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

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The eviction of travellers from land on which they had been settled for many years breached their right to respect for their private and family lives and their homes

In today's Chamber judgment in the case of **Winterstein and Others v. France** (application no. 27013/07), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The Court reserved in its entirety the question of the application of Article 41 (just satisfaction).

The case concerned eviction proceedings brought against a number of traveller families who had been living in the same place for many years. The domestic courts issued orders for the families' eviction, on pain of penalty for non-compliance. Although the orders were not enforced, many of the families moved out. Only four families were provided with alternative accommodation in social housing; the so-called family sites where the remaining families were to be accommodated were not created.

The Court noted that the courts, despite acknowledging the lack of urgency and of any manifestly unlawful nuisance, had not taken into account the lengthy period for which the applicants had been settled, the municipal authorities' toleration of the situation, the right to housing, the provisions of Articles 3 and 8 of the Convention and the Court's case-law.

The Court pointed out in that connection that numerous international and Council of Europe instruments stressed the need, in cases of forced eviction of Roma or travellers, to provide the persons concerned with alternative accommodation. The national authorities had to take into account the fact that such applicants belonged to a vulnerable minority; this implied paying special consideration to their needs and their different way of life when it came to devising solutions to the unlawful occupation of land or deciding on possible alternative accommodation.

Principal facts

The applicants are 25 French nationals, applying on their own behalf and on behalf of their minor children, and the International Movement ATD Fourth World. Most of the applicants are travellers and live in the municipality of Herblay (Val d'Oise).

The *département* of Val d'Oise, which has been home to travellers for very many years, possesses two instruments in this sphere: a travellers' accommodation programme for the *département* (under the 1990 and 2000 Laws known as the "Lois Besson") and a *département*-wide affordable housing action plan.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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More than 2,000 travellers live in the municipality of Herblay (approximately 10% of its population), occupying between 400 and 500 caravans. Around four-fifths of the caravans are in breach of the land-use plan. In 2000 an urban and social study was initiated with a view to providing alternative accommodation for the travellers who had settled in the municipality. Under the 2004-2010 travellers' accommodation programme for the *département*, the municipality of Herblay was exempted from the requirement to provide a site for itinerant travellers because of the number of settled families living in caravans and the study that was underway.

Under the "Loi Besson" of 5 July 2000 the mayor of Herblay issued two decisions in July 2003 and January 2005 prohibiting travellers from parking their mobile homes anywhere in the municipality.

The applicants had been living in the same part of Herblay for many years and some of them had been born there. They were part of a group of 26 families (42 adults and 53 children, making a total of 95 people) who had settled on the land as owners, tenants or occupants without title. According to the land-use plan, the plots of land in question were situated in an "area qualifying for protection on account of its natural beauty and character". Camping and caravanning were allowed provided that the site was suitably equipped and the persons concerned had the requisite authorisation.

On 30 April and 11 May 2004 the municipal authorities brought an action against 40 individuals – including the applicants – before the urgent-applications judge, seeking a ruling that the land was being unlawfully occupied and an order requiring the persons concerned to remove all their vehicles and caravans as well as any buildings from the site, on pain of a penalty of 200 euros (EUR) for each day's delay.

In an order of 2 July 2004 the urgent-applications judge dismissed the municipal authorities' action. The judge considered it sufficiently established that the defendants had been settled on the land for many years, long before the publication of the land-use plan, and that the long-standing toleration of the situation by the municipal authorities, while not amounting to a right, precluded a finding of urgency or of a manifestly unlawful nuisance, which alone could bring the matter within the jurisdiction of the urgent-applications judge. The judge further observed that the municipal authorities were required under the "Loi Besson" of 5 July 2000 to provide a site for itinerant travellers.

In September 2004 the municipal authorities brought an action against 40 individuals, including the applicants, in the Pontoise *tribunal de grande instance*, reiterating the requests made to the urgent-applications judge. In a judgment of 22 November 2004 the court granted the authorities' requests. It held that the defendants, in setting up their caravans and huts on the land in the absence of a permit or a decision by the prefecture in their favour, had breached the land-use plan, which was automatically enforceable. The court ordered the defendants to vacate the land within three months from the date of service of the judgment, failing which they would be fined EUR 70 per person for each day's delay.

In a judgment of 13 October 2005 the Court of Appeal upheld the judgment, observing that the occupation of the land by the persons concerned was contrary to the land-use plan. It considered that the action of the municipal authorities had its legal basis in the requirement to comply with regulations laid down in the public interest and applicable to everyone without discrimination. The Court of Appeal added that the lengthy period of occupation did not amount to a right, nor did the long-standing toleration of the situation by the municipal authorities. The applicants appealed on points of law but decided not to proceed with the appeal when their request for legal aid was refused.

To date, the Herblay municipal authorities have not enforced the judgment of 13 October 2005. However, many of the applicants have left the site for fear of enforcement and of being required to pay the fine. Following the adoption of that judgment, the authorities decided to undertake an urban and social study concerning all the families involved in the judicial proceedings, in order to

determine their individual situations and assess the options for finding alternative accommodation. The study revealed, among other things, that most of the families wished to be provided with alternative accommodation on so-called family sites, small-scale caravan sites which the municipal authorities had planned to create. Following a resolution of 22 February 2010 by the French High Authority against Discrimination and for Equality (HALDE), finding that the exemption granted to the municipality of Herblay by the *département* programme was incompatible with the "Loi Besson", the municipality decided to designate the land that had been earmarked for the creation of a family site as a site for itinerant travellers. Four of the applicant families were provided with social housing between March and July 2008, in accordance with their wishes, and two families moved to other parts of the country. The other applicants, only a minority of whom remained *in situ*, are living in precarious conditions on unsuitable land from which they are liable to be removed at any time.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), taken alone and in conjunction with Article 14 (prohibition of discrimination), the applicants complained that the order requiring them to vacate the land they had occupied for many years amounted to a violation of their right to respect for their private and family lives and their homes.

The application was lodged with the European Court of Human Rights on 13 June 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 8

The Court observed that the applicants had lived for a very long time – between five and thirty years – in the same part of Herblay, or had been born there. They had had sufficiently close and continuing links with the caravans, huts and bungalows located on the land for these to be considered as their homes, irrespective of whether the occupation of the land was lawful. The Court considered that this case also pertained to the applicants' right to respect for their private and family lives, in so far as living in caravans formed an integral part of travellers' identity and the case concerned the eviction of a community of close to one hundred individuals, with inevitable repercussions on their way of life and their social and family ties.

The Court took the view that the interference with the applicants' rights had been in accordance with the law and had pursued the legitimate aim of protecting the environment. As to whether the interference had been proportionate, the Court took into consideration the following factors: firstly, the Herblay municipal authorities had tolerated the applicants' presence over a lengthy period before seeking to put an end to the situation in 2004. Secondly, the only grounds advanced by the municipal authorities for seeking the applicants' eviction related to the fact that their presence on the land was contrary to the land-use plan. The Court observed that the applicants had submitted arguments before the domestic courts grounded on their long-standing occupation and the

toleration of the situation by the municipal authorities, and on the right to housing, the provisions of Articles 3 (prohibition of inhuman or degrading treatment) and 8 of the Convention and the Court's case-law.

However, those aspects had not been taken into consideration in the proceedings on the merits.

The Court reiterated that the loss of one's home was the most extreme form of interference with the right to respect for the home. Any person at risk of such interference should in principle be able to have the proportionality of the measure determined by a court. In the present case the domestic courts had ordered the applicants' eviction without first examining the proportionality of the measure. They had noted that the applicants' presence on the land ran counter to the land-use plan, and had attributed overriding importance to that circumstance without weighing it against the arguments advanced by the applicants.

In the Court's view, this approach was problematic as it did not comply with the principle of proportionality. The applicants' eviction could be considered as necessary in a democratic society only if it met a pressing social need, which it was primarily for the domestic courts to assess. This issue was all the more relevant since the authorities had not offered any explanation or argument as to the necessity of the eviction: the land in question had already been classified as a protected natural area in the previous land-use plans, it was not communal land on which development was planned, and there were no third-party rights at stake.

The Court considered that the applicants had not had the benefit of a review of the proportionality of the interference in the context of the eviction proceedings against them.

The principle of proportionality also required that particular consideration be given to the consequences of the eviction and the risk of the applicants being made homeless. The Court pointed out in that connection that numerous international and Council of Europe instruments stressed the need, in cases of forced eviction of Roma or travellers, to provide the persons concerned with alternative accommodation. The national authorities had to take account of the fact that such applicants belonged to a vulnerable minority, which implied giving special consideration to their needs and their different lifestyle when it came to devising solutions to the unlawful settlement of land or deciding on possible alternative accommodation. The Court noted that this had been only partly achieved in the present case.

The Court acknowledged that the authorities had given sufficient consideration to the needs of the families who had opted for social housing and who had been provided with alternative accommodation four years after the eviction ruling. It arrived at the opposite conclusion with regard to those applicants who had requested alternative accommodation on family sites since, with the exception of four families who had been provided with social housing and two families who had moved to other parts of the country, the applicants were all in a highly precarious situation. The Court therefore considered that the authorities had not given sufficient consideration to the needs of the families who had requested alternative accommodation on family sites.

The Court held that there had been a violation of Article 8 in respect of all the applicants, in so far as they had not had the benefit, in the context of the eviction proceedings, of a proper examination of the proportionality of the interference with their right to respect for their private and family lives and their homes as required by that Article.

There had also been a violation of Article 8 in the case of those applicants who had requested alternative accommodation on family sites, as their needs had not been duly considered.

Just satisfaction (Article 41)

The Court held that the question of the application of Article 41 was not ready for decision and reserved it, taking into account the possibility of an agreement between the respondent State and the applicants.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.