



Human Rights Committee

Communication No. 2073/2011

**Views adopted by the Committee at its 106th session (15 October–2
November 2012)**

<i>Submitted by:</i>	Liliana Assenova Naidenova et al. (represented by counsel, the Global Initiative for Economic, Social and Cultural Rights and the Equal Opportunities Association)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Bulgaria
<i>Date of communication:</i>	25 June 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 July 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2012
<i>Subject matter:</i>	Impending eviction and demolition of housing of the long-standing Roma community
<i>Substantive issues:</i>	Effective remedy; unlawful and arbitrary interference with one's home; right to equality before the law/equal protection of the law; discrimination on the ground of ethnic origin
<i>Procedural issues:</i>	Another procedure of international investigation or settlement; exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2; 17 and 26
<i>Articles of the Optional Protocol:</i>	5, paragraphs 2 (a) and (b)

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session)

concerning

Communication No. 2073/2011*

Submitted by: Liliana Assenova Naidenova et al. (represented by counsel, the Global Initiative for Economic, Social and Cultural Rights and the Equal Opportunities Association)

Alleged victims: The authors

State party: Bulgaria

Date of communication: 25 June 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 October 2012,

Having concluded its consideration of communication No. 2073/2011, submitted to the Human Rights Committee by Liliana Assenova Naidenova and 9 other individuals under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication, dated 25 June 2011, are Liliana Assenova Naidenova, Blaga Lubchova Naidenova, Traianka Ivanova Naidenova, Gura Borisova Marinova, Pavel Triachev Peshev, Blagoi Trianov Assenov, Pavlina Marinova Mladenova, Stefka Vassileva Christova, Stoianka Tzvetanova Trianova and Vela Borisova Mihailova, all Bulgarian nationals of Roma ethnicity belonging to the Dobri Jeliaskov community, situated in Sofia, Bulgaria. They claim a violation by Bulgaria of their rights under articles 2, 17 and 26 of the International Covenant on Civil and Political Rights in case of eviction and demolition of housing in the Dobri Jeliaskov community. The Optional Protocol entered into force for Bulgaria on 26 June 1992. The authors are represented by counsel, the

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

Global Initiative for Economic, Social and Cultural Rights and the Equal Opportunities Association.

1.2 On 8 July 2011, in accordance with rule 92 of its rules of procedure, the Human Rights Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to evict Liliana Assenova Naidenova and the other authors, and not to demolish their dwellings while their communication was under consideration by the Committee. This request for interim measures of protection was reiterated on 9 May 2012.

Factual background

2.1 The Dobri Jeliaskov community consists of impoverished Roma and has been in existence for over seventy years. During this time, the housing of the community has been de facto recognized by public authorities, including through being provided with individual mail service and publicly regulated services, such as electricity. The community also has police registration of their address.

2.2 On 12 July 2006, inhabitants of the Dobri Jeliaskov community were notified about the so-called “invitation letter” issued on 11 July 2006 by the mayor of the Sofia Metropolitan Municipality, Vuzrajdane subdistrict, requesting them to voluntarily leave the houses constructed unlawfully on municipal land. The community did not comply with this request and, on 24 July 2006, the Metropolitan Municipality, Vuzrajdane subdistrict, issued an eviction order against the Dobri Jeliaskov community. The eviction order states that unlawful buildings have been constructed on undisputable municipal land, as established by the district municipal administration with protocols dated 26 June 2006 and cites article 65 of the Municipal Property Act and article 178, paragraph 5, of the Territory Law, which allow for eviction of individuals and demolition of buildings constructed without the proper permits on municipal property. Representing the community, the Equal Opportunities Association appealed the order before the Sofia City Court and asked for an injunction against the eviction pending the examination of their appeal, which is permitted under article 65 of the Municipal Property Act. That injunction was initially granted by the Sofia City Court.

2.3 On 15 April 2008, however, the Sofia City Court ruled that the eviction order was lawful. The Dobri Jeliaskov community appealed the Sofia City Court’s decision before the Supreme Administrative Court, which upheld it on 28 October 2009. Since then the order has been subject to imminent execution. On 26 March 2011 the Sofia Municipality issued a protocol for execution of the eviction order. This protocol was handed to the inhabitants of the Dobri Jeliaskov community on 23 June 2011, and they were given seven days to submit their objections. Although the objections have been filed with the municipality, they would not have halted the evictions.

2.4 At the time when this communication was submitted to the Committee, ten households were under imminent threat of forced eviction and demolition. Back then, 34 individuals lived in the Dobri Jeliaskov community, 15 of whom were children. The remainder of the community had left the area after the initial eviction order was issued in 2006. According to the authors, none of those to be forcibly evicted have been offered alternative housing; no meaningful consultation has taken place with the community; and the mayor of the Sofia Municipality, Vuzrajdane subdistrict, has stated that the municipality could not provide alternative housing for the families, since they lived in the Dobri Jeliaskov community illegally.

The complaint

3.1 The authors submit that it is largely due to the persistent pattern of racial discrimination against Roma that the Dobri Jeliaskov community is an informal settlement (e.g., “unlawful buildings”). This discrimination includes lack of education and employment opportunities necessary to afford housing at market rates. They refer to the concluding observations of the Committee on Economic, Social and Cultural Rights, stating that “success has not been achieved” in the State party’s efforts to combat unemployment and “deplor[ing] the situation where those who are employed receive salaries which do not allow them to secure for themselves and their families an adequate standard of living”.¹

3.2 The authors state that the State party has denied the long-standing Dobri Jeliaskov community any security of tenure, including the minimum “degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats” required by its international and domestic human rights obligations.² They add that there are no mechanisms at the domestic level to challenge successfully eviction in such cases where there exists a denial of even the minimum degree of security of tenure.³

3.3 The authors submit that the forced evictions and threatened forced evictions amount to a violation of article 17, read in conjunction with article 2, of the Covenant. They recall that the Committee has previously stated in concluding observations that the practice of forced evictions “arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under article 17 of the Covenant”.⁴ The Committee went on to state that the State party concerned should “ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made”.⁵ In a similar factual situation, the Committee condemned forced eviction and demolition of homes built without permits as well as discriminatory municipal planning systems.⁶

3.4 The authors claim that the threatened forced eviction of the Dobri Jeliaskov community is also unlawful in that it contravenes, inter alia, the right to adequate housing, including the prohibition on forced eviction, enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights as informed by general comments No. 4 (1991) and 7 (1997) on the right to adequate housing: forced eviction⁷ of the Committee on Economic, Social and Cultural Rights, and that those general comments provide persuasive authority for defining the prohibition on forced evictions under international law generally and including under the Covenant. Therefore, since forced evictions as such are contrary to the Covenant on Economic, Social and Cultural Rights, they amount to *unlawful*⁸ interference with the home and are thus also in violation of article 17 of the Covenant.

¹ Committee on Economic, Social and Cultural Rights, concluding observations on the third periodic report of Bulgaria, E/C.12/1/Add.37, paras. 13 and 14.

² Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, *Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/23), annex III, para. 8 (a).

³ Notwithstanding, the authors have attempted to challenge the eviction orders by bringing a case before the Sofia City Court.

⁴ Human Rights Committee, concluding observations on the second periodic report of Kenya, CCPR/CO/83/KEN, para. 22.

⁵ *Ibid.*

⁶ Human Rights Committee, concluding observations on the third periodic report of Israel, CCPR/C/ISR/CO/3, para. 17.

⁷ *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/23), annex IV.

⁸ Emphasis added by the authors.

3.5 The authors argue that the forced evictions are also *arbitrary*⁹ in that they are undertaken in a racially discriminatory manner. The threatened forced eviction of the Dobri Jeliakov community is largely due to the inhabitants' Roma ethnicity and the informal housing conditions in which Roma have to live because of their ethnic origin. The authors add that as such the evictions have both an unlawful discriminatory intent and an unlawful discriminatory effect.

3.6 The authors refer to Council of Europe Recommendation (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005,¹⁰ and submit that the Recommendation should be used as persuasive authority in interpreting article 17 of the Covenant and, since it is binding on Bulgaria, any contravention of Council of Europe Recommendation (2005) 4 would amount to an unlawful interference with the home. Based on the foregoing, the authors claim that the threatened forced eviction at stake in this communication should be deemed unlawful as well as arbitrary and consequently in violation of article 17 of the Covenant.

3.7 The authors claim that the threatened forced evictions amount to a violation of article 26, read in conjunction with article 2 of the Covenant. By virtue of article 5(4) of the Constitution, the rights enshrined in the Covenant and other treaties ratified by Bulgaria are directly binding within its domestic legal framework. Article 26 requires that the rights guaranteed by article 17 of the Covenant be guaranteed without discrimination on account of Roma ethnic origin, as well as guaranteeing the equal protection of article 17 of the Covenant.

3.8 The authors submit that the State party has ratified the Covenant on Economic, Social and Cultural Rights and that, therefore, the rights guaranteed thereunder are directly binding within its domestic legal framework, including the right to adequate housing, and including the prohibition on forced eviction, enshrined in article 11 thereof. The authors submit that article 11 of the Covenant on Economic, Social and Cultural Rights, read in conjunction with article 2, obliges the State party to respect, protect and fulfil the right to adequate housing without discrimination. They add that the right to adequate housing enshrined in article 11 of the Covenant on Economic, Social and Cultural Rights, which is similar to the rights protected by article 17 of the Covenant, prohibits forced eviction. Under the Covenant on Economic, Social and Cultural Rights, evictions can only be justified in highly exceptional circumstances and after all feasible alternatives to eviction have been explored in meaningful consultation with the persons affected. Even then, various due process protections as outlined in general comment No. 7 of the Committee on Economic, Social and Cultural Rights must be adhered to (para. 16). Finally, and even if the due process criteria have been satisfactorily met, evictions cannot be carried out in a discriminatory manner, nor can they result in rendering individuals homeless or vulnerable to the violation of other human rights.

⁹ Emphasis added by the authors.

¹⁰ Recommendation (2005) 4, *inter alia*, requires that national housing policies address the specific problems of Roma housing as a matter of emergency and in a non-discriminatory manner. The Recommendation also states that "Member states should promote and protect the right to adequate housing for all, as well as ensure equal access to adequate housing for Roma through appropriate, proactive policies, particularly in the area of affordable housing and service delivery". With respect to "protection and improvement of existing housing", States "should ensure that Roma are protected against unlawful eviction, harassment and other threats regardless of where they are residing" and "should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out".

3.9 The authors claim that, as demonstrated by the facts and domestic procedures in the present communication, the State party has failed to abide by the legal process related to the prohibition on forced eviction. They conclude that the State party is in violation of article 26 of the Covenant for not prohibiting discrimination on account of Roma ethnic origin, not providing for the equal protection of article 17 of the Covenant or for the equal protection of the rights enshrined in the Covenant on Economic, Social and Cultural Rights, including the right to adequate housing and the prohibition on forced eviction.

3.10 The authors submit in conclusion that, if the forced eviction of the Dobri Jeliaskov community is implemented, the State party would violate articles 17 and 26 of the Covenant, read alone and in conjunction with article 2, including the non-discrimination clause of article 2, paragraph 2, of the Covenant. They further submit that an immediate injunction against any forced eviction of the Dobri Jeliaskov community should be granted as a matter of urgency. The authors add that remedies should also include the regularization of the Dobri Jeliaskov community, including the provision of a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. All remedies should be implemented with the genuine and meaningful participation of the Dobri Jeliaskov community.

State party's observations on admissibility and merits

4.1 By note verbale of 9 September 2011, the State party submitted its observations on admissibility and merits of the communication. As to the admissibility, it states that the authors have failed to exhaust all available domestic remedies and that, therefore, the communication should be declared inadmissible pursuant to rule 96 (f) of the Committee's rules of procedure. The State party submits that, in its decision of 28 October 2009, the Supreme Administrative Court has found that the authors have failed to produce any evidence establishing their right of ownership of the immovable property, parts of it or the right to erect constructions on the said immovable property. According to article 587 of the Code of Civil Procedure, the initiative to prove one's property rights is vested with the authors. They are given the opportunity to prove ownership over certain immovable property by presenting a proof of continuous ownership of the immovable property in question to a notary public.

4.2 The State party submits that the authorities have not been able to find any proof whether the procedure envisaged under article 587 of the Code of Civil Procedure has even been initiated by the authors or by their respective representatives. The authors have initiated an appeal procedure against the eviction order, which is based on the ownership documents presented by the municipality. The State party adds that the authorities are also unaware of whether the authors have seized any national human rights body, such as the Ombudsman and the Commission on Protection against Discrimination, of the matter.

4.3 The State party draws the Committee's attention to the fact that the authors of the present communication have submitted similar claims to the complaint procedure of the Human Rights Council, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Independent Expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It submits that such controversial practices do not conform to rule 96 (c) of the Committee's rules of procedure and, consequently, should not be encouraged.

4.4 As to the merits, the State party submits that the immovable property in question has been expropriated by the municipality in 1974 in accordance with the plans for territorial development of Sofia applicable at that time. Compensation has been provided in the form of property rights over apartments in the newly constructed buildings.

4.5 The State party states that the appeal procedure against the eviction order of 24 July 2006 has been concluded and the Supreme Administrative Court has confirmed the illegality of the authors' actions on 28 October 2009. The municipal property is, however, still in their possession and no eviction has been carried out by the municipal authorities.

4.6 The State party submits that the principle of equality of all citizens before the law is set forth in article 6(2) of the Constitution and the basic law does not allow for any limitation of rights nor for any privileges whatsoever on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliations, personal or social status. In its Interpretative Judgment No. 14 of 1992, the Constitutional Court ruled that "equality of all citizens before the law" within the meaning given by article 6(2) of the Constitution signifies equality before all legal acts. The Protection against Discrimination Act adopted in 2003 also confers equal rights on all citizens, regardless of their ethnic identity, in respect of the possibility to have access to rental accommodation in social housing or construction or, respectively, to purchase a property. The State party adds that victims of the alleged discrimination have the choice whether to submit a complaint before the Commission for Protection against Discrimination or before the court. Pursuant to article 53 of the Protection against Discrimination Act, the procedure before the Commission is free of charge.

4.7 The State party states that the authorities' policy regarding the Roma community is based on the Framework Programme for Equal Integration of Roma in the Bulgarian society (Framework Programme), adopted by Council of Ministers Decision in 1999. Section IV "Territorial Structure of the Roma Neighbourhoods" of the Framework Programme stipulates that the separated Roma neighbourhoods, most of which are situated outside the respective city plans and do not have an adequate infrastructure, are one of the most serious socioeconomic problems of the community. This Framework Programme was updated in 2010 and its scope was expanded to include the issues of discrimination. The State party also refers in this context to the National Programme for the Improvement of the Housing Conditions of Roma in Bulgaria (2005–2015).

4.8 The State party also notes that a number of projects aimed at improving the situation of members of the ethnic groups, with a special focus on Roma, have been implemented and are being implemented in the context of the compliance with the criteria for membership of the European Union. These projects are financed under the Programme of Community aid to the countries of Central and Eastern Europe (Phare) of the European Union, by the Council of Europe Development Bank, under the national budget through the budget of the Ministry of Regional Development and Public Works and through the budgets of a number of municipalities. The State party adds that Roma integration activities, including projects implemented by non-governmental organizations and financed from national or external sources, are subject to constant monitoring.

4.9 The State party submits that the Commission on Roma Integration has been established within the National Council for Cooperation on Ethnic and Demographic Issues (Council for Cooperation), which is an advisory and coordinating body under the Council of Ministers. Furthermore, there exists the Public Council on Roma Issues and one of the most important points on its agenda is the resolution of the housing problems of the Roma community in Sofia. A project plan has been developed and submitted for approval by the Municipal Council within the framework of the Operative Programme "Regional Development (2007-2013)". According to the project, the Sofia Municipality would purchase plots for the construction of buildings with developed social and technical infrastructure. The new buildings are aimed at providing modern social housing to socially disadvantaged persons, including Roma, in Sofia.

Authors' comments on the State party's observations

5.1 On 24 October 2011, the authors commented on the State party's observations. They argue that the present communication should be declared admissible, since the international procedures invoked by the State party, namely the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent Expert on minority issues do not fall within the scope of the "procedure of international investigation or settlement" referred to in article 5, paragraph 2 (a), of the Optional Protocol or in rule 96 (e) of the Committee's rules of procedure.¹¹

5.2 As to the State party's reference to the complaint procedure of the Human Rights Council, the authors submit that neither the Global Initiative for Economic, Social and Cultural Rights nor the Equal Opportunities Association has had recourse to this procedure in the present communication. In any event, the complaint procedure of the Human Rights Council also does not fall within the scope of the "procedures of international investigation or settlement" referred to in article 5, paragraph 2 (a), of the Optional Protocol or in rule 96 (e) of the Committee's rules of procedure.

5.3 As to the exhaustion of domestic remedies, the authors note that the State party acknowledges in its observations that "the appeal procedure [against the eviction order of 24 July 2006] has been concluded and the Supreme Administrative Court has confirmed the illegality of the authors' actions". They submit, therefore, that there are no further domestic remedies to exhaust. The authors argue that the State party's acknowledgement of the Supreme Administrative Court's decision also demonstrates that domestic law fails to provide a remedy for those facing forced eviction from so-called informal settlements.

5.4 As to the Ombudsman and the Commission on Protection against Discrimination, the authors submit that the former was used by them but was unable to halt the threat of forced eviction which was to be implemented in July 2011. In this regard, they recall that the eviction order has not been implemented to date due to the interim measures of protection requested by the Committee on 8 July 2011. The authors further submit that they could not have resorted to the Commission on the Protection against Discrimination, since the subject matter of the present communication has already been litigated before the State party's courts.¹² With reference to the Committee's jurisprudence,¹³ the authors argue that the requirement to exhaust all available domestic remedies applies insofar as such remedies appear to be effective in the particular communication. Therefore, the authors submit that there is no domestic law or remedy available to them that could prevent the forced eviction.

¹¹ Reference is made to communication No. 540/1993, *Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 7.1; and Office of the United Nations High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (New York and Geneva, 2008), pp. 157–158.

¹² According to article 6, paragraph 2, point 2 of the rules of procedure of the Commission on the Protection against Discrimination, "[a] person who addresses an application before the Commission is required to attach a declaration that there is no other case between the same parties, initiated before the court".

¹³ See, for example, communications No. 1403/2005, *Gilberg v. Germany*, decision of inadmissibility adopted on 25 July 2006, para. 6.5; No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5; communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision of inadmissibility adopted 2 November 2004, para. 7.2. Reference is also made to James Crawford, "International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries" (Cambridge University Press, 2002), p. 265.

5.5 On the merits, the authors submit that the compensation project for the immovable property in question (see paragraph 4.4 above) was never fully implemented and none of them was compensated, contrary to what is suggested by the State party. Indeed, they still reside in the Dobri Jeliakov community which has existed in that location for over seventy years. As to the laws, policies and programmes aimed at the improvement of the housing conditions for Roma that are referred to by the State party in its observations, the authors state that the Dobri Jeliakov community has not benefited from any of those.

5.6 With reference to the jurisprudence of the European Committee of Social Rights,¹⁴ the authors add that, in the event that the Dobri Jeliakov community is considered informal or “illegal”, that alone still does not justify forced eviction. The authors conclude that, if implemented, the forced eviction of the Dobri Jeliakov community would be a violation by the State party of articles 17 and 26 of the Covenant, read alone and in conjunction with article 2, including the non-discrimination clause of article 2. They submit that the remedies should include the regularization of Dobri Jeliakov community, including the provision of a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. If the Dobri Jeliakov community prefers the provision of alternative housing, its inhabitants must be allowed to freely, actively and meaningfully participate in all decisions related to such provision of alternative housing.

State party's further observations on admissibility and merits

6.1 By note verbale of 5 January 2012, the State party submitted its further observations. It argues that the authors' claim on property rights over the plot of land where the structures of the so-called “Dobri Jeliakov community” are situated remains unsubstantiated. In 1974, the plot of land in question was expropriated by the municipality for construction of two apartment buildings and compensation was provided. The State party adds that this fact was established beyond any doubt by the Supreme Administrative Court in its decision of 28 October 2009. Any additional property claims should be pursued through established domestic procedures, pursuant to article 587 of the Code of Civil Procedure.

6.2 With reference to article 12 of the Sofia Municipality Planning and Development Act,¹⁵ containing an exhaustive list of all construction that may be permitted in the so-called green zone, the State party submits that the legalization of the Dobry Jeliakov community, which is situated in such a zone between two apartment buildings, will deprive the neighbouring communities of their allotted rights.

6.3 The State party adds that, during the latest inquiry held by the Public Council on Roma Issues in July 2011, the inhabitants of the Dobry Jeliakov community confirmed once again their preference to be provided with alternative accommodation within the city limits. Such a solution is being sought within the framework of the Operative Programme “Regional development (2007–2013)” (see paragraph 4.9 above). Due to the determination of the municipal authorities to find a durable solution of the issue, while respecting the human rights of the inhabitants, no eviction has been carried out with regard to the Dobry Jeliakov community.

¹⁴ Reference is made to the European Committee of Social Rights, *European Roma Rights Center v. Bulgaria*, complaint No. 31/2005, decision on the merits of 18 October 2006, para. 53 and conclusion; and *INTERIGHTS v. Greece*, complaint No. 49/2008, decision on the merits of 11 December 2009, para. 60 and conclusion.

¹⁵ Article 12 of Sofia Municipality Planning and Development Act reads as follows: “After public discussion construction shall be permitted in the development zones and independent terrains of the green system designated for: (1) networks and facilities of the technical infrastructure; (2) maintenance of the green system; (3) sport and entertainment activities and children playgrounds; and (4) servicing of the visitors.”

6.4 The State party notes that the decision of European Committee of Social Rights in the *European Roma Rights Centre v. Bulgaria* (see, paragraph 5.6 above) was subject to control by the Committee of Ministers of the Council of Europe, which has specifically acknowledged¹⁶ measures undertaken by the State party both at local and national level to improve the situation of Roma with regard to housing.

Authors' comments on the State party's further observations

7. On 11 March 2012, in response to the State party's further observations, the authors reaffirm that they have never received any compensation upon their housing and land being expropriated by the State party's authorities. They add that the green zone was established long after the Dobri Jeliaskov community was in existence. Furthermore, the right to development and the human rights-based approach to development require that the needs of the inhabitants of the Dobri Jeliaskov community be prioritized in any urban development scheme rather than having urban development schemes result in further impoverishment. The authors also submit that there has not been any meaningful dialogue with the Dobri Jeliaskov community concerning the provision of alternative accommodation and relocation. As to the State party's assertion that the threatened forced eviction of the Dobri Jeliaskov community has not been carried out "due to the determination of the municipal authorities to find a durable solution of the issue", the authors assert that it was rather due to the interim measures requested by the Committee.

State party's additional observations on the merits

8. On 25 April 2012, the State party submitted its additional observations, stating that the compensation for the nationalized plot of land in question was paid on 25 December 1975. It argues that the municipal authorities are engaged in a dialogue with the representatives of the Dobri Jeliaskov community, which may be seen from records of the Roma Municipal Council's workings in the Vuzrajane subdistrict. The State party adds that the district administration strictly complies with all relevant recommendations with regard to the present communication, including the Ombudsman's recommendation not to undertake any action on the removal of unlawful inhabitants until all necessary conditions for alternative housing have been met.

Additional submissions concerning interim measures

9. On 8 May 2012, the authors submit that, in an attempt to force them to leave, the Municipality of Sofia had the water company, Sofiyska Voda, cut off the water supply to the Dobri Jeliaskov community on 29 April 2012. They argue that by depriving them of access to running water, the State party violates the Committee's request for interim measures of protection. Furthermore, as a means of forcible eviction, the cutting off of water violates a prohibition on unlawful or arbitrary interference with the home, which is stipulated in article 17 of the Covenant. Additionally, the cutting off of water rises to a threat of violating the right to life enshrined in article 6 of the Covenant¹⁷ and the prohibition on cruel, inhuman or degrading treatment or punishment enshrined in article 7 of the Covenant. The authors ask the Committee to urgently intervene with the State party and to request it to abide by its obligations to ensure the rights guaranteed under the Covenant, including by directing the Municipality of Sofia and the water company,

¹⁶ Resolution CM/ResChS(2007)2 on Collective Complaint No. 31/2005 by the European Roma Rights Centre against Bulgaria.

¹⁷ Reference is made to the Human Rights Committee, concluding observations on the third periodic report of Israel, para. 18.

Sofiyska Voda, to immediately re-establish access to water for the Dobri Jeliaskov community.

10. On 9 May 2012, the Human Rights Committee, acting through its Special Rapporteur on new communications and interim measures, reiterated its request for interim measures of protection. The State party was informed that, while the authors have not been forcibly evicted, cutting off the water supply to the Dobri Jeliaskov community could be considered as indirect means of achieving eviction. The State party was consequently requested to re-establish water supply to the Dobri Jeliaskov community.

11. On 21 May 2012, the State party submitted its further observations and stated that during a regular examination of the water installations, the owner, stock company Sofiyska Voda, discovered the existence of two continuously running taps without stopcocks and water meters, which had been illegally added to the existing water network. These two water taps were consequently removed. It argues, therefore, that the actions in question are irrelevant to the present communication and were certainly not aimed at forcibly evicting the authors from their homes.

12.1 On 30 May 2012, the authors submit that the Equal Opportunities Association, representing the Dobri Jeliaskov community, met with the Sofiyska Voda water company on 19 May 2012 in order to negotiate re-establishment of access to water. The individual homes lack access to water infrastructure and the Dobri Jeliaskov community has shared this limited water source for over fifty years. The Equal Opportunities Association and Sofiyska Voda water company initially agreed that the Dobri Jeliaskov community requires access to water and began discussing details on how to re-establish connection including having the Equal Opportunities Association guarantee the payment. This meeting was later attended by the mayor of the Sofia Metropolitan Municipality, Vuzrajdana subdistrict, as these local authorities claim to own the plot of land on which the Dobri Jeliaskov community has resided for over seventy years and therefore have to agree to any re-establishment of access to water. Upon the arrival of the mayor, it became apparent that the municipality was reluctant to allow access to water to be re-established.

12.2 The authors further submit that, eventually, the Equal Opportunities Association was asked to leave the room so that the mayor and her staff could meet privately with staff of the Sofiyska Voda water company. It is unknown what transpired at this meeting, but it was promised that the Equal Opportunities Association would be informed of any decision. Subsequent to this meeting, a deputy mayor met with the Dobri Jeliaskov community and informed them that the authorities refused to agree with re-establishment of water access for the community. At the time when the authors' further information of 30 May 2012 was submitted, water access had yet to be re-established.

12.3 In the same submission, the authors also draw the Committee's attention to a recent judgment of the European Court of Human Rights¹⁸ in which the European Court unanimously ruled that a threatened forced eviction of a long-standing Roma community, notwithstanding its informal tenure status, would violate article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the Bulgarian authorities must consider alternatives to eviction including regularizing tenure status and upgrading existing housing in consultation with the community. They add that article 8 of the European Convention guarantees respect for the home, which is similar to the rights protected under article 17 of the Covenant.

¹⁸ European Court of Human Rights, *Yordanova and Others v. Bulgaria* (application no. 25446/06), Judgment of the European Court of Human Rights, 24 April 2012.

Issues and proceedings before the Committee

Consideration of admissibility

13.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

13.2 With regard to the requirement laid down in article 5, paragraph 2 (a), of the Optional Protocol, the Committee takes note of the State party's argument that the authors of the present communication have submitted similar claims to the complaint procedure of the Human Rights Council, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Independent Expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The Committee further notes the authors' explanation that neither the Global Initiative for Economic, Social and Cultural Rights nor the Equal Opportunities Association has had recourse to the complaint procedure of the Human Rights Council. The authors also argued that, in any event, none of the procedures invoked by the State party falls within the scope of the "procedure of international investigation or settlement" referred to in article 5, paragraph 2 (a), of the Optional Protocol.

13.3 In this regard, the Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.¹⁹ The Committee recalls that the study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Protocol.²⁰ Accordingly, the Committee considers that it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (a) of the Optional Protocol, from examining the communication.

13.4 The Committee notes the State party's objection to the admissibility of the present communication due to the authors' failure to exhaust domestic remedies. It notes the State party's explanation, according to which they had an opportunity to prove their property rights on the plot of land where the Dobri Jeliaskov community is situated pursuant to article 587 of the Code of Civil Procedure and that the authors did not seize the Ombudsman and the Commission on Protection against Discrimination of the matter. The Committee also notes the authors' argument that, although they had made recourse to the Ombudsman, this institution was unable to halt the threat of eviction which was to be implemented in July 2011. The authors further argued that they could not have resorted to the Commission on the Protection against Discrimination, since the subject matter of the present communication had already been litigated before the State party's courts and that, in any event, there was no domestic law or remedy available to them that could have prevented the eviction of the Dobri Jeliaskov community. The Committee further notes that

¹⁹ See communications No. 540/1993, *Celis Laureano v. Peru*, para. 7.1; and No. 1776/2008, *Ali Bashasha and Hussein Bashasha v. Libyan Arab Jamahiriya*, Views adopted on 20 October 2010, para. 6.2.

²⁰ See communication No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 6.2.

the authors have unsuccessfully challenged before the Sofia City Court and the Supreme Administrative Court the eviction order of 24 July 2006.

13.5 While having noted article 587 of the Code of Civil Procedure, according to which an individual may prove ownership over certain immovable property by presenting a proof of continuous ownership of the immovable property in question to a notary public, the Committee nevertheless considers that the State party has not provided any detailed information on the availability and effectiveness of the remedy under its Code of Civil Procedure in the particular circumstances of the authors' case, that is, in the absence of a claim to legal title on their part. The Committee further observes that the eviction of the Dobri Jeliaskov community was to be implemented in July 2011 and that there were no further domestic remedies available to the authors that could have prevented the eviction from taking place. In addition, in the light of the State party's own acknowledgement that victims of the alleged discrimination have the choice whether to submit a complaint before the Commission for Protection against Discrimination or before the court (see paragraph 4.6 above), the Committee accepts the authors' explanation that they could not have made recourse to the Commission in question, since the subject matter of the present communication has already been litigated before the State party's courts. Furthermore, as regards the possibility of complaining to the Ombudsman, the Committee recalls that any finding of this body would only have hortatory rather than binding effect on the authorities. It concludes that such a complaint cannot be considered an effective remedy,²¹ which the author was required to exhaust, for purposes of article 5, paragraph 2 (b), of the Optional Protocol. Under the circumstances, the Committee is satisfied that the authors, by having challenged before the Sofia City Court and the Supreme Administrative Court the eviction order of 24 July 2006, have exhausted domestic remedies, in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

13.6 In relation to the alleged violation of article 26, read alone and in conjunction with article 2, as well as of article 2, read in conjunction with article 17, of the Covenant, in that the State party has failed to respect the equal protection and non-discrimination principles by denying the remedies and protection against forced eviction and demolition of housing to the authors, on the ground of their Roma ethnic origin, the Committee considers that these claims have been insufficiently substantiated, for purposes of admissibility. It further remains unclear whether these allegations were raised at any time before the State party's authorities and courts. In these circumstances, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

13.7 The Committee notes that the authors' references to articles 6 and 7 of the Covenant (see paragraph 9 above) concern arguments relating to the interim measures requested by the Committee, and were not raised as separate claims under the Covenant.

13.8 The Committee considers that the authors' remaining claims under article 17 of the Covenant are sufficiently substantiated, for purposes of admissibility, and proceeds to their examination on the merits.

Consideration of the merits

14.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

²¹ See, communications No. 900/1999, *C. v. Australia*, Views adopted on 28 October 2002, para. 7.3, and No. 1184/2003, *Brough v. Australia*, Views adopted on 17 March 2006, para. 8.7.

14.2 The authors claim that the enforcement of the eviction order of 24 July 2006 and their subsequent removal from the Dobri Jeliaskov community would amount to subjecting them to arbitrary and unlawful interference with their homes and would, therefore, violate their respective rights under article 17 of the Covenant. In this regard, the Committee recalls that the term “home” as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation.²² In the present communication, it is undisputed that the Dobri Jeliaskov community where the authors’ houses are situated and where they have continuously resided existed with the acquiescence of the State party’s authorities for over seventy years and that the authors have police registration of their address. In these circumstances, the Committee is satisfied that the authors’ houses in the Dobri Jeliaskov community are their “homes” within the meaning of article 17 of the Covenant, irrespective of the fact that the authors are not the lawful owners of the plot of land on which these houses had been constructed.

14.3 The Committee must then determine whether the authors’ eviction and the demolition of their houses would constitute a violation of article 17 of the Covenant if the eviction order of 24 July 2006 were to be enforced. There is no doubt that the eviction order, if enforced, would result in the authors’ losing their homes and that, therefore, there would be an interference with their homes. The Committee recalls that, under article 17 of the Covenant, it is necessary for any interference with the home not only to be lawful, but also not to be arbitrary. The Committee considers, in accordance with its general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation, that the concept of arbitrariness in article 17 of the Covenant is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.²³

14.4 The Committee notes the State party’s argument that the fact that the authors had not produced any evidence establishing their property rights over the plot of land where the structures of the Dobri Jeliaskov community are situated, was sufficient to establish that the eviction order of 24 July 2006 was lawful. Even assuming that the authors’ eviction and the demolition of their houses were permitted under the State party’s law, namely, article 65 of the Municipal Property Act and article 178, paragraph 5, of the Territory Law, the Committee notes, however, that the issue remains whether such interference would be arbitrary.

14.5 The Committee notes the authors’ claims that the Dobri Jeliaskov community existed with the acquiescence of the State party’s authorities for over seventy years, that the “green zone” was established retroactively (see paragraphs 6.2 and 7 above) and that, according to the mayor of the Sofia Municipality, Vuzrajane subdistrict, they could not be provided with social housing, since they lived in unlawful buildings constructed on municipal land (see paragraph 2.4 above). The Committee further notes that, although the State party’s authorities are in principle entitled to remove the authors, who occupy municipal land unlawfully, their lack of property rights over the plot of municipal land in question was the only stated justification for the issuance of the eviction order against the Dobri Jeliaskov community and that the State party has not identified any urgent reason for

²² See general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation, *Official Records of the General Assembly, Forty-third Session, Supplement No. 40, A/43/40*, annex, para. 5.

²³ *Ibid.*, para. 4. See also communications No. 1510/2006, *Vojnović v. Croatia*, Views adopted on 30 March 2009, para. 8.5, and No. 687/1996, *Rojas García v. Colombia*, Views adopted on 3 April 2001, para. 10.3.

forcibly evicting the authors from their homes before providing them with adequate alternative accommodation.

14.6 The Committee considers it highly pertinent that, for several decades the State party's authorities did not move to dislodge the authors or their ancestors and, therefore, de facto tolerated the presence of the informal Dobri Jeliaskov community on municipal land. Moreover, despite the issuance of an expropriation order in 1974, the community has remained at its present location for over thirty years thereafter. While the informal occupants cannot claim an entitlement to remain indefinitely, the authorities' inactivity has resulted in the authors' developing strong links with the Dobri Jeliaskov site and building a community life there. In the Committee's view, these facts should have been taken into consideration in deciding whether and how to proceed with regard to the authors' homes built on municipal land. The eviction order of 24 July 2006 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, and in the absence of any pressing need to change the status quo. In other words, under the relevant domestic law, the municipal authorities and the State party's courts were not required to have regard to the various interests involved or to consider the reasonableness of the authors' immediate eviction.

14.7 In the light of the long history of the authors' undisturbed presence in the Dobri Jeliaskov community, the Committee considers that, by not giving due consideration to the consequences of the authors' eviction from the Dobri Jeliaskov, such as the risk of their becoming homeless, in a situation in which satisfactory replacement housing is not immediately available to them, the State party would interfere arbitrarily with the authors' homes, and thereby violate the authors' rights under article 17 of the Covenant, if it enforced the eviction order of 24 July 2006.

15. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party would violate the authors' rights under article 17 of the Covenant if it enforced the eviction order of 24 July 2006 so long as satisfactory replacement housing is not immediately available to them.

16. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including refraining from evicting them from the Dobri Jeliaskov community so long as satisfactory replacement housing is not immediately available to them. The State party is also under an obligation to ensure that similar violations do not occur in the future.

17. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]