A right to home or an individual preference? The impact of the definition of home in international and European legislation on cases concerning Roma, Travellers, and Gypsies

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Silvia Cittadini

This article analyses how the concept of home is interpreted by the European Court of Human Rights and how its definition affects the decisions on cases concerning the Right to Home of Romani individuals. The analysis is conducted departing from a series of renowned cases that have been brought in front of the European Court by individuals of Romani origin. It has often been argued that these cases are steps towards the recognition of the Romani "special needs," although such narrative has already been criticized for reproducing a stereotypical idea of Roma. In opposition to this argument and in light of the academic debate on the definition of the home, this article claims that the decisions of the Court are mainly based on the association between the home and a sense of stability, which fails to recognize other ideas of the home. The article, though, also highlights possible evolutions in the jurisprudence of the Court emerging from latter cases which may result in a reinforcement of the housing rights of these groups.

Keywords: right to housing, forced evictions, anti-gypsyism, identity, culture, mobility, caravan

Introduction

Although present on the whole European territory since the Middle Ages, Romani groups[1] have long been the object of a specific form of racism, anti-gypsyism,[2] that has informed their discrimination and marginalization.

1. The term "Romani groups" refers to a series of different minority groups living all over Europe, including Travellers and Gypsies who are mentioned in this article. In the article, the use of this "umbrella term" does not intend to suggest the existence of a homogeneous Romani minority sharing a common culture or characteristics. The idea that all groups identified as Roma (mostly in public discourses and policies) would, at least at some level, share a common origin or cultural characteristics has, indeed, already been largely criticized (McGarry 2014; Surdu and Kovats 2015; Tremlett 2009). On the contrary, "Romani groups" is used to identify all those groups who are subject to a specific form of racism, anti-gypsyism.
2. Anti-gypsyism is defined as "a historically constructed, persistent complex of customary racism against social groups identified under the stigma 'gypsy' or other related terms"

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In the housing sector, anti-gypsyism is still manifested in different forms: on the one hand, the limited access to economic and material resources hinders their access to improved housing conditions; on the other hand, forced evictions are increasingly used as a tool against these groups by local authorities. The situation changes from country to country and according to the political environment, but it is generally characterized by weak protection of the housing rights of Romani individuals. In Italy and France, the evictions of informal Romani encampments and the expulsion of their inhabitants have pushed the European Union to intervene with rather questionable results (Trehan and Sigona 2009; Picker and Vivaldi 2019). In the UK, national legislation has progressively limited the possibility for Travellers and Gypsies to have access to authorized sites where to settle either temporarily or permanently, even though local organizations have often highlighted how policy action in this sector results in the violation of the rights of a minority group (Richardson 2006; Johnson et al. 2020; Kirkby 2021). In Central and Eastern Europe, the transition period has witnessed a deterioration of the housing conditions of Roma, often exposed to forced evictions and segregated in marginalized neighbourhoods with insufficient access to public services (Rostas 2019; Lancione 2019; Vincze and Zamfir 2019; Witkowski and Nowicka 2021).

In light of the position of Romani groups, who often do not find proper protection in the local and national systems, it appears particularly relevant to analyse how international and European legislation in protection of human rights can represent a shield against the violations suffered by these groups. In the housing sector, the main tools are represented by the Right to Housing, enshrined both by the International Covenant on Economic, Social and Cultural Rights (1966) and the Revised European Social Charter (1996), and of the Right to Home, included in the International Covenant on Civil and Political Rights (1966) and the European Convention on Human Rights (ECHR) (1950). In this context, a major role is played by the European Court of Human Rights (ECtHR) and its jurisprudence on the protection of the right to home, included in Article 8 of the European Convention. Indeed, the Court has been often called to rule over cases concerning the eviction of individuals or groups belonging to Romani communities, overturning

(Alliance Against Antigypsyism 2017). The first manifestation of anti-gypsyism is the systematic construction and representation of Roma by knowledge production and public discourses as a defined and homogeneous group with specific characteristics (Kóczé 2018; McGarry 2017; Marushiakova and Popov 2018). This representation of Roma feeds their dehumanisation and exclusion from decision-making, which, in turn, prevents the deconstruction of the stereotypes affecting this group (Rostas 2019; Mirga-Kruszelnicka 2015). Anti-gypsyism, then, is manifested in various sectors of society and forms, from hate speech, to direct discrimination, to segregation in education and housing, etc. (Cortés Gomez and End 2019).

national decisions (ECtHR 2021), although the real impact of its decisions on the protection of the right to housing of these groups is debated. Indeed, while many authors have welcomed the decisions of the Court as an advancement in the protection of the housing rights of Roma (Remiche 2012; Henrard 2004; Donders 2016; Ringelheim 2011), it has also been stressed how these decisions have not led to an effective reduction of the forced evictions carried out against Roma (Link and Muižnieks 2016; Caflish 2017). Furthermore, Doris Farget (2012) has criticized the arguments used by the Court in the decisions concerning Gypsy and Travellers groups in the UK for reinforcing a number of stereotypes.

The objective of this article is to propose an analysis of the jurisprudence of the ECtHR on cases concerning the evictions of Romani groups, to verify the existence of an evolution of the protection of the housing rights of these groups. With this aim, the analysis focuses especially on how "home" is defined by the ECtHR and how this definition affects the decisions of the Court. Building upon the most recent academic reflections on the meaning and significance of the home for the individual, the article highlights the importance of the definition of the home for the protection of the related right. The second section, then, analyses how the definition of home affects the decisions concerning Romani individuals and it investigates possible evolutions in the protection of their housing rights in the jurisprudence of the Court.

The problematic definition of "home" and its impact on the jurisprudence of the ECtHR

The right to home is protected by a series of international and European legal documents, most notably by the International Convention on Civil and Political Rights (Article 17) and the ECHR (Article 8). Within these documents, the right to home is understood as a negative right protecting the individual's home against external interferences and is associated with the protection of the more general concept of "privacy." For this reason, its protection does not exclusively include the protection of the physical structure of the home, but a broader series of fields that are connected with the private sphere of the individual, such as correspondence, health procedures, data protection, and police control (ECtHR 2020b; Desmond 2018; van der Sloot 2017). Nevertheless, the field strictly connected to housing is surely affected by the protection of this right, especially in cases of forced eviction. As a consequence, it has often been associated with the social right to housing (Hohmann 2013; Kenna 2005; Remiche 2012). It is significant, in this sense, that General Comment No. 7 on forced evictions of the International Covenant on

Economic, Social and Cultural Rights (1997) explicitly mentions Article 17 of the International Covenant on Civil and Political Rights. Both documents, indeed, require the States to avoid "unlawful and arbitrary interferences" with one's home (UN Committee on Economic Social and Cultural Rights 1997: para 8; United Nations [General Assembly] 1966: Art. 17) and and to refrain from forced evictions when there is no reasonable motivation.

This principle has also often been restated by the ECtHR: although forced evictions might be considered legitimate in certain circumstances, the unlawful occupation of land is not a sufficient reason for carrying out a forced eviction, as this may still represent an unreasonable violation of one's home. It appears, therefore, essential to define what is a home and when intervention in the place of living can be identified as a violation of the related right. If we look to the International Covenant on Civil and Political Rights, the definition of the term "home" is clarified in the General Comment n.16. Here, the home is understood to be "the place where a person resides or carries out his usual occupation." The States are, then, invited "to indicate in their reports the meaning given in their society to the terms 'family' and 'home'" (Human Rights Committee 1988: para 5). Consequently, the primary principle used to identify the "home" is a certain level of stability, a secure link between the person and the place of living. A similar definition is used by the ECtHR, which recognizes a violation of the home in the presence of "sufficient and continuous links with a specific place" (Roagna 2012; Koch 2006; ECtHR 2020b).

This definition of home, strictly connected with a sense of stability and attachment to a fixed place, appears problematic in many ways if we consider the large literature that has investigated the concept of home in the last decades. Since the home is mostly an intangible concept associated with a broad series of emotions and feelings, its analysis has always been associated with a reflection on the identity of the person. One of the first authors developing on this topic has been the geographer Edward Relph, who defined home as "the foundation of our identity, … an irreplaceable centre of significance"(Relph 1976: 39). In this context, the home was considered the place individuals are more attached to, the point of departure from where to interpret the world, the material reflection of a stable and territorially located identity. Other authors have come to similar conclusions and engaged in a debate on the implications of the relation between the home and the identity (Casey 2001; Tuan 2001; Sack 1997). Here, the home is idealized as a "nest of peace" against the chaos of the public space and associated with a fixed and bounded identity – stable in space and time and linked to traditional values.

This idea of the home as something fixed is strictly related to the classical liberal thinking that has then been criticized by feminist and postcolonial

scholars for supporting oppressive relations of power. Feminist authors highlighted how the idealization of home as a "domestic haven" overlooked – and supported – the oppression and exploitation of women in this space (Young 2005; Goldsack 1999; Irigaray 1992). Then, criticisms have been moved for the role played by the home in colonial settings: here, indeed, it became a symbol of a supposed "civilized" world – clean, rich, modern, and based on Christian values – opposed to an uncivilized, impure "other," not able to enjoy the benefits of the home (Blunt and Rose 1994; Honig 1994). A third critical aspect of the classical understanding of the home is its association with an identity that is bounded and stable in place and time. According to Doreen Massey and Gillian Rose, such understanding of the home and its relationship with identity does not recognize the fact that both concepts are fluid and change over time (Massey 1995).

Recognizing the inherent fluidity of the home also means acknowledging the different forms and shapes that it can assume. The home is not necessarily identifiable with a specific geographical place, as it can be identified with a plurality of places, in case of mobility, or even with abstract spaces of interaction and extended networks of relations – e.g. social networks (Nowicka 2007; Ralph and Staeheli 2011; Kusenbach 2017). This also means opening the doors to full recognition of diversity in the housing sector. The association between the home and a territorially located identity resulted in the denigration of mobile ways of living: as noticed by Massey (1995), caravans have always been considered as "second-choice homes" or even not "real homes" since they are not geographically stable. Accordingly, people living in mobile homes have been regarded as "quasi-homeless."

In the last years, this reflection on the concept of home has found a renovated attention within the field of migration studies, which analyses the significance and evolution of the home in contexts of mobility and its connection with the transforming identity of the individual. These studies have highlighted, on the one hand, the importance of engaging in a process of homemaking for the inclusion and well-being of the person moving to a new context and, on the other hand, the variety of elements and feelings intervening in the definition of the home, which is not forcibly identified in one specific place (Cancellieri 2017; Hondagneu-Sotelo 2017; Nikielska-Sekula 2021; Almenara-Niebla 2020). These studies confirm the complexity and ambivalence of the definition of the home, which cannot be exclusively identified in the stable connection with a place, as argued by those who associated the home with a fixed and bounded identity. Rather, the home becomes a medium between a fluid and changing identity and the surrounding space. For this reason, the way the home is defined and materialized in the constructed space depends also on the way the individual

defines themselves and their relationship with the external world. Here, the sociocultural context plays an important role, although it can never be considered the only factor determining the personal idea of the home (Blunt and Dowling 2006; Boccagni and Mubi Brighenti 2017).

These insights highlight how the identification of the home with the presence of "sufficient and continuous links with a specific place" might be representative of an interpretation that is culturally biased, exclusionary, and possibly outdated in an increasingly mobile world. How does this definition of the home affect the decisions of the ECtHR, especially on cases concerning Romani groups? Is it possible to identify an evolution in the arguments of the Courts towards a new understanding of "home"? Indeed, unlike the International Covenant on Civil and Political Rights that has defined home within the General Comment n. 16, the definition of the ECtHR is the product of its jurisprudence, and it can change over time. This is done intentionally to keep the definition of the concepts enshrined in the Convention open and flexible and to take into consideration the social, legal, and technological developments that may arise (Koch 2006). In addition to this, the Court explicitly aims to avoid culturally biased definitions and, for this reason, has included "non-traditional residences and other non-fixed abodes" within the category of "home" (ECtHR 2020b). Is this recognition sufficient to protect the right to home of those living in mobile structures?

The following section aims to answer these questions with an analysis of some of the cases that have marked an evolution in the protection of the right to home of individuals belonging to Romani groups by the ECtHR. This analysis considers cases that concern Romani groups living in different countries and that share little or nothing with each other. They are here analysed together not to essentialize their Romani belonging, but because the ECtHR has often recalled them within other cases concerning Roma. Furthermore, as will be highlighted in the next section, other scholars who analysed these cases have argued that the Court in its decisions is moving towards the recognition of the "special needs" of Roma and of the positive obligations of protecting "Romani way of life" (Donders 2016; Ringelheim 2011; Henrard 2004). One of the aims of my analysis is to verify the existence of such evolution, and what its connection with the understanding of "home" and its consequences might be. The decisions here considered concern three applicants belonging to the British group of the Gypsies – *Buckley vs the UK*, *Chapman vs the UK* and *Connors vs the UK* – a Romani neighbourhood in Bulgaria – *Yordanova and Others vs Bulgaria* – and two cases of Travellers and Roma living in France – *Winterstein and Others vs France* and *Hirtu and Others vs France*.

The jurisprudence of the European Court of Human Rights on cases concerning the right to home of Roma, Travellers, and Gypsies

The first two cases considered – *Buckley vs the UK* (ECtHR 1996) and *Chapman vs the UK* (ECtHR 2001) – concern two families belonging to Gypsy groups living in the UK. In both cases, the applicants, after purchasing a piece of land to place their caravan on because of the restricting laws against illegal stationing and the lack of authorized sites in their area, had been denied permission to station permanently on the land that they had bought. The authorities justified the decision because, in the first case, the stationing did not respect local planning regulations, and, in the second, it was located in protected green area. Ms Buckley turned to the ECtHR asking to recognize the caravan as a home and the intervention of the authorities against nomadism as a violation of the related right. In this judgement, the ECtHR acknowledged that "living in a caravan home is an integral and deeply-felt part of her Gypsy lifestyle" (ECtHR 1996: para 64). Nevertheless, it rejected the applicant's argument and considered the denial of the permission justified under local planning regulation, failing to recognize the difficulties for the applicant to find a proper spot to place her caravan.

This case has sparked a debate about the necessity of considering the broader context in which the state intervenes. The refusal of planning permission may be regarded as a violation of the right to home when the existing conditions and regulations de facto prevent the possibility of finding a proper home. Nevertheless, in the case of nomadism, it was debated how such practice should be protected under Article 8. Indeed, most of the authors who analysed this case interpreted the protection of nomadism as an issue pertaining to the protection of the right to a traditional way of life (included in the right to privacy), rather than of the right to home (Henrard 2004; Ringelheim 2011; Donders 2016). This argument was based on the idea that Travellers and Gypsies represented a vulnerable minority with special needs whose cultural specificities must be protected by the authorities. In the specific case, nomadism was considered as an integral aspect of the Traveller and Gypsy way of life that, consequently, had to be protected as such. The ECtHR has adopted this argument in a case held in 2001, *Chapman vs the United Kingdom* (ECtHR 2001). In assessing the case, the judges recognized living in a caravan as part of a traditional way of life of the Traveller and Gypsy community and the duty of the state to protect the "special needs" connected to such traditional way of life under Article 8. Nevertheless, the Court finally rejected the case arguing that the lack of proper halting sites does not justify the violation of domestic planning regulations and that "Article 8 does not go so far as to allow *individuals' preferences* as to their

place of residence to override the general interest" (ECtHR 2001: paras 81–2). Finally, the ECtHR argued that Article 8 does not imply a right to be provided with a home (Donders 2016).

This last case is considered particularly critical as the final decision has been contested by seven judges of the Court, who submitted a joint dissenting opinion. They argued that the UK has violated Article 8 on the basis of the emerging consensus at the European level of the necessity also to protect minorities through positive actions. They furthermore dissented on the argument that Article 8 would not imply a right to be provided with a home, concluding that it contains "a positive obligation on the authorities to ensure that Gypsies have a practical and effective opportunity to enjoy their right to home, private and family life, in accordance with the traditional lifestyle" (Joint dissenting opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Straznicka, Lorenzen, Fischbach, and Casadevall in Chapman vs the United Kingdom 2001: paras 8–10). According to some authors (Henrard 2004; Donders 2016; Ringelheim 2011), this decision and the dissenting opinion represented a step towards a broader recognition of the rights of the Romani and Gypsies communities to pursue a "traditional way of life" and of the positive obligation of the States in protecting this minority and in considering their "special needs."

The last case concerning the Gypsy community in the UK, *Connors vs the United Kingdom* (ECtHR 2004), held in 2004, is often mentioned as a further step towards the recognition of the "special needs" of the Romani minority in general (Henrard 2004). The case concerned the eviction of a Gypsy family from a halting site where the applicant, Mr Connors, has been living for 13 years. The applicant was authorized to occupy a plot within the area, but, following the misbehaviour of some members of his family, he, together with the entire family, was first asked by the local authorities to leave the site, then violently evicted. Mr Connors presented the case in front of the ECtHR claiming the violation of Article 8 and won the case. The Court held that the eviction of the Connors family was not justified by "pressing social needs" or "proportionate to the legitimate aim being pursued" (ECtHR 2004: para 95). Furthermore, the Court referred to the cases of Chapman and Buckley in stating that: "The vulnerable position of gypsies as a minority means that some *special consideration* should be given to their needs." The reference to the previous cases led some authors to further emphasize the creation of a consensus on the necessity of facilitating the Gypsy way of life and the consequent development of positive obligations in this direction (Henrard 2004; Ringelheim 2011).

Nevertheless, this apparent evolution in the jurisprudence of the ECtHR has been already criticized by Doris Farget (2012), who highlighted how

considering the caravan as an integral part of a supposed "Gypsy way of life" reproduces dangerous stereotypes. This criticism is in line with the recent analyses of the relationship between anti-gypsyism, knowledge-production, and public representations of Roma. Indeed, a vast literature on the issue is showing how the systematic exclusion of Roma from the production of knowledge has informed a public representation of this group constructed around stereotypes and generalizations (Mirga-Kruszelnicka 2015; Tremlett 2009; Bogdán et al. 2015; Brooks et al. 2021). For instance, it is common both in policy planning and in academic analysis to overlook the profound diversity existing between different Romani groups. As highlighted by McGarry (2014), Simhandl (2009), and Rövid (2011), to consider all Roma as members of a defined, homogeneous, and coherent minority with "special needs" does not only fail to recognize differences, but it also feeds a misrepresentation. Another aspect, indeed, more and more criticized of this narrative is the association between Roma and supposed "cultural specificities," such as nomadism. The risk here is to pay too much attention to a supposed culture that would drive individuals' decisions while overlooking the agency of the Romani person and the general surrounding context (Marushiakova and Popov 2015; Tremlett 2009).

In addition to this, it could be claimed that, while it is true that the Court has expressed increased attention towards "the special needs of Roma," the primary criteria used to identify the violation of the right to home remains the presence of "sufficient and continuous links with a specific place." This principle, indeed, has been restated several times by the Court and also used to claim a violation of the right when the action of the state was otherwise considered legitimate (Roagna 2012; Remiche 2012). It can also be assumed, therefore, that in the case of Mr Connors the violation of the right to home was found not because of a recognition of the right to live on a caravan, but rather because the applicant has been living on that land for 13 years. In its decision, indeed, the Court has claimed that the right to home is meant to protect "the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a *settled and secure* place in the community" (ECtHR 2004: para 84). This case, therefore, was treated as other cases of evictions, which, as Donders (2016) also admitted is considered a much more serious violation of the right to home compared to the refusal of permission for stationing the caravans, as in the cases of *Buckley* and *Chapman*.

Finally, the apparent recognition of the need to protect the caravan as an "essential part of the Gypsy way of life," together with reproducing dangerous stereotypes, raises a series of ambivalences, as Farget (2012) already highlighted. For instance, in the *Connors* decision, the Court stated

that the applicant "claimed, in effect, special exemption from the rules applying to everyone else" (ECtHR 2004: para 86). In this case, the search for a place in a society ruled by norms constructed by others was interpreted as a demand for exemption, reinforcing the idea that Roma are unwilling to follow everyone's laws. Furthermore, if nomadism is considered a crucial aspect of the "Gypsy way of life," it is not clear the position of those who do not practice nomadism, like the Connors, or who aim to station their caravan on a stable place: are they still "Gypsies?" The Court seems to provide a rather romanticized, as well as doubtful, explanation: "The complexity of the situation has, if anything, been enhanced by the apparent shift in habit in the Gypsy population which *remains nomadic in spirit if not in actual or constant practice*" (ECtHR 2004: para 93, emphasis added). Furthermore, the contradiction of such argument and its potential weakness (after all, why protect a cultural characteristic that is apparently disappearing?) is evident in the fact that, at the moment of the final decision, such a crucial feature of the Gypsy way of life becomes a mere "individual preference," as in the case of Chapman (ECtHR 2001: para 82).

The other three cases considered here concern the eviction of groups of people belonging to Romani communities living in France and Bulgaria. In all three cases, the Court has admitted the claims of the applicants, finding the local authorities guilty of the violation of the right to home. These cases, then, may represent an advancement in the protection of the housing rights of groups living in conditions of precarity and insecurity. Nevertheless, I will argue that, since the presence of a continuous link between the person and the place of living remains the main principle used to recognize a violation of the right to home, individuals living in caravans and/or in contexts of mobility continue to be more exposed to violations of this right. In *Yordanova and Others vs Bulgaria* (ECtHR 2012), the Court found Bulgaria guilty of the violation of the right to home of a group of Romani individuals living on land illegally occupied. The community concerned started occupying the public area of a neighbourhood in Sofia from the 1960s and since then it has developed into a Romani settlement hosting from two to three hundred people. The general conditions of the settlement were deplorable as there was neither sewage nor plumbing, and a process of legalization had never been started. Nevertheless, the local authorities had always silently tolerated the occupation until 2005 when the municipality decided to begin a process of eviction. In front of the ECtHR, the Bulgarian authorities have justified the decision of evicting the Romani community on the basis that the land was occupied illegally, the living conditions did not respect the adequate norms, and the municipality planned to enhance the urban environment by constructing modern dwellings at the place of the inadequate buildings.

The ECtHR rejected the arguments of the authorities claiming that the legitimate aim of the eviction did not compensate for the violation of the right to home of the individuals, who have been living in the neighbourhood for years and have been part of the social life of the area. Furthermore, the Court argued that the eviction was unnecessary for the enhancement of the urban environment because this could have been reached by engaging in a process of legalization and by improving the existing housing conditions. Finally, it emphasized that "due consideration must be given to the consequences of their removal and the risk of their becoming homeless;" and "an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 of the Convention in exceptional cases" (ECtHR 2012: paras 125–30).

This case surely represents a crucial development in the protection of individuals living in situations of vulnerability and, therefore, for the protection of Roma living in illegal settlements. First, it emphasizes the need to avoid evictions of Romani settlements and instead to seek solutions to improve the existing living conditions. It therefore brings attention to an important policy issue, namely the forced displacement of Romani families living in illegal settlements justified by inadequate housing conditions. Furthermore, it emphasizes the positive obligations of Article 8 to ensure a secure shelter in exceptional cases, implicitly connecting the right to home with the right to housing, as Adélaïde Remiche (2012) highlighted. The ECtHR, indeed, also supported its decision with the fact that no adequate alternative housing was provided for the evicted families.

Nevertheless, like in the case of *Connors vs the UK*, the decision of the Court in *Yordanova and Others vs Bulgaria* is mainly based on the argument that the community concerned has been residing in the neighbourhood for years. This argument leaves open the issue of whether a violation of the home can also be found when the "continuous link" between the evicted family and the place does not exist. This issue does not exclusively concern nomadic Roma, but migrant Roma or Roma who have been forced to move and change location because of the continuous evictions. In these cases, are evictions legitimate? In addition to this, it is surely commendable that in the case of *Yordanova* the Court recognized the principle that an eviction should not leave a person homeless, and for this reason an adequate alternative should be provided. Nevertheless, it is questionable whether the provision of accommodation that respects the adequate standards can compensate for the violation of the home. This is especially crucial for those individuals who may find it more difficult to build a new home within a context that does not offer solutions suitable to their housing needs. It is therefore questionable whether this evolution may also represent an opportunity for cases concerning Gypsies and Travellers living in caravans, as long as

the necessity of providing adequate areas where they can safely park their caravans is not recognized.

In this regard, it the argument used by the Court in the case *Winterstein and Others vs France* appears particularly interesting (ECtHR 2013). In this case, a group of French Travellers (*gens du voyage*) had been living with their caravans for many years (between five and 30) on land that has then been reclassified as a "protected area." Despite the reclassification, the local authorities have continued to tolerate the presence of the Travellers families on the land concerned for many years, until they decided to request the local tribunal to carry out an eviction. While the urgent-applications' judge dismissed the request of the local authorities, the Tribunal de Grande Instance ordered the Traveller families to clear the area within three months and to pay a fine of 70 euros per person for each day of delay. The decision moved the Traveller families to apply to the ECtHR, complaining of a violation of Article 8. In the meantime, some of the families moved out from the land autonomously, while others had been relocated into social housing. Nevertheless, not all received an alternative solution in social housing and others refused to move into apartments, requesting instead housing solutions in family plots where they would have been living according to their "way of life." As a consequence, a number of families continued to live in the same area and, although they had never been forcibly evicted, the notification and fine for clearing the area were never withdrawn.

In their argumentation, the applicants used the *Chapman* and *Connors*' cases, requesting the respect of the "lifestyle of travellers" and their "identity as a Gypsy" (para 56) and referring to the obligation for the municipality to make land available for Travellers (para 21). Nevertheless, the Court in its argumentation relied greatly on the decision on *Yordanova and Others vs Bulgaria*, noticing how, as in the Bulgarian case, the French authorities had tolerated the unlawful settlement of the traveller families for years, allowing the creation of "a strong link with the place and building of a community life there" (para 78). The principle was indeed reiterated that specific premises can be considered a "home" when "sufficient and continuous links with a specific place" do exist (para 69). Nevertheless, as in the cases concerning British Gypsies, here the Court restated that "the occupation of a caravan is an integral part of the identity of travellers" (para 70) and that "the vulnerable position of Roma and travellers as a minority means that some special consideration should be given to their needs and their different lifestyle" (para 71).

Consequently, the Court claimed that the eviction's proceeding failed to evaluate the *proportionality* of the interference, namely whether the eviction was "necessary in a democratic society." It furthermore recognized a violation of Article 8 in the obligation imposed on the applicants to vacate

their caravans from the land, although the eviction had never been enforced. Finally, it rejected the argument of the French authorities that alternative adequate solutions were offered to the families living on the land, since a plan for the creation of family plots, as requested by some, was never implemented and then abandoned. This is probably the most interesting and potentially innovative part of this decision because the Court here explicitly stated that the refusal of the families to be relocated into apartments in social housing cannot be used as an excuse when this kind of solution does not "correspond to their lifestyle" (para 91).

This argument of the Court may be seen as an evolution compared to previous decisions. As previously described, in *Chapman vs the UK*, the Court rejected the argument of the applicant regarding the lack of halting sites, labelling this request as a mere "housing preference," while here it recognized the right of Travellers to be provided with housing solutions that fit their needs. This evolution can actually lead to a reinforcement of the housing rights of individuals living in caravans or other mobile structures with the recognition of the obligation of the state to provide structures apt to favour this different way of understanding the house and the home. Nevertheless, this decision also raised some criticisms: one of the judges of the Court released a partly dissenting opinion (Partly dissenting opinion of Judge Power-Ford to ECtHR case Winterstein and Others vs France 2013), claiming that the Court should have had recognized the racist motivation that moved French authorities to issue the eviction notice. This argument, supported by Bénoliel (2013) and Bowring (2015), highlights an important issue that is still not fully acknowledged by the Court, concerning the anti-gypsyist prejudices that emerge in many eviction notices, which justify the action with the protection of "public order" and/or "public health."

Furthermore, the principle of the "continuous links" for the identification of the home is still not challenged, as the last of the decisions here taken into account, *Hirtu and Others vs France* (ECtHR 2020a), also demonstrates. This case concerned a group of Romani families from Romania, living in France, who, after the dismantlement of a previous camp, occupied land in the suburbs of Paris. One year later, the local prefect issued an order to vacate the land in 48 hours, failing which they would have been forcibly evicted. After unsuccessfully bringing the case to the national courts and being evicted from the land, Mr Hirtu applied to the ECtHR, complaining of a violation of the right to home, among others. In this case, the Court did not recognize an interference with the home, because the concerned families could not claim a prolonged link with the place of living. Nevertheless, the Court accepted the claim that the eviction amounted to a violation of the private and family life of the individuals because the manner in which the

eviction had been carried out did not respect the safeguard procedures, resulting in a breach of Article 8.

Conclusions

The evictions of individuals belonging to Romani groups remains one of the most evident and tragic outcomes of anti-gypsyism in Europe, as also largely proved by reports released by NGOs working in this field (ERGO Network 2018; Rorke 2020). In this context, the ECHR and the jurisprudence of the ECtHR on the protection of the right to home can represent an important shield against the unlawful action of national institutions towards these groups. Nevertheless, this article highlights how the jurisprudence of the Court, departing from an idea of the home based on place stability and attachment, might fail to properly protect the rights of those who, by choice or for necessity, do not have a stable home. This is evident in the first two cases analysed, where the eviction of Gypsies' families and the lack of stationing sites for caravans have not been recognized as a violation of the home. In addition, the persistence of the association between the home and stability as a "universal norm" brought the judges of the Court to call for the protection of the caravan home as a "cultural specificity" of Roma, reinforcing a stereotype that informs the marginalization and exclusion of those identified within this macro-group.

The last three cases analysed here though, while confirming the persistence of an idea of home linked to stability, highlight a series of evolutions that may lead to reinforcement in the protection of the housing rights also of these groups. The *Yordanova* case, along with confirming that the illegal occupation of land is not a sufficient justification for carrying out forced evictions, reaffirmed the necessity of ensuring that those affected by eviction are not left homeless. Even more interesting in this regard is the *Winterstein* case, where the Court rejected the claim of the French authorities that alternative solutions were offered since a plan for the creation of family plots that would better fit the way of life of the families that requested them was never implemented. This, in particular, may be seen as an important evolution in the jurisprudence of the Court, since in the *Chapman* case it rejected the claim of the applicant regarding the lack of stationing areas for caravans, labelling it as a mere "housing preference."

Nonetheless, the fact that the protection of the right to home remains linked to an idea of stability might continue to expose vulnerable groups, who encounter more difficulties in creating this stability or do not identify with this idea, to a higher risk of eviction. This aspect is particularly relevant for Roma who are often the objects of evictions carried out because of the prejudices

affecting these groups. In this context, it appears important to also recognize the racist motivation lying behind many eviction decisions, as noticed during the *Winterstein* case. Here, rather than recognizing Roma as a vulnerable group with "specific needs," which might just feed the above-mentioned prejudices, the impact of anti-gypsyism in the difficulties encountered by these groups in finding a secure home should be acknowledged.

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