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FLASH REPORT

Country:	France
Title:	Council of State, 13 February 2019 No. 427423
Date:	6 March 2019
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<u>Context</u>	
Issue at stake:	Conditions of enforcement emergency order of evacuation of land occupied by Roma families
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Housing
Source:	National court decision
Applicable law:	Article 521-2 of the Code of Administrative Justice, Articles 8 and 3 ECHR, Article L. 2212-2 of the City and Towns Act

Content

Case: In 2012, the city of Bobigny has installed caravans on its property to the benefit of 200 Roma persons living in slums, in the context of a convention of temporary occupation until 2015. Upon the term of the convention, the city sold the plot to a municipal corporation that further instituted an action to evict the occupants before the High Judicial Court of Bobigny. This action was dismissed by a judgment of 14 December 2015 on account of the failure of the Corporation to establish the emergency considering that these people were installed at the initiative of the city in the context of an insertion project. The appeal was postponed and never heard due to the failure of the appellant to file its conclusions.

In the meantime, the Mayor adopted an order to evacuate the premises in 48 hours on 15 May 2017. The order was quashed by a decision of the Administrative Tribunal of Montreuil of 9 June 2017 in the absence of any measure taken to relocate the occupants.

In October 2018, the Corporation instituted a new action to evict the occupants before the High Judicial Court of Bobigny and the Mayor issued a new order of evacuation within 7 days on 26 October 2018.

The Prefect refused to provide the support of the police to enforce the Mayor's evacuation order.

The occupants initiated an emergency motion to quash the Mayor's order to evacuate which was dismissed by the Montreuil Administrative Court on 22 November 2018. It was followed by an emergency motion to suspend the execution of the Mayor's order, that was dismissed on 11 December 2018. The occupants appealed this decision before the Council of State (*Conseil d'Etat*, Supreme Administrative Court).

Before the appeal to the Council of State was heard, the Bobigny High Court rendered a decision on 31 January 2019 maintaining the Corporation's action to evacuate, while

awarding a 17 months' delay to the execution of the evacuation. The Court held that since there was no established emergency to evacuate, this period of time was necessary to take all necessary measures to secure the rights and relocation of occupants.

The Defender of Rights presented observations before the Council of State (Decision 2019-040). It drew the Court's attention to the dangers of contradictory decisions between the judicial and administrative courts, and to the requirements to be met before ordering an evacuation, as defined by the jurisprudence of the European Court of Human Rights and the Ministerial instructions taken in application thereof dated 26 August 2012 and 25 January 2018.

Decision of the court: The land site constitutes the Petitioners' domicile considering that they live there at the initiative of the city since 2012. Article L. 2212-2 of the City and Towns Act provides that the Mayor can only adopt an order to evacuate persons from their domicile in case of imminent danger. The Mayor does not establish that the situation has changed since the last order, which was quashed for lack of imminent danger. In addition, all measures taken to prepare the evacuation have been limited to temporary shelters that do not offer permanent alternative domicile to protect the occupants' rights. Hence, this order constitutes a serious violation of the occupants' rights to private life and the protection of one's domicile and is manifestly illegal. The evacuation order is suspended indefinitely, ensuring the families against any measure of emergency evacuation.

Key points of analysis: This decision intervenes after eight years of massive governmental evacuation policy, during which local authorities have systematically failed to honour their obligation to prepare evacuations and offer long term relocation to persons who were evacuated. As a result, despite continuous evictions measures, the amount of illegally occupied land has not diminished, and the occupants' rights have been massively violated.

In this decision, the Council of State clearly indicates that the long-standing occupation of land without title qualifies as domicile and as such is protected against emergency evacuation unless the local authority establishes significant imminent danger and has taken all required measures to offer permanent housing and protect the occupants' fundamental rights.

Link source:

Decision of the Council of State:

https://www.legifrance.gouv.fr/affichJuriAdmin.do;jsessionid=4B8116330BCFF04DC838B446306461F0.tplgfr25s_1?oldAction=rechExpJuriAdmin&idTexte=CETATEXT000038135472&fastReqId=614933702&fastPos=264.

Decision of the Defender of Rights:

https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=27540&opac_vie_w=-1.