (see paragraphs 55-59 and 61-65 above).

133. In general, the underprivileged status of the applicants' group must be a weighty factor in considering approaches to dealing with their unlawful settlement and, if their removal is necessary, in deciding on its timing, modalities and, if possible, arrangements for alternative shelter. This has not been done in the present case.

134. In sum, the Court finds that the respondent Government failed to establish that the removal order of 17 September 2005 was necessary in a democratic society for the achievement of the legitimate aims pursued.

γ) Whether events since 2005-2006 would render the enforcement justified

135. It is true that in the years since September 2005 the fate of the Batalova Vodenitsa area has been the subject of negotiations, discussions and examination by consultative bodies such as the National Council for Cooperation on Ethnic and Demographic Issues. The Council apparently recommended consideration of alternative modes of action and a more balanced solution. The Government and the local authorities in Sofia declared on several occasions that they planned to find a solution to the applicants' housing problem by providing them with alternative shelter (see

paragraphs 33, 44, 55, 57 and 96 above). It is also true that several programmes on Roma housing problems have been adopted at the national and regional level in Bulgaria (see paragraphs 60-63 above) and that, apparently, some projects in other locations have been undertaken. All this may suggest that the authorities are seeking a proportionate approach, combining the enforcement of building planning rules with positive measures to assist the individuals concerned.

136. The Court cannot but observe, however, that these discussions and programmes were not part of a formal procedure before a body in which power to modify the impugned order for the applicants' removal was vested and, in any event, they did not result in any legal act concerning the applicants concretely. The order of 17 September 2005 has remained in force and is still enforceable. Although the mayor of the relevant district suspended the applicants' removal temporarily, it is significant that, as it appears from the material submitted to the Court, there has been no decision to re-examine the order of 17 September 2005 or tie its enforcement to the implementation of appropriate measures to secure respect for the applicants' Article 8 rights (see paragraphs 41, 45-48 and 56 above).

137. In these circumstances, it cannot be considered that the above-mentioned *post hoc* discussions have secured the fair decision-making process that is indispensable for the discharge of the respondent State's duties under Article 8 of the Convention or that "necessity in a democratic society" was otherwise demonstrated.

138. The Government have also argued that repeated complaints by neighbours, including in 2008 and 2009, would justify the enforcement of the removal order (see paragraphs 93 and 97 above).

139. It appears undisputed between the parties that, before 2005 and since then, there have been repeated complaints by residents of blocks of flats adjacent to the land at issue in which two main issues were raised: (i) sanitary risks mainly related to the lack of sewage and the fact that the applicants' homes do not meet building requirements and (ii) offences and disturbances of public order allegedly committed by the residents of the unlawful settlement in Batalova Vodenitsa (see paragraphs 20-25, 42 *in fine*, 56, 93 and 97 above).

140. On the first issue, the Court has already found that health risks of that kind could in principle justify the impugned measures, had it been demonstrated – which is not so in the present case – that the removal order respected the principle of proportionality (see paragraphs 120-134 above).

141. As to the second issue, the Court accepts that the authorities were under a duty to act in response to the neighbours' allegations about offences and disturbances in the area. It was their responsibility to apply the law and, if necessary, investigate the alleged offences and sanction the individuals concerned. The respondent Government have not provided any evidence of such action having been taken.

142. Some of the neighbours' complaints, however, also contained illegitimate demands, such as to have the applicants "returned to their native places" (see paragraph 93 above). It is also clear that the situation that obtained was characterised by tension that risked fuelling animosity between two social and ethnic groups. It was therefore important to act in such a manner that the authorities were not seen as being influenced by hostile attitudes of one group against another. However, the Court is not convinced that these subsequently raised illegitimate demands played any role in the initial decision-making process for the issuing of the removal order in question.

143. In sum, the events since the removal order was issued and reviewed by the domestic courts do not provide a basis for a conclusion that its future enforcement would be justified.

(e) Conclusion as regards Article 8

144. The above considerations are sufficient for the Court to reach the conclusion that there would be a violation of Article 8 in the event of enforcement of the deficient order of 17 September 2005 as it was based on legislation which did not require the examination of proportionality and was issued and reviewed under a decision-making procedure which not only did not offer safeguards against disproportionate interference but also involved a failure to consider the question of "necessity in a democratic society".

2. Article 14 in conjunction with Article 8

145. The parties' submissions are summarised in paragraphs 85-99 above. In essence, the applicants complained that the removal order was based on racist attitudes against them and the Government maintained that the removal order was justified and that the applicants could not claim a privileged treatment.

146. It is undisputed that Article 14 applies in the present case, seeing that discrimination is alleged in relation to the applicants' right to respect for their homes and private life and, therefore, in respect of issues falling within the ambit of Article 8 (see, for example, *E.B. v. France* [GC], no. 43546/02, § 47, 22 January 2008, and *Larkos v. Cyprus* [GC], no. 29515/95, § 28, ECHR 1999-I).

147. The Court observes, however, that the issue before it is whether a hypothetical future enforcement of the removal order would be discriminatory. The Court cannot speculate about the timing and modalities of any such enforcement and assess the Article 14 issue on the basis of a hypothetical scenario. For example, it cannot assume, as urged by the applicants, that the authorities would again seek to remove them at very short notice.

148. The Court also notes that the main argument of the applicants about discrimination concerns the allegation that the authorities were unduly

influenced by hostile attitudes and complaints from neighbours. The Court has dealt with relevant aspects of these issues in the context of proportionality under Article 8 (see paragraphs 128-143 above).

149. In these circumstances, the Court finds that no separate issue arises under Article 14 with regard to any future enforcement of the removal order of 17 September 2005.

3. Articles 3 and 13 of the Convention and Article 1 of Protocol No. 1

150. The applicants considered that in the event of enforcement of the order of 17 September 2005 there would also be violations of Articles 3 and 13 of the Convention and Article 1 of Protocol No. 1. The Government disputed this.

151. The Court, noting that the enforcement of the order of 17 September 2005 has been suspended, cannot speculate about the modalities of any future enforcement and cannot assume, as urged by the applicants, that the authorities would again seek to remove them at very short notice or would not offer alternative shelter where appropriate. Nor can it assume that the authorities would damage their belongings or would not allow time to move them. The municipal authorities had stated their intention to issue a separate demolition order in the event of enforcement of the impugned removal order (see paragraph 31 above).

152. In any event, the Court has already found that the enforcement of the removal order of 17 September 2005 would violate the applicants' rights under Article 8 on the grounds that it was issued and reviewed in a manner which did not secure the minimum procedural safeguards. In these circumstances, there is no reason to doubt that the respondent Government would comply with the present judgment and would not act in violation of the Convention by removing the applicants on the basis of a deficient order.

153. For the reasons set out above, the Court finds it unnecessary to examine the above complaints separately.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

154. The applicants alleged that, apart from any violation of the Convention that would occur in the event of the future enforcement of the removal order, the authorities had already violated their rights under Articles 3, 8, 13 and 14.

155. In particular, in their view, the unjust and arbitrary manner in which the authorities had acted – seeking summarily to remove them after decades of tolerating their presence, disregarding signed agreements and legitimate concerns, moving on the basis of racially biased complaints by non-Roma inhabitants and demonstrating clear indifference to the applicants' becoming homeless, amounted to treatment of such gravity that

it could be characterised as degrading. That treatment was in any event discriminatory.

156. The Government considered that all the actions complained of were lawful and justified under the Convention.

157. The Court accepts that the applicants' situation in September 2005, when they and their families were given only several days to leave their decades-old homes, was unenviable. The Court has already found that Article 8 would be violated in the event of the removal order of 17 September 2005 being enforced (see paragraph 144 above).

158. It is further relevant that the authorities accepted to suspend the enforcement of the removal order. The Court finds unconvincing the applicants' argument that, despite the above, they were subjected to treatment beyond the threshold of severity required under Article 3 or suffered a separate violation of Article 8 as a result of the very fact that the authorities announced their decision to remove them and made preparatory moves. It should not be overlooked that the applicants knew at all relevant times that they occupied municipal land unlawfully and could not expect to remain there indefinitely.

159. It is true that serious cases of discriminatory statements by public officials or failure by the authorities to react to racist statements may constitute violations of Article 14 or even Article 3 (see *Moldovan v. Romania (no. 2)*, nos. 41138/98 and 64320/01, §§ 111-14, ECHR 2005-VII (extracts), with further references). The Court cannot exclude furthermore that a failure to react to discriminatory attitudes and statements could amount to a violation of Article 14 in conjunction with other Convention provisions, including Article 8.

160. The Court notes, however, that that the applicants' main complaint concerns a potential violation of the their rights under Article 8. As regards the attitudes and statements complained of, Bulgaria has put in place legal protection mechanisms, such as the possibility to file complaints to the commission set up under the Protection against Discrimination Act or directly bring judicial proceedings. This mechanism apparently functions in practice as seen from relevant examples (see paragraph 71 above) and the applicants have not claimed that they could not resort to it. It cannot be said, therefore, that the national legal system left the applicants defenceless. They could bring legal proceedings with a view to having incidents of hate speech examined and obtain an authoritative condemnation of any racist statements, and compensation.

161. In sum, the Court, having examined in detail the complaints concerning the future enforcement of the removal order of 17 September 2005 (see paragraphs 100-153 above), finds that the applicants have not established convincingly that the additional complaints formulated by them give rise to a separate issue under the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

162. The Court finds it appropriate to consider the present case under Article 46 of the Convention, which reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

163. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

164. Contracting States' duty in international law to comply with the requirements of the Convention may require action to be taken by any State authority, including the legislature (see *Viaşu v. Romania*, no. 75951/01, 9 December 2008).

165. In view of the relevant strict provisions in the Municipal Property Act, noted in the present judgment (see paragraphs 122 and 123 above), and the fact that the order of 17 September 2005 is still enforceable in Bulgarian law, it appears necessary to assist the respondent Government in the execution of their duty under Article 46 of the Convention.

166. In particular, in view of its findings in the present case, the Court expresses the view that the general measures in execution of this judgment should include such amendments to the relevant domestic law and practice so as to ensure that orders to recover public land or buildings, where they may affect Convention-protected rights and freedoms, should, even in cases of unlawful occupation, identify clearly the aims pursued, the individuals affected and the measures to secure proportionality.

167. In so far as individual measures are concerned, the Court is of the view that the execution of the present judgment requires either the repeal of the order of 17 September 2005 or its suspension pending measures to ensure that the authorities have complied with the Convention requirements, as clarified in the present judgment.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. Article 41 of the Convention provides:

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

A. Damage

169. The applicants claimed 10,000 euros (EUR) each for non-pecuniary damage. They stated that they had suffered from the fact that they had to live for years under the threat of homelessness and from the alleged racial bias in the authorities' actions. The applicants requested that any award of damages should be made payable to the bank account of the Bulgarian Helsinki Committee.

170. The Government, objecting to the allegations about discrimination and racist attitudes on the part of the authorities, considered that the finding of a violation of the Convention would constitute sufficient just satisfaction.

171. In the present case, the Court found that there would be a violation of Article 8 of the Convention if the order of 17 September 2005 were enforced. In most cases concerning violations that have not already occurred, the Court considered that the finding of a violation was sufficient just satisfaction (see, *mutatis mutandis*, *Raza v. Bulgaria*, no. 31465/08, § 88, 11 February 2010, with further references). It sees no reason to reach a different conclusion in this case. Furthermore, it is relevant that, as noted above, the applicants themselves have not been very active in seeking a solution that would allow them to put an end to their unlawful occupation of land in Batalova Vodenitsa (see paragraphs 13, 43 and 51 above).

B. Costs and expenses

172. The applicants claimed EUR 5,786.82 for costs and expenses relating to the domestic proceedings and the proceedings before the Court. This sum included legal fees for eighty-one hours of legal work at the hourly rate of EUR 70 and court fees in the amount of EUR 116.82. The applicants submitted copies of a legal fees agreement, a time sheet and receipts. They requested that any sums awarded under this head should be paid directly into the bank account of the Bulgarian Helsinki Committee, the organisation which provided them with legal assistance.

173. The Government considered that the claim was excessive as the hourly rate claimed allegedly exceeded several times the usual rates charged by lawyers in Bulgaria.

174. Having regard to the relevant criteria and considering that the number of hours of legal work claimed appears to be excessive, the Court awards EUR 4,000 in respect of costs and expenses.

C. Default interest

175. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there would be a violation of Article 8 of the Convention in the event of the enforcement of the order of 17 September 2005;

2. *Holds* that no separate issue arises under Article 14 of the Convention in conjunction with Article 8;

3. *Holds* that it is not necessary to examine separately whether there would be violations of Articles 3 and 13 of the Convention and Article 1 of Protocol No. 1 in the event of the enforcement of the order of 17 September 2005;

4. *Holds* that no separate issue arises in respect of the applicants' complaints under Articles 3, 8, 13 and 14 of the Convention about the authorities' past actions and statements in relation to Batalova Vodenitsa;

5. *Holds* that the finding of a violation of Article 8 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of costs and expenses, to be converted into Bulgarian levs at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants, to be paid into the bank account of the Bulgarian Helsinki Committee[1];

1. Rectified on 5 June 2012: ", to be paid into the bank account of the Bulgarian Helsinki Committee" has been added.

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

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President