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

FIFTH SECTION

DECISION

Application no. 46889/16
Erdjan BEKIR and Others
against North Macedonia

The European Court of Human Rights (Fifth Section), sitting on 24 June 2021 as a Committee composed of:

Mārtiņš Mits, *President,*
Jovan Ilievski,
Ivana Jelić, *judges,*

and Martina Keller, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 August 2016,

Having regard to the decision not to indicate to the respondent Government an interim measure under Rule 39 of the Rules of Court,

Having regard to the decision to give priority to the application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. At the time, twenty-nine of them were children, including one infant, one applicant was a pregnant woman, one applicant had a child with a disability and three applicants were men whose wives were pregnant. The applicants were represented before the Court by the European Roma Rights Centre (ERRC), a non-governmental organisation (NGO) based in Brussels, Belgium, which also complained in its own name.

2. The Government of North Macedonia ("the Government") were represented by their Agent, Ms D. Djonova.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background information

4. The applicants, together with other Roma families, had been living in an informal and substandard settlement in Skopje in an area known as "Polygon", on the bank of the River Vardar (near the city centre, in the vicinity of the United States embassy, the residence of the Archbishop of the Macedonian Orthodox Church-Ohrid Archdiocese, pedestrian paths and a recreational area). They alleged that most of the families had been living there for between five and nine years (a video-recording of the settlement allegedly made in 2010 was submitted in support of this allegation). The Government denied that the settlement had existed before the end of 2014, when improvised shelters for some Roma families had been noticed for the first time during on-site inspections by the competent local authorities.

5. The settlement was located on State-owned land intended for the construction of a public road. It consisted of tents, makeshift dwellings and shacks made out of available material, such as paper, cardboard, wood and nylon sheets. The living conditions in the settlement were poor. The only water source was a single water pump. Weather conditions permitting, the applicants used the River Vardar for their hygiene needs. The applicants' source of income came from collecting and selling scrap iron, paper and plastic. According to them, they were "reduced to some of the most abject poverty observable in Europe today".

6. From February 2015 several meetings were held between the competent utility services and local and social welfare authorities regarding issues related to the settlement, such as the accumulation of waste, environmental and fire hazards, health risks and alternative accommodation for the residents. The utility and social welfare services carried out several on-site inspections, during which they informed the residents (including some of the applicants) of the intended cleaning-up of the site and demolition of the settlement, and of their social rights, and offered them alternative accommodation in a shelter for homeless persons in Čičino Selo ("the shelter") located on the outskirts of Skopje (the official reports of the visits stated that all the persons concerned had refused the offer and sought placement in State-owned flats for socially endangered categories ("social flats")). During the visits it was established that some of the residents, including some of the applicants, had registered residences elsewhere or were recipients of a pecuniary social allowance. Prior to the impugned measure of 1 August 2016 described below, clean-up operations ordered under the Public Cleanliness Act had already taken place on the site, in the presence of social welfare services and the police, in April (in the presence of a local NGO) and August 2015 and April 2016 (in addition, a private adjacent plot of land had been cleaned up in January 2016). The applicants and the other occupants subsequently returned to the site and rebuilt their homes out of the available materials.

B. Relevant events

1. Events preceding the impugned measure of 1 August 2016

7. On 14 June 2016 the ERRC enquired with the competent local authorities when access to water would be secured at the site, which was "one of the focus sites for the ERRC's water-supply projects". On 1, 8 and 11 July 2016 the city utility services inspectorate visited the site and established that homeless people had created a waste dumping ground contrary to the Public Cleanliness Act. On the latter date, the city inspectorate ordered, under section 27 of that Act, a public utility company (*јавно претпријатие "Комунална хигиена"*) to clean up the site. As provided for by law and stated in the order, an appeal without suspensive effect could be submitted to a second-instance government commission. On 26 July 2016 the city authorities asked the social welfare services to attend the clean-up operation scheduled for 1 August 2016 in order to assist the Roma residents. The applicants were not served this order and nor did they receive any formal notification of the measure.

2. Events of 1 August 2016

8. On 1 August 2016 the public utility company proceeded with the enforcement of the above order. As stated by the applicants, on the morning of 1 August 2016, the water pump was destroyed by the police. Later the same day, an excavator demolished the applicants' homes and some of their belongings (documents, clothes and furniture).

9. According to the official documents, social workers and the police attended the clean-up operation, during which 100 cubic metres of waste, namely cardboard, plastic bottles, pieces of electric appliances, tyres and cables, were collected. The documents do not indicate that there were any improvised shelters on the site at the time of the operation. The Government argued that the residents, including the applicants, had removed all their personal belongings prior to that date. All the persons concerned, most of whom refused to identify themselves, had declined the proposal by the social welfare services to be accommodated in the shelter and had asked to be accommodated in social flats (articles in the media of July 2016 reported that the shelter was the "only shelter for homeless persons in the [respondent State]").

10. After the clean-up operation (which was covered by the media), the residents resettled on the site, rebuilding, as stated by the applicants, "another informal settlement in similarly bad conditions" (a video-recording of 5 August 2016 showed tents and improvised shelters made of nylon sheets, as well as selected waste (plastic bottles)). They were provided with support by NGOs and the Red Cross. The applicants continued collecting and selling plastics and other waste in order to make a living.

3. Events after the impugned measure of 1 August 2016

11. Subsequent to the impugned measure, the social welfare services offered some of the applicants accommodation in the shelter, which they refused due to security concerns (security concerns about the shelter, based on oral testimonies, had been voiced in the media in November 2014). Minutes of the on-site visits of the social welfare services of 3 and 4 August 2016 confirmed the above refusal. In a television report of 5 August 2016 regarding an on-site visit of the shelter by representatives of the applicants and a Roma NGO, one applicant stated that accommodation at the shelter was inadequate because "there was no work for them to do ... and (they) could not bring a cart ...". On 8 August 2016 the issue of housing was discussed at a meeting between the applicants, the NGO and the social welfare services. The latter visited the site again and identified twenty-nine families, including many of the applicants. All the persons contacted refused to be accommodated in the shelter. The documents indicated that some residents (including some of the applicants) had registered residences elsewhere, were recipients of pecuniary social allowances and/or had health insurance. According to the applicants, those residences were either uninhabitable or overcrowded or they were no longer entitled to reside in them.

12. On 22 September 2016 the police and social welfare services visited the site in order to identify those present. During the visit, twenty-four applicants (including the family of the pregnant woman, who had meanwhile given birth) refused to be accommodated in the shelter due to security concerns. Some of the applicants unsuccessfully requested to be accommodated in two other social facilities in the vicinity of Skopje. On 27 October 2016 social welfare services visited the site again and identified twenty-one families, including most of the applicants. It was established that many of them were recipients of pecuniary social allowances and that some of them had paid jobs.

13. As explained by the Ombudsman in an exchange with the ERRC, in November 2016 the Ombudsman had visited the locality and noted that there had been 135 people, including seventy-eight children and six pregnant women living "in very difficult conditions, in tents, without light, without water, and without any help from the public institutions".

4. Other relevant facts

(a) The shelter for homeless persons in Čičino Selo ("the shelter")

(i) Living conditions and other relevant information about the shelter

14. According to a 2013 report of the Ombudsman, the living conditions in the shelter in Čičino Selo were inadequate, with insufficient food and food-storage facilities, a low level of hygiene, and problems with waste collection and access to healthcare and education (in particular for Roma

children). It also noted safety issues ("frequent confrontations with the local population") owing to, as alleged by the residents, the absence of a guard service and the inadequate response of the police and the social welfare services to reported incidents.

15. In August 2016 there were fifty-five people (adults and children of different ethnic origins) accommodated in the shelter. At that time there were four available rooms (the surface area of the rooms was in the range of between 12 and 16 sq. m) suitable for accommodating fifteen to twenty people. In the exchange with the ERRC noted above, the Ombudsman stated that in November 2016 there had been two available rooms in the shelter and the overall conditions there had been worse than those indicated in the 2013 report (see above). These latter observations preceded the completion of the reconstruction work (see paragraph 17 below) and concerned the rooms that had not been renovated.

16. According to official statistics, between 2012 and 2016 there were no reports of incidents with the local population outside the shelter. Petty crimes against public order (inappropriate behaviour in public, harassment, intoxication, insulting a police officer, fights) were reported as follows: nine in 2012, 2013 and 2015; six in 2014; and eight up to October 2016. Some petty offences were committed by the occupants of the shelter. In written statements of August and September 2016, several occupants of the shelter stated that the living conditions were adequate and that they received regular medical assistance; they denied the rumours of any abuse outside the shelter.

(ii) Improvement works in the shelter and other related activities

17. After part of the shelter was damaged in a fire in 2015 (twenty-four of the sixty rooms were damaged by fire), considerable construction work (completed in December 2016) and other activities were taken with a view to increasing the capacity of the shelter (reconstruction of fourteen rooms suitable for accommodating thirty-four people) and improving the living, safety (renovation of doors and windows, entry ramp, twenty-four hour guard service, three wardens), sanitary and hygiene conditions, medical assistance (free healthcare and medicines) and other conditions (one full-time educator). Furthermore, at the end of November 2016, that is subsequent to the Ombudsman's remarks (see paragraph 15 above), five mobile homes (with air conditioning) were installed in the grounds of the shelter suitable for accommodating twenty people. The Government submitted photographs of the reconstructed part of the shelter and the mobile homes.

(b) Facts regarding the applicants' accommodation subsequent to the impugned measure of 1 August 2016

18. On 5 January 2017 eleven families (sixty people) from the site, including the first, forty-second and forty-eighth to fifty-second applicants listed in the appendix accepted temporary (for one week) accommodation in two State-run social facilities in Skopje ("R.M." and "25 M."). Many other applicants, namely those listed under nos. 2-4, 13-17, 22, 37-39, 44-46 and 52-53 in the appendix below, explicitly refused that offer.

19. Following a coordinated effort by several government institutions and numerous on-site visits by social workers (official documents were provided in support of these facts), between October 2017 and October 2018, 130 people from the site were gradually accommodated in the above-mentioned State-run social facilities. According to official documents, all the applicants, except those listed under nos. 2-5, 13-19, 28-30 (who had a registered residence in another city in which they were living), 41 and 42 (who received a social allowance and lived in her registered residence and on the site) in the appendix below, were accommodated therein. After October 2018, the same applicants, except those listed under nos. 40, 43-46, 48-50 and 53 in the appendix below, were relocated to newly constructed, individual, mobile homes in village V., near Skopje, a location previously agreed upon with the occupants of the "Polygon". The accommodation was provided for a renewable period of six months. Each mobile home was composed of two fully furnished rooms with a total surface area of 24 sq. m. In the compound, the applicants benefitted from the following: continuing support by two NGOs; a full-time social worker; a professional security service; primary health insurance; vocational training (some applicants obtained paid jobs in a municipality); regular education (school, organised transportation to schools) and various cultural and entertainment activities for children. It has not been argued and nor has any evidence been put forward that the applicants specified above are no longer accommodated in that compound. According to the Government, the remaining applicants had either failed to seek accommodation in any of the above facilities or it had been difficult to locate them.

5. Miscellaneous

20. Both parties referred extensively in their submissions to the system and procedure for allocation (rent) of social flats in the respondent State. They also referred to the implementation of the National Roma Strategy 2014-20 according to which 10% of all social flats were to be allocated to Roma, as a particularly vulnerable community. According to official statistics for the period 2013-16, thirty-four social flats were allocated to Roma (assisted by local Roma NGOs). In 2014 one applicant (listed under

no. 9 in the appendix below) applied for a social flat and has not yet obtained a decision. The applicants referred to some instances in which successful candidates had not received social flats several months after their requests had been granted.

COMPLAINTS

21. The applicants complained under Article 3 of the Convention that it had been traumatising for their children to witness the demolition of their homes on 1 August 2016 and their parents' powerlessness. Under Articles 3 and 8 of the Convention, they complained that after being forcibly evicted from their homes, they had been left homeless in conditions of extreme destitution. The demolition of their dwellings had been unlawful and disproportionate and the relevant legislation had not provided the required procedural safeguards. Furthermore, the national authorities had not provided them with alternative accommodation. Under Article 13 taken in conjunction with Articles 3 and 8 of the Convention they complained that they had not had an available remedy with automatic suspensive effect before the demolition of their dwellings had taken place. Relying on Article 14, read in conjunction with Articles 3, 8 and 10 of the Convention, and Article 1 of Protocol No. 12 they complained that the demolition of their homes had been discriminatory on account of race.

22. The ERRC complained in its own name under Article 10 taken alone and in conjunction with Article 14 of the Convention that the eviction of the applicants had been carried out in retaliation for their letter of 14 June 2016 (see paragraph 7 above).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3, 8 AND 13 OF THE CONVENTION

23. The applicants complained under Articles 3 and 8 of the Convention about the demolition of their homes, the absence of any procedural safeguards and the failure of the respondent State to provide them with alternative accommodation or any other form of support. Relying on Article 13, they alleged that they had not had an effective remedy in respect of the alleged violation of their rights under Articles 3 and 8 of the Convention. The Articles in question read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

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

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

24. The Government objected that the applicants had not exhausted the effective domestic remedies, in that they had failed (a) to bring an administrative action under section 56 of the Administrative Disputes Act against the order of 11 July 2016 (see paragraph 7 above), which they should have done as soon as they had found out about the intended clean-up operation on 1 August 2016 (such a remedy was decided speedily and could result in a court order preventing the continuation of the impugned measure); (b) to lodge a private criminal complaint against the officials responsible on account of a violation of the inviolability of the home, an offence punishable under the Criminal Code; or (c) to lodge a compensation claim, coupled with a request for a court order banning the impugned measure, under the Obligations Act, on account of the alleged violation of their human rights and freedoms. Notwithstanding the applicants' vulnerability, their legal representatives ought to have been aware of those remedies, which could have provided the applicants with adequate redress. These remedies were to be regarded as effective within the meaning of Article 13 of the Convention.

25. They further submitted that the reason for the impugned measure of 1 August 2016 had been to clean up the waste dumping ground created on the site and not to demolish the applicants' homes. The authorities had had no intention of submitting the applicants to degrading or inhuman treatment. Given the applicants' vulnerability, the authorities "had tolerated" their unlawful residence at the site for "several years", and the impugned measure had not aggravated the conditions at the site. The decision to clean up the site had been lawful, necessary to protect the life and health of the population and the environment, and proportionate. It had been taken in response to public reactions and complaints about the site as a source of

environmental and health hazards. After 1 August 2016 the applicants, especially those who had been particularly vulnerable at the time (see paragraph 12 above), had been offered the most suitable alternative accommodation that the respondent State had been able to provide in view of its economic and social resources. Their refusal to stay in the shelter, which had offered much better living conditions than those at the site, had been based on security concerns, which the relevant statistics had refuted as unsubstantiated and unjustified (see paragraph 16 above). Alternative accommodation in other social facilities sought by some of the applicants (see paragraph 12 above) could not have been granted since it had concerned a children's dormitory (unsuitable for the accommodation of adults) and an institution that had ceased to operate and had no longer been State-owned. Despite the financial difficulties, the respondent State had committed itself to improving the overall conditions in the shelter.

26. They also argued (and submitted evidence) that many of the applicants had had registered residences elsewhere (and therefore could not be regarded as homeless); that they had continued to receive social allowances; that most of them (thirty-five) had had medical coverage; and that they had not applied for social flats, a procedure which did not entail a heavy administrative burden (the only exception (see paragraph 20 above) had concerned a request for accommodation of a large family in several flats close to each other).

27. Lastly, having regard to the developments described in paragraph 19 above, the Government submitted (in their submissions of 3 July 2019) that the applicants could no longer claim to be victims of the violations complained of under this head.

2. The applicants

28. The applicants argued that neither remedy invoked by the Government had suspensive effect and could not therefore be regarded as effective for their grievances under this head. Since they had not received any prior information about (the exact date of) the demolition and had not been involved in the adoption of the order leading up to their forced eviction on 1 August 2016, they could not reasonably have foreseen the events that had happened "entirely unexpectedly, let alone challenge them in court". They stated that the effectiveness of the *ex post facto* remedies invoked by the Government was to be seen from the viewpoint of the State's responsibility to ensure the existence of procedural safeguards allowing the applicants to obtain some form of judicial review of the proportionality of their eviction, which according to them should have been available prior to the carrying out of the impugned measure.

29. They reiterated that the carrying out of the impugned measure had been tantamount to the demolition of their homes. Following their forced eviction, the applicants' situation had been "significantly worse", as they

had been deprived of their only water supply and left "without any shelter and in degrading conditions". The authorities had not provided any meaningful assistance besides visiting the applicants at the site, which they had perceived as harassment (allegedly confirmed by two local NGOs contacted by the applicants) and an attempt to collect data to prove that some of them had not been eligible for social allowances. As regards the proposed accommodation in the shelter, they maintained that it had been "illusory", mainly due to "lack of space for them". They also reiterated what they had said about the poor living conditions and the security concerns, as noted by the Ombudsman. Their requests for alternative accommodation demonstrated that they had been cooperative and willing to resolve the matter (see paragraph 12 above). Their temporary accommodation during the winter season (see paragraph 18 above) had been unsuitable in that there had been no heating and insufficient food.

30. While admitting that some of them had been receiving pecuniary social allowances, the applicants submitted that this risked no longer being the case because homeless people, such as the applicants, were not eligible to obtain the allowance, the amount of which was in any event too low. Although the domestic legislation provided for mandatory health insurance for all residents of the respondent State, this was not the case in practice and the applicants "did not know what steps to take to restore or obtain sickness cover". The system of social housing "[was] entirely dysfunctional and bore the hallmarks of administrative incompetence and corruption". Figures on social housing demonstrated that insufficient numbers of social flats had been allocated to Roma (see paragraph 20 above). In any event, "the cumbersome, underfunded social housing system [wa]s an irrelevant solution to the crisis the authorities ha[d] created on 1 August 2016".

31. Lastly, they denied that the accommodation they had been provided with fifteen months after the demolition of their homes (see paragraph 19 above) had removed their "victim" status or that it meant that the matter had been resolved within the meaning of the relevant provisions of the Convention. The present case concerned the events of 1 August 2016 and their immediate aftermath. They also criticised the living conditions in those facilities, as well as the adequacy of the social, educational and other assistance provided to them.

B. The Court's assessment

1. Complaints under Articles 3 and 8 of the Convention

(a) Alleged violation of Article 3 of the Convention regarding the circumstances in which the applicants' "homes" were demolished

32. The applicants maintained that the manner in which the authorities had demolished their "meagre possessions and only shelter" and the

particularly traumatising effect it had had on their children amounted to treatment contrary to Article 3 of the Convention.

33. The Court considers it important to address the non-exhaustion objection raised by the Government in view of the relevant Convention principles summarised in the Court's judgment in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014.

34. In this connection it notes that the applicants did not apply to the civil courts in order to vindicate their rights under this head. In the Court's view, a civil action for damages under the Obligations Act would have provided the courts with an opportunity to establish the relevant facts, consider any civil responsibility of the competent authorities for the incident in question and award compensation to the injured parties. The Court has already accepted, albeit in a different context, that compensation proceedings on account of a violation of human rights and freedoms under the Obligations Act was an appropriate fact-finding forum at domestic level for the applicants' grievances under Article 3 of the Convention (see, *mutatis mutandis*, *Selami and Others v. the former Yugoslav Republic of Macedonia*, no. 78241/13, § 83, 1 March 2018, and *Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 26984/05, § 63, 19 April 2012), particularly when such grievances, as in the present case, do not include an allegation of intentional acts (see, *mutatis mutandis*, *V.V.G. v. the former Yugoslav Republic of Macedonia* (dec.), no. 55569/08, § 46, 20 January 2015, concerning compensation proceedings for medical negligence). In the latter context, similar findings were made in Article 2 cases concerning the unintentional infliction of death and/or lives being put at risk unintentionally (see *Delovski v. the former Yugoslav Republic of Macedonia* (dec.), no. 56148/15, § 25, 7 July 2020, concerning a road accident with lethal consequences, and *Koceski v. the former Yugoslav Republic of Macedonia* (dec.), no. 41107/07, § 27, 22 October 2013, in which parents were awarded non-pecuniary damages for the death of their child in a public playground).

35. In such circumstances, and in the absence of any counter-arguments by the applicants, the Court cannot but conclude that there is no reason to doubt that the civil-law remedy that was available to them would have been effective within the meaning of Article 35 of the Convention for their grievances under this head.

36. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Remaining aspects of the applicants' complaints under this head

37. The applicants complained under Articles 3 and 8 of the Convention that the demolition of their homes had been unlawful and disproportionate, that it had not been accompanied by the required procedural safeguards, and

that the national authorities had not provided them with alternative accommodation. Following their eviction, they had been living in conditions of extreme poverty, without food, drinking water or sanitation, and in degrading conditions that had been dangerous for their health and well-being.

38. Having considered the circumstances of the case and the nature of the applicants' allegations, the Court considers that the complaints under this head fall to be examined exclusively under Article 8 of the Convention (see *Costache v. Romania* (dec.), no. 25615/07, § 19, 27 March 2012; *Winterstein and Others v. France*, no. 27013/07, § 103, 17 October 2013; and *Cazacliu and Others v. Romania* (dec.), no. 63945/09, § 105, 4 April 2017).

39. The Court observes that the parties submitted conflicting accounts as to how long the applicants had lived on the "Polygon" site before the clean-up operation on 1 August 2016 (see paragraph 4 above). On the other hand, it takes note of the Government's admission that the authorities "had tolerated" the applicants' living on the site for "several years" (see paragraph 25 above). In such circumstances, the Court is ready to accept that they had sufficiently close and continuous links with their tents, makeshift dwellings and shacks (see paragraph 5 above) on the land occupied by them for this to be considered their "home", regardless of the absence of any tenure by the applicants to that land under domestic law (see *Yordanova and Others v. Bulgaria*, no. 25446/06, § 103, 24 April 2012, and *Winterstein and Others*, cited above, § 141). That some of the applicants had their registered addresses elsewhere is insufficient for the Court to hold otherwise.

40. In view of the above, the Court considers that, notwithstanding the Government's contention, the impugned measure of 1 August 2016 constituted an interference with the applicants' right to respect for their home. It has not been argued that any of the applicants' homes, as they existed at the time (see paragraph 5 above), remained on the site after the clean-up operation. On the facts, this would appear to be the fourth such operation since April 2015. Previous clean-up operations, which appear to have taken place at regular intervals (April-August-April), were the result of a coordinated approach by the competent authorities in which due consideration was given to all relevant issues regarding the settlement (environmental and health), including the applicants' housing and their social status. Each one was preceded by on-site visits of the settlement and a consultation between the social welfare services and the residents about their social rights and alternative accommodation (see paragraph 6 above). Similarly, three on-site visits of the settlement were carried out by the competent utility services in the month preceding the operation. In such circumstances and notwithstanding the absence of a formal notice of the inspectorate's order of 11 July 2016 leading up to the operation, it cannot be

considered that on the critical date the applicants were confronted with an unforeseeable risk of losing their home (see, conversely, *Petrache and Tranca v. Italy* (dec.), no. 15920/16, §30, 4 October 2016, which concerned an abrupt eviction preceded by a two-week notice period without any other indication).

41. This has no bearing on the impossibility for the applicants to seek for the impugned measure, after it had started, to be suspended. As the Court has already found, an administrative action under section 56 of the Administrative Disputes Act referred to by the Government (see paragraph 24 above) could only be brought while the impugned measure, in this case the clean-up operation carried out by the local public utility company, was ongoing (see *Dooel Zlaten Egej v. North Macedonia* (dec.), no. 4051/13, § 19, 17 November 2020). Accordingly, it is unreasonable to expect the applicants to have sought a court order preventing the continuation of the clean-up operation, which, as argued by the applicants and not disputed by the Government, lasted only a couple of hours. Similar considerations apply to the possibility of seeking, under the rules of administrative proceedings, a judicial review of the order leading up to the impugned measure (see paragraph 7 above). The existence of other procedural safeguards for the applicants to vindicate their rights under this head, as required under the Court's well-established case-law (see *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 53, 21 April 2016), will be considered below.

42. As regards the settlement itself, it is undisputed that before the impugned measure of 1 August 2016 it had been a substandard and informal settlement composed of tents, makeshift dwellings and shacks made out of available material, such as paper, cardboard, wood and nylon sheets. It is to be noted that after the clean-up operation, the applicants resettled on the site, as they had done previously when the competent authorities had carried out similar operations (see paragraphs 6 and 10 above). The applicants did not present any convincing evidence that their dwellings and the overall living conditions in the settlement after the operation had been "significantly worse" (see paragraph 29 above). On the other hand, the Court takes note of the applicants' statement and the supporting evidence that after the clean-up operation, they had rebuilt "another informal settlement in similarly bad conditions" (see paragraph 10 above). Furthermore, the operation in question apparently did not affect their principal activity, namely collecting and selling plastics and other waste, by which they made their living.

43. Notwithstanding the above, the Court will examine the impugned measure and the subsequent approach by the competent authorities.

44. On the available material, the Court is satisfied that the impugned measure had a valid legal basis in domestic law (see paragraph 7 above) and was aimed at cleaning up the area and putting an end to a situation involving

environmental and health risks which, as argued by the Government and not disputed by the applicants, had given rise to complaints (see paragraph 25 above). The available evidence shows that the same considerations had prompted the previous similar operations by the authorities (see paragraph 6 above). The existence of those risks in the present case is confirmed by the principal activity of the residents in the settlement and the evidence presented (see paragraphs 5 and 9-10 above). The Court has acknowledged that there is a legitimate public interest in taking measures to cope with hazards such as those in the present case, in the interests of the protection of health and of the rights of others (see *Yordanova and Others*, cited above, §§ 113-14). This is without prejudice to the Court's above finding that the measure in question interfered, as a consequential effect, with the applicants' homes.

45. The Court will examine the other aspects of the case in view of the relevant considerations emerging from its case-law (ibid., §§ 118 and 130, and *Winterstein and Others*, cited above, §§ 148 and 159-60).

46. In this connection it notes that the impugned measure of 1 August 2016 was carried out in the presence of the social welfare services, which remained involved in resolving the applicants' housing situation. Having regard to the subsequent steps taken by the social welfare services, most of which in coordination with and with the involvement of the applicants, the Court is satisfied that they demonstrated an active and reliable commitment to taking measures, some of which were specifically tailored to take account of the particular vulnerability of some of the applicants at the time, intended to provide at least temporary and for some of them permanent alternative accommodation (see paragraphs 11-12 and 18-19 above).

47. The Court takes note of the multiple attempts by the social welfare services to accommodate the applicants in the shelter, which they refused, stating at that time that it was due to alleged security risks (see paragraphs 11-12 above), whereas in the proceedings before the Court they gave as the principal reason the lack of space, and also the poor living conditions in the shelter (see paragraph 29 above). The Court considers that these attempts are to be seen in context and in view of the priorities and available resources (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 107, ECHR 2004-XII). It notes that it is uncontested that the shelter was the only social housing for homeless people in the respondent State (see paragraph 9 above) and that it had the capacity to provide immediate accommodation for some of the applicants (see paragraph 15 above). There is nothing to suggest that the applicants, who were being assisted at the time by local NGOs, sought accommodation in any other suitable social housing facility (see paragraph 25 above). Nor did they allege in the proceedings before the Court that such accommodation had been available or that the authorities had refused to consider any proposal on their part in this respect. As to the shelter, while it is true that some security risks and poor living conditions

had been noted by the Ombudsman (see paragraphs 14-15 above), on the available material (see paragraphs 14 and 16 above) the Court cannot determine conclusively whether they were of such a nature as to justify the applicants' refusal. It also observes the nature of their settlement at the site, where living conditions were "very difficult", as noted by the Ombudsman, to the extent that, according to the applicants, they were "reduced to some of the most abject poverty observable in Europe today" (see paragraphs 5 and 13 above). In any event, their concerns in regard to the shelter seem to have been removed in December 2016 after reconstruction work had been carried out there (see paragraph 17 above).

48. The Court also notes that no explanation has been provided why many applicants refused the offer of temporary accommodation (in January 2017) in "R.M." and "25 M.", the same State-run social facilities in which several months later (October 2017) the vast majority of the applicants accepted to be housed (see paragraphs 18-19 above). They then remained there until October 2018 when most of them were relocated to another social housing facility near Skopje. The applicants did not present any evidence in support of their allegations that the living conditions in these facilities were poor (see paragraph above). Furthermore, there is no information regarding any subsequent change to the situation of the applicants who opted for social housing in those facilities. Accordingly, the Court is satisfied that the authorities gave sufficient consideration to the applicants' housing needs (see *Winterstein and Others*, cited above, § 161, in which the families who opted for social housing were relocated four years after the eviction order).

49. The Court has examined the parties' arguments regarding the applicants' health insurance and the system of allocation of social flats and finds that, in the given circumstances and in so far as they concern issues pertaining to domestic legislation and practice *in abstracto*, they cannot be regarded as relevant to the examination of the applicants' grievances in the present case. The applicants also stated that the "social housing system [wa]s an irrelevant solution to the crisis the authorities ha[d] created on 1 August 2016" (see paragraph 30 above).

50. Lastly, the Court notes that it has already found that a civil action for damages under the Obligations Act was an effective remedy that could provide declaratory and monetary reparation for any breach of the applicants' right to respect for their home under Article 8 of the Convention (see *Vraniskoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 39168/03, 22 June 2010). The applicants have not presented any convincing arguments that *ex post facto* general tort law proceedings could not have provided them with appropriate and sufficient relief for their grievances under this head in the light of the relevant principles under Article 8 of the Convention (see *Cazacliu and Others*, cited above, §§ 123-34).

51. In view of the foregoing, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 13 complaints

52. The applicants alleged, under Article 13 of the Convention, that they had not had an effective remedy in respect of their grievances under Articles 3 and 8 of the Convention.

53. Having regard to its above findings (see paragraphs 37-51) regarding the applicants' substantive complaints under Article 8 of the Convention, the Court considers that they do not have an "arguable claim" for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, §§ 54-55, Series A no. 131).

54. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Relying on Article 14, read in conjunction with Articles 3, 8 and 10, and Article 1 of Protocol No. 12, the applicants complained that the demolition of their homes had been discriminatory on account of their Roma origin. The ERRC complained in its own name under Article 10, taken alone and in conjunction with Article 14 of the Convention, that the eviction of the applicants had been as a direct consequence of their involvement in assisting the applicants, which could have a chilling effect on NGOs involved in advocacy work for vulnerable groups (see paragraph 7 above).

56. The Court notes that neither the applicants nor the ERRC, in so far as it complains in its own name, availed themselves of the remedy of a constitutional complaint before the Constitutional Court. It is well established case-law of the Court that the Constitutional Court has full jurisdiction, under Article 110 § 3 of the Constitution, to deal with alleged violations of the rights and freedoms under Article 10, on the one hand (see *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, § 53, 9 February 2017, and the references cited therein), and under Article 14 or Article 1 of Protocol No. 12, on the other hand (see *Sulejmanov v. the former Yugoslav Republic of Macedonia* (dec.), no. 69875/01, 18 September 2006; *Vraniskoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 37973/05, 26 May 2009; and *Sijakova and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 67914/01, 6 March 2003). Alternatively, allegations of discrimination could have been raised in a civil action under the Discrimination Act (*Закон за спречување и заштита од дискриминација*), as the *lex specialis* (see *X and Y v. North Macedonia*, no. 173/17, §§ 19-21 and 27,

5 November 2020). The applicants did not avail themselves of either of the above remedies. Neither did they explain why these remedies would have been ineffective in their case.

57. In such circumstances, these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 July 2021.

Martina Keller	Mārtiņš Mits
Deputy Registrar	President

APPENDIX

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Erdjan BEKIR	1992	Macedonian/ citizen of the Republic of North Macedonia	Skopje
2.	Arsena AJDIN	2005		Skopje
3.	Elvis AJDIN	1978		Skopje
4.	Gjulten AJDIN	2004		Skopje
5.	Azbija ALITI	1995		Tetovo
6.	Arijan ASAN	2007		Skopje
7.	Dudija ASAN	1969		Skopje
8.	Isa ASAN	2007		Skopje
9.	Redjep ASAN	1966		Skopje
10.	Sara ASAN	2001		Skopje
11.	Seit ASAN	2001		Skopje
12.	Semra ASAN	2011		Skopje
13.	Alen BEKIR	2005		Skopje
14.	Andjela BEKIR	2014		Skopje
15.	Djengiz BEKIR	1991		Skopje
16.	Kristijan BEKIR	2013		Skopje
17.	Ramize BEKIR	1964		Skopje
18.	Sali BEKIR	2004		Skopje
19.	Rashid BEKJIR	1983		Skopje
20.	Abibe EMIN	2009		Skopje
21.	Avdije EMIN	2010		Skopje
22.	Azret EMIN	1987		Skopje
23.	Lizabet EMIN	1992		Skopje
24.	Perhan EMIN	1989		Skopje
25.	Ramize EMIN	2006		Skopje
26.	Sebihan EMIN	2016		Skopje
27.	Tereza EMIN	2012		Skopje
28.	Djemile JASHARI	1972		Tetovo
29.	Mirsad JASHARI	1993		Tetovo

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
30.	Murat JASHARI	1993		Skopje
31.	Alen MEMISHOV	1999		Not known
32.	Bido MEMISHOV	1997		Skopje
33.	Elmedina MEMISHOV	2005		Not known
34.	Mevljan MEMISHOV	2007		Skopje
35.	Mondo MEMISHOV	1998		Skopje
36.	Robert MEMISHOV	2006		Not known
37.	Zaim MEMISHOV	1961		Prilep
38.	Elvira MEMISHOVA	2002		Skopje
39.	Manta MEMISHOVA	2008		Skopje
40.	Sebin MIFTAR	1994		Skopje
41.	Zanetman MIFTAR	1992		Skopje
42.	Paca RAMADAN	1985		Skopje
43.	Gjulka SAIT	1977		Skopje
44.	Melisa SAIT	2015		Not known
45.	Mini SAIT	1994		Skopje
46.	Ramiza SAIT	2001		Skopje
47.	Kasandra SELIM	1999		Skopje
48.	Senada SHAKIROVSKA	2001		Sredno Konjari
49.	Ahmet SHAKIROVSKI	1975		Skopje
50.	Ismail SHAKIROVSKI	1999		Sredno Konjari

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
51.	Senat SHAKIROVSKI	1999		Skopje
52.	Ibraim USEINOV	1986		Skopje
53.	Magbulje VESEL	1986		Skopje