

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

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A. Background about the Applicants and about Plavecký Štvrtok

1. The applicants are a Romani couple who live in a poor, segregated Romani community in Plavecký Štvrtok, located in the District of Malacký, approximately 30 kilometres north of Bratislava and ten kilometres east of the Austrian border. In 1996 and 1997, the applicants built a small house (37 square metres) in the community. They did not know who the owner of the land was. They did not ask the Construction Office for building permission. The applicants orally informed the mayor of their intention to build a house. The municipality has assigned the applicants' house the registration number "677", although the house has not been registered in the Land Registry. The applicants now know that the land is owned by the State and administered by the Slovak Land Fund (Slovenský pozemkový fond).

2. At the time when the proceedings described below were initiated, the applicants were living in the house with their three minor children (five people total).

3. The Romani community in Plavecký Štvrtok is one of the biggest in Western Slovakia, numbering several hundred people. It has been there for decades and, every year, several new houses are built. Almost all of them are informal – that is, built without the necessary approvals. In the vicinity of the community, there are gas pipelines whose "safety zone" (i.e. the zone in which it is unlawful to build any buildings without the consent of the pipeline operator) covers some land on which the community is built. There are also homes outside the community, in which non-Roma live, that are within the safety zone. The applicants note that no action seems to have been taken to demolish the homes of those non-Roma. Families in the community live in terrible housing conditions with a single source of drinkable water – a water dispenser. Access to public services is limited. For example, mail is not delivered to those living in the community. The inhabitants have to visit the nearest post office regularly to ask about incoming mail.

4. In 2013, the UN Committee on the Elimination of all Forms of Racial Discrimination, during its periodic review of the human rights situation in Slovakia, focused, inter alia, on the housing situation of Roma in Plavecký Štvrtok and recommended that Slovakia "put an end to forced evictions and demolitions of Roma settlements without prior notice and when such demolitions are necessary provide adequate and appropriate alternative housing solutions for them, and include in its next periodic report any measures taken to address the situation of Roma in Plavecký Štvrtok". Concluding observations on the ninth to the tenth periodic reports of Slovakia: CERD/C/SVK/CO/9-10.

B. Administrative Proceedings against the Applicants

5. On 24 February 2012, the municipality of Plavecký Štvrtok, acting through its Construction Office, issued an Announcement on the Commencement of a State Building Supervision (Oznámenie o začatí štátneho stavebného dohľadu). The Announcement was based on the suspicion that the applicants' house had been built without the necessary permission. On 1 March 2012, the Construction Office carried out the State building supervision procedure and concluded that it was appropriate to initiate proceedings for additional permission for a construction (konanie o dodatočnom povolení stavby).

6. On 4 July 2012, the Construction Office announced the commencement of the proceedings on additional permission for a construction. It ordered the applicants to secure and present several deeds, written opinions, and permits, including a document entitling them to erect a construction on the plot and consent from the operator of the gas pipelines to build in the safety zone. The applicants were given 60 days from the date the announcement was served on them to provide these documents and prove that giving additional permission for the building would not be against public interests protected by law. Similar proceedings were initiated against several other owners of houses built in the community.

7. On 5 October 2012, after the applicants failed to secure the documents, the Construction Office issued a Demolition Order (Rozhodnutie, ktorým sa nariaďuje odstránenie stavby) ordering the applicants to destroy their house within three months from the date of service of the order.

Statement of the facts (continued)

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8. On 23 October 2012, the applicants lodged an appeal against the Demolition Order with the supervising authority – the Circuit Construction Office in Bratislava. They challenged several flaws in the order. They claimed, inter alia, that the building and the plot underneath, as identified in the order, did not exist. They also challenged the racially discriminatory nature of the proceedings against them. They claimed that the gas pipelines were drawn incorrectly in the territorial plan of Plavecký Štvrtok municipality; that the operator of the gas pipelines had not been a party to the administrative proceedings, even though, by law, the operator should have been; and that the official documents from the Construction Office had not been delivered in accordance with the law.

9. On 14 November 2012, the Construction Office issued an Amendment to the Demolition Order (Oprava rozhodnutia) in which it corrected the registration numbers of the construction and the plot underneath, which they had misstated in the original decision. The Construction Office claimed that these were typing mistakes.

10. On 3 December 2012, the applicants appealed the amended order. They claimed that it had not been delivered to their legal representative and that the mistakes in the original decision could not be considered mere typing mistakes.

11. On 21 March 2013, the Circuit Construction Office in Bratislava issued a decision dismissing the applicants' appeal and upholding the Demolition Order. Although, the appellate authority acknowledged certain flaws in the decision (e.g. discrepancies between official documents on which the lines of the gas pipelines had been drawn), it considered the proceedings and the decision itself to be in accordance with law. In response to the allegations of discrimination, the Circuit Construction Office stated that it did not find that the Construction Office of Plavecký Štvrtok had engaged in any discriminatory conduct.

C. Motion to the Prosecutor

12. On 10 December 2012, the applicants filed a motion with the District Prosecution Office in Malacky. They challenged the lawfulness of the territorial plan of the Plavecký Štvrtok municipality, alleging that it contained several mistakes related to how the lines of the gas pipelines were drawn.

13. On 11 February 2013, the District Prosecution Office in Malacky notified the applicants that it found the territorial plan to be in accordance with the law and, thus, would not order any measures to be taken.

D. Court Proceedings

14. On 3 June 2013, the applicants lodged an administrative claim with Bratislava Regional Court. They challenged both decisions issued by the administrative authorities and asked the court to postpone the enforceability of the Demolition Order. The applicants argued that the Demolition Order and the proceedings were flawed procedurally and on the merits, and that they were racially discriminatory. They also argued that the Circuit Construction Office's decision did not contain sufficient reasoning to justify the dismissal of their claims. It was thus obvious that the appellate authority had not carried out a proportionality test – balancing the rights of the applicants against the rights and interests of others. On 15 August 2013, the Regional Court issued a decision postponing the enforceability of the Demolition Order.

15. On 27 November 2015, Bratislava Regional Court issued a judgment dismissing the claim. It identified certain procedural errors made by the administrative authorities, notably the fact that the Construction Office of Plavecký Štvrtok had not delivered the Demolition Order or the amended version of it to the second applicant. However, it held that the applicants had not secured the documents needed for additional permission for their building and, thus, had not proved that the additional permission would be in the public interest. As for the discrimination claim, the court stated that it was not sufficiently precise.

16. On 17 December 2015, the applicants appealed to the Supreme Court. They argued, inter alia, that Bratislava Regional Court had not considered some of their claims and allegations while others had been addressed only partially. The applicants also argued that they were not given help and instructions by the authorities on how to secure the documents necessary for securing additional permission, which is why they were unable to obtain those documents.

17. On 25 February 2016, the applicants filed a supplement to their appeal to the Slovak Supreme Court. In the supplement, they highlighted the overall vulnerable and disadvantaged position of Romani communities in Slovakia,

Statement of the facts (continued)

60. especially in relation to housing, and they referred to the case law of the Court in relation to right to respect for one's home.

18. On 31 May 2017, the Supreme Court issued a judgment upholding the decision of Bratislava Regional Court and agreeing with its reasoning.

E. Proceedings before the Constitutional Court

19. On 18 August 2017, the applicants lodged a constitutional complaint with the Constitutional Court of the Slovak Republic. The applicants alleged violations of their rights protected under Article 8 alone and in conjunction with Article 14 of the Convention, in addition to other arguments arising under the Constitution of the Slovak Republic.

20. The Constitutional Court's ruling on the matter was served on 31 January 2019, which is the date on which it became effective. The Constitutional Court dismissed the constitutional complaint as manifestly ill-founded.

F. Further Developments

21. Although the demolition order is now effective and the applicants have not complied with it, no attempts have been made to enforce it. The applicants' oldest child (their daughter) has moved out of the home; the applicants continue to live there with their two sons (one of whom is still a minor).

G. Background about the Housing Situation of Roma in Slovakia

22. The overall housing situation of Romani communities in Slovakia is appalling and serves as a stark illustration of the consequences of antigypsyism in the country. A substantial number of Romani people in Slovakia are living in conditions of residential segregation and substandard housing and lack access to basic infrastructure, even drinking water. Based on the Atlas of Romani Communities (UNDP, 2013: <https://bit.ly/2Ooju3T>), there are 803 localities in which Roma make up more than 30% of the population; over 40% of these are located at the margins of municipalities. The Atlas found that 17% of the Roma population - over 68,000 people - live in isolated, racially segregated communities. Living in racially segregated communities often translates into substandard housing, with associated health risks and lack of infrastructure. Paved roads, electricity, water pipelines, sewage systems, and access to public services are either non-existent, very limited, or hard to access. About 14.7% of people living in segregated Romani communities live in non-standard forms of housing (e.g. shacks or wooden houses). Many Romani families live under the threat of forced eviction due to insufficient legal protection from such evictions and due to an ineffective system for legalising informal housing and securing home ownership. Many Romani people's homes are located either on State-owned land or on land owned by other private people, as a result of the transition from communism and the decentralisation that took place during that transitional period. The adverse housing conditions Roma face in Slovakia have led to criticism from UN human rights bodies. See, e.g. UN Committee on the Elimination of All Forms of Racial Discrimination (Concluding observations on the 11th to 12th periodic report of Slovakia, CERD/C/SVK/CO/11-12, 8 December 2017): "the Committee remains specifically concerned that: (a) Roma people continue to live in settlements where the basic facilities such as sanitation, drinking water, electricity, sewage systems and waste disposal are lacking; (b) Residential segregation of Roma communities persists, mostly in the eastern part of the country, including through the construction of walls that separate them from the rest of the population; (c) In many cases, Roma continue to be at risk of forced eviction, partly due to their lack of security of tenure"; UN Human Rights Committee (Concluding observations on the fourth report of Slovakia, CCPR/C/SVK/CO/4, 22 November 2016): "Roma continue to suffer from discrimination, widespread unemployment, forced evictions without adequate alternative housing solutions and residential segregation".

23. The Plavecký Štvrtok community is one of the most disadvantaged in Western Slovakia; it illustrates the housing crisis for Roma set out above. Problems with the ownership of land have plagued the community for decades. Both the Slovak Government and the Municipality of Plavecký Štvrtok have been aware of these issues: the archive of the website of the Government's Plenipotentiary for Romani Communities (<https://archiv.vlada.gov.sk/romovia/23018/aktivita-a-navrh-usvrk-na-riesenie-situacie-v-plaveckom-stvrtku.html>) shows that between 2008 and 2010, there were several meetings of the representatives of the Government and the representatives of the local municipality. Those meetings did not result in any solution to prevent people becoming homeless due to lack of tenure to their homes and the land. Instead, fully aware of these issues, the municipality proceeded with the demolition proceedings described above anyway.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
Article 8, taken on its own	<p>1. The applicants claim that their eviction and the demolition of their house would amount to a violation of their right to respect for private and family life as well as the right to respect for home. This is a complaint both about a prospective violation and about a violation that has already occurred, as the mere threat of a demolition, the applicants claim, has violated their Article 8 rights.</p> <p>2. The building which is subject to the impugned demolition proceedings clearly fulfils the criteria under the Court's case-law to be considered the applicants' home (<i>Moreno Gómez v Spain</i> (2004), § 73), despite the fact that it was built without the necessary permission (<i>Buckley v the United Kingdom</i> (1996), § 54). It can hardly be disputed that execution of the Demolition Order would amount to a grave interference with the applicants' right to respect for private life, family life, and home. The applicants have lived in the Plavecký Štvrtok community all their lives and raised their children there. Naturally, they have many social and family ties to the community. Indeed, the applicants submit that the mere threat of eviction in itself amounts to an interference with their Article 8 rights, given that they would be left street homeless and are left in a situation of uncertainty and anxiety (<i>Yuseinova and Others v Bulgaria</i> (decision, 2019), § 46: "the demolition order amounted to an interference with his rights under Article 8 even before it was enforced").</p> <p>3. As for the lawfulness of the interference, the applicants do not contest the fact that Act no. 50/1976 Coll. (the Construction Act) provided a legal basis for the Construction Office to issue a demolition order. However, the Construction Act does not specify which documents should be presented. The Construction Office of Plavecký Štvrtok ordered the applicants to produce more than ten documents within sixty days. The fact that the applicants come from a disadvantaged community (see, <i>mutatis mutandis</i>, <i>Horváth and Kiss v Hungary</i> (2013), § 102) and would have serious difficulty securing the necessary documents was not considered at all. As a result, the provision lacked the "quality of law" Article 8 § 2 requires: the applicants could not, even with advice, have foreseen that they would face having their home demolished in these circumstances. See, <i>mutatis mutandis</i>, <i>S. and Marper v the United Kingdom</i> (2008), § 95. The authorities knew they were imposing a complex order on people living in deep poverty with few resources and who were unlikely to secure legal advice or be able to comply with their demands. In these circumstances, finding that the interference had a legal basis would be perverse. See Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe: "Roma and Travellers continue to face widespread and enduring anti-Gypsyism, which entails, inter alia, widespread discrimination and other violations of their rights, while at the same time creating barriers which prevent them from accessing justice".</p> <p>4. The applicants submit that the interference did not pursue a legitimate aim. In theory, the aim of demolition orders is to ensure respect for the rights of others. In practice, the Construction Office targeted only Romani families for demolition orders; non-Roma in the same position appear to have been left alone. There is therefore a presumption that the interference was racially discriminatory (see below in relation to Article 8 taken with Article 14).</p> <p>5. The applicants believe that the order to demolish their home cannot be considered "necessary in democratic society". Their situation is very similar to that of the applicants in <i>Yordanova and Others v Bulgaria</i> (2012). They are members of a poor, segregated Romani community which has been present in Plavecký Štvrtok for decades, leading to the creation of strong social and family ties among the members of the community, including the applicants. The fact that there were houses built on land owned by the State was tolerated until 2012, when the authorities initiative demolition proceedings against many of the inhabitants. The applicants' house stood there for 15 years without any legal challenge. The municipality even gave it a registration number. See, <i>mutatis mutandis</i>, <i>Öneryıldız v Turkey</i> (2004), §§ 105-106.</p> <p>6. Under Article 8, the Demolition Order could only be considered "necessary in a democratic society" for a legitimate aim if it addresses a "pressing social need" and if it</p>

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)	
62. Article invoked	Explanation
Article 8 taken on its own (continued)	<p>is proportionate to the legitimate aim pursued (see <i>Yordanova</i>, § 123). Even though, the national authorities are in a better position than the Court to assess the nature of the interference, the margin of appreciation is narrower in housing matters falling under Article 8 when the individual's effective enjoyment of fundamental or "intimate" rights is at stake (<i>Gladysheva v Russia</i> (2011), § 93). The decisions of the domestic authorities turned on the fact that the applicants' home was not built with proper permission. This formalistic approach did not take into account the proportionality of the measure, despite the Court's clear case law that Article 8 requires domestic courts in these circumstances to conduct a balancing exercise. See <i>Ivanova and Cherkazov v Bulgaria</i> (2016), § 53. The loss of one's home is the most extreme interference with the right to respect for home (<i>McCann v the United Kingdom</i>, 2008, § 50). Yet in this case the courts did not follow the procedural steps the Court has made clear in its case law they must; those steps are very clearly set out in <i>Winterstein v France</i> (2013) at § 148. In cases involving forced evictions Roma, the Court has also recognised an obligation to ensure there is alternative accommodation. <i>Winterstein</i>, § 159. If the Demolition Order against the applicants is enforced, the family will be street homeless. They are a poor family and it will be impossible for them to find anywhere else to live. The authorities have taken no steps to ensure that the applicants will be rehoused. Meanwhile, the land on which the Romani community in Plavecký Štvrtok lives has never been used by the authorities and is not planned for any particular use by the authorities; and there are no private owners whose rights must be taken into consideration.</p>
Article 8 taken with Article 14	<p>1. The threat to demolish the applicants' home amounts to discrimination based on the applicants' ethnicity, race, and/or colour. Likewise, if carried out, the demolition would be discriminatory.</p> <p>2. The applicants note that it appears only Roma have been targeted by this threat, despite the fact that non-Roma also live in the gas pipeline "safety zone". In these circumstances, the burden is on the Respondent Government to show that the measure is not discriminatory. <i>Oršuš and others v Croatia</i> (Grand Chamber, 2010), § 153 ("indirect discrimination may be proved without statistical evidence" when it is shown that only Roma are affected by a particular practice). See, also, <i>E.B. v France</i> (Grand Chamber, 2008), § 74 (on the burden of proof).</p> <p>3. In the alternative, the applicants submit that threatening to demolish their home amounts to discrimination by failing to take into account the particular situation that Roma in Slovakia face. This can be seen through the lens of the <i>Thlimmenos</i> principle: "The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different". <i>Thlimmenos v Greece</i> (2000), § 44. The Court has put it even more specifically when it comes to the situation of Roma: "the Court considers that the State has specific positive obligations to avoid the perpetuation of past discrimination". <i>Horváth and Kiss v Hungary</i> (2013), § 116. This applies as much to housing segregation as to school segregation: when there is a history of discrimination, as there clearly is concerning Roma in Slovakia, there is a positive obligation to take steps to correct it. See, also, <i>D.H. and Others v Czech Republic</i> (Grand Chamber, 2007), § 175.</p> <p>4. Instead, despite being fully aware of the history of discrimination that has given rise to the applicants' current housing situation, the authorities are taking steps to demolish the family's home, leaving them street homeless. This flies in the face of the Court's case law when it comes to discrimination against Roma.</p>

