



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

FIRST SECTION

CASE OF AYALA FLORES v. ITALY

(Application no. 16803/21)

JUDGMENT

Art 8 • Home • Enforcement of a demolition order imposed on the applicant's home after her conviction for unlawful construction in breach of a building ban owing to a risk of seismic activity and to a "specific environmental interest" in the area • Proportionality assessment carried out by the domestic courts • Balancing of right to environmental protection against conscious defiance of building restrictions • Lack of a more thorough examination attributable to applicant's vague and unsubstantiated submissions • Margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 October 2025

FINAL

23/01/2026

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Ayala Flores v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić, *President*,

Erik Wennerström,

Raffaele Sabato,

Frédéric Krenc,

Davor Derenčinović,

Alain Chablais,

Anna Adamska-Gallant, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 16803/21) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Peruvian national, Ms Elisabeth Ayala Flores (“the applicant”), on 20 March 2021;

the decision to give notice to the Italian Government (“the Government”) of the complaint concerning the proportionality of the demolition order imposed on the applicant’s home under Article 8 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 23 September 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the proportionality of the enforcement of the demolition order imposed on the applicant’s home with her conviction for the offence of unauthorised construction and, specifically, the possibility of having the proportionality of the demolition order reviewed within the domestic framework in respect of its impact on the right to a home. It raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Procida (Naples). The applicant was represented by Mr L.B. Molinaro, a lawyer practising in Barano d’Ischia.

3. The Government were represented by their Agent, Mr L. D’Ascia.

4. The facts of the case may be summarised as follows.

I. THE UNAUTHORISED CONSTRUCTION AND THE DEMOLITION ORDERS

5. In the early 1990s the applicant and her husband, A.M., erected a small construction on a plot of land owned by A.M. on the island of Procida. The couple established their home there.

6. On 12 August 1996 the municipality of Procida ascertained that the premises had been erected without a building permit or authorisation, which was required given that the construction was located in a highly seismic zone also subject to landscape constraints (*vincoli paesaggistici*) under the Law for the protection of areas of outstanding natural beauty (see paragraph 46 below). Consequently, on 10 September 1996 the municipality ordered the applicant to restore the site to its original state, giving her sixty days to comply (see paragraph 44 below).

7. On an unspecified date in 1998 the municipality issued a demolition order in respect of the dwelling and served it to the applicant, giving her ninety days to comply (see paragraph 41 below).

8. In 1999 the applicant and her husband were brought to trial for, among other charges, unauthorised construction under section 20(c) of Law no. 47 of 28 February 1985 (see paragraph 45 below). According to the charges, they had erected a 30 sq. m building without a building permit or authorisation in an area subject to landscape constraints owing to the risk of seismic activity, and to an absolute ban on construction (*vincolo di inedificabilità*), stemming from the fact that the area in question had been declared an area of “specific environmental interest” (see paragraph 45 below).

They were additionally charged with the offence of “entering into premises which had been sealed by the police” (*violazione dei sigilli*) under Article 349 of the Criminal Code (see paragraph 45 below), for having further modified the construction, breaking the seals placed to prevent interference with the site on two separate occasions.

9. By a judgment of 7 May 2002, deposited in the registry on 14 May 2002, the Pozzuoli subdistrict section of the Naples District Court found the applicant and A.M. guilty as charged and sentenced them to an overall suspended penalty of five months’ imprisonment and a fine of 300 euros (EUR). The District Court further ordered the demolition of the construction (see paragraph 42 below).

10. The applicant appealed and on 7 July 2003 the Naples Court of Appeal declared part of the offences time-barred and upheld her conviction for the offences of unauthorised construction and of entering premises sealed by the police. The Court of Appeal reduced accordingly the overall sentence and lifted the seizure that had been imposed on the building for the sole purpose of allowing the applicant to carry out its demolition.

11. The judgment was deposited in the registry on 18 July 2003 and it became final on 16 October 2003.

12. On 10 December 2004 the applicant applied for a building amnesty under Decree-Law no. 269 of 2003 (see paragraph 48 below) and paid the relevant fees. The application went unanswered.

13. On 23 December 2009 the applicant's husband died. She kept living in the dwelling.

II. ENFORCEMENT OF THE DEMOLITION ORDER

14. On 24 January 2016 the public prosecutor attached to the Naples Court of Appeal, who was entrusted with the enforcement of the demolition order issued with the applicant's conviction (see paragraph 43 below), asked the municipality of Procida whether the demolition had been carried out or whether there were any reasons of public interest preventing it.

15. Consequently, on 25 February 2016 the municipality served the applicant with an eviction notice instrumental to allowing the municipality to carry out the demolition of the dwelling.

16. The documents provided show that on 21 March 2016 the public prosecutor served the applicant with a notice to comply with the demolition order issued with her conviction (see paragraph 9 above). The notice instructed her to demolish the dwelling within ninety days and warned her that if she failed to comply, the demolition would be carried out at her expense.

17. On 1 March 2016 the applicant submitted a formal request to the municipality, asking it to recognise that it was in the public interest to keep the structure that she and her husband had built.

III. REVIEW PROCEEDINGS (*INCIDENTE DI ESECUZIONE*)

A. First-instance proceedings

18. On 2 March 2016 the applicant lodged an appeal with the Naples Court of Appeal, asking for a review of the enforcement order (*incidente di esecuzione*), seeking the annulment or, in any event, the revocation of the demolition order or for it to be temporarily stayed.

19. In her appeal the applicant raised several complaints, none of which concerned her right to a home under Article 8 of the Convention.

20. The applicant alleged that she presented to the Court of Appeal additional written submissions in which she stated that the unauthorised construction was her only home, that she had been living there for more than fifteen years after her conviction and that she was experiencing financial difficulties. Relying on Article 8 of the Convention (and citing *Ivanova and Cherkeзов v. Bulgaria*, no. 46577/15, 21 April 2016), she contended that the enforcement of the demolition order would disproportionately affect her. The Government disputed this allegation (see paragraph 61 below).

21. With a ruling issued on 13 November 2018 and deposited in the registry on 25 November 2019, the Court of Appeal, acting as an enforcement court (*giudice dell'esecuzione*), dismissed the applicant's appeal.

22. While reaching that conclusion, the Court of Appeal observed that the demolition order was to be considered as a mainly restorative measure and that it was characterised as such in the Court of Cassation's case-law (see paragraph 50 below). According to the Court of Appeal, the demolition order was the mandatory response to unauthorised construction as it was intended to restore the orderly use of the land and compliance with building regulations. The Court of Appeal did not take a stand on the applicant's written submissions.

B. Proceedings before the Court of Cassation

23. The applicant appealed on points of law. Firstly, she complained that the Court of Appeal had failed to reply to the arguments supporting the alleged violation of Article 8 of the Convention presented in her additional written submissions (see paragraph 20 above), of which she reproduced the content in its entirety.

She then reaffirmed her remaining claims, and disputed the Court of Appeal's findings.

24. By judgment no. 26334 of 15 July 2020, deposited in the registry on 21 September 2020, the Court of Cassation rejected the appeal on points of law as inadmissible.

As to the alleged failure to address the content of her additional submissions, the Court of Cassation considered that that ground of appeal could not be examined as it did not satisfy the self-sufficiency (*autosufficienza*) requirement, since the applicant had not attached those written submissions to the appeal on points of law and had failed to demonstrate that they had been actually filed with the Court of Appeal. Nonetheless, the Court of Cassation provided further reasoning.

25. At the outset, the Court of Cassation expressly relied on the Court's relevant case-law (namely, *Ivanova and Cherkezov*, cited above, § 53) and acknowledged that any person risking the loss of his or her home should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention and in respect of his or her individual circumstances. It then referred to its own case-law where that principle had already been emphasised (see paragraphs 50-54 below).

26. Having said that, the Court of Cassation found that the applicant had presented her complaint under Article 8 of the Convention in a generic manner, failing to point out the individual circumstances demonstrating the disproportionate nature of the demolition order, which outweighed the public interest underlying its enforcement.

27. Moreover, the Court of Cassation considered that despite a certain period of time having passed (namely fifteen years) between the issuance of the demolition order and its enforcement, the applicant could not have had any legitimate expectation to keep living in the building, which she had always known was unauthorised. It further reiterated that the demolition order was a necessary measure in order to restore the site to its original condition and added that the applicant had failed to prove that the construction had been erected out of necessity (*stato di necessità*).

28. Lastly, the Court of Cassation rejected the remainder of the appeal, subscribing to the lower court's reasoning.

IV. FACTS SUBMITTED BY THE PARTIES FOLLOWING THE COMMUNICATION OF THE CASE FOR OBSERVATIONS

29. On 24 February 2021 the applicant applied to the municipality of Procida seeking accommodation in public housing owing to the fact that the construction where she had been living for years was facing demolition.

30. The Government provided the Court with three reports written by municipal officials following three on-site inspections of the area where the construction erected by the applicant is located.

31. The first report referred to the inspection carried out on 28 January 2020, when the officials wrote that the construction "was not inhabited; the surrounding area [was] overgrown with tall grass, brambles, weeds, and shrubs which could endanger the sanitary conditions of the neighbouring units". Attached to the report were photos depicting the area outside the construction.

32. A second inspection was carried out on 18 January 2022. According to the relevant report, the conditions of the construction and of the surrounding area had changed, in that a fence with a metal gate had been installed without a permit or authorisation. The fence is visible in the photos attached to the report.

33. On 3 December 2024 a third inspection was carried out. The municipal officials wrote the following in their report:

"... the construction does not appear to be inhabited, as ascertained in the previous inspections. This is confirmed by the attached photographs, particularly those of the interior of the building, which show an area that appears unfit for use (*inagibile*) and would be better suited as a storage unit."

The officials further noted that the exterior was unchanged and then spotted an accumulation of various materials forming what appeared to be an external storage area. Lastly, the officials noted that the openings of the construction had been fitted with green metallic shutters as shown by the photos attached to the report. They had been installed without a permit or authorisation.

34. All the photos attached to the three reports were submitted to the Court in black and white and no details of the interior of the premises are discernible.

35. With her observations, the applicant submitted two written statements (*dichiarazioni sostitutive dell'atto di notorietà*) signed by two women – residents of Procida, but whose relationship with the applicant remained unclear – according to whom the applicant was living, at the date of the statements, in the unauthorised construction on the island of Procida and had no other place to live owing to her difficult financial situation.

36. She further submitted a written opinion by a surveyor that she had appointed. In it, the surveyor explained that the applicant had very limited means, a fact that, together with her advanced age, prevented her from carrying out the needed maintenance work on the interior as well as the exterior of the dwelling.

Attached to the surveyor's opinion, the applicant provided the Court with the following documents:

(i) a certificate of residence issued by the municipality of Procida, attesting that she had been residing in the dwelling since 21 October 2001;

(ii) a certificate issued by the *Istituto Nazionale per la Previdenza Sociale*, the Italian welfare entity, attesting the payment of her pension (*assegno sociale*) in the net monthly amount of EUR 551,59 in January 2025;

(iii) a certificate concerning the financial situation of the applicant's household (*Indicatore della situazione economica equivalente*), showing that she lived alone and that her annual income amounted to EUR 4,943;

(iv) some colour photographs depicting the interior of the dwelling (specifically, the signs of water damage to the ceiling) and the exterior, where a collapsed storage unit and flower vases placed on a small wall were visible.

37. By the date of the latest information provided to the Court (7 April 2025) the house had not yet been demolished.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT LEGAL FRAMEWORK

38. The relevant legal framework is summarised in *Longo v. Italy* (dec., no. 35780/18, §§ 20-33, 27 August 2024).

39. For the sake of clarity, the main relevant provisions are reproduced below, together with other provisions which are of relevance in the present case.

40. Section 4 of Law no. 47 of 1985, in the relevant parts incorporated with a minor amendment into Article 27 of the Consolidated Law on Construction (see *Longo*, cited above, § 20), designated the mayor as the authority in charge of supervising town planning and building activities in the municipal territory to ensure their compliance with the law and regulations,

the provisions of town planning instruments and the construction methods set out in building permits.

41. The relevant parts of section 7 of Law no. 47 of 1985, incorporated without amendment into Article 31 of the Consolidated Law on Construction, provided as follows:

“1. Building work carried out in contravention of a building permit is that which involves the construction of a building which is totally different in terms of typological, planovolumetric or use characteristics from that covered by the permit itself, or the execution of building volumes that exceed the limits indicated in the project and that constitute a building or part of [a building] separately identifiable and usable.

2. The mayor, after ascertaining the execution of building work without a building permit, in contravention of permission or significantly different (*variazioni essenziali*) from that covered by the permit ... shall order its demolition.

3. If the person responsible for the unauthorised construction does not demolish or restore the site within ninety days of the demolition order, the construction and the area on which it stands (*area di sedime*) ... shall be acquired without compensation (*acquisiti di diritto*) by the municipality ...

4. Failure to comply with the demolition order within the time-limit laid down in the previous paragraph shall constitute grounds for taking possession [of the property] and its registration (*trascrizione*) in the land register, which shall be carried out free of charge.

5. The mayor shall order the demolition of the incorporated building work at the expense of the person responsible, unless a municipal council resolution declares the existence of an overriding public interest and provided that the work does not conflict with significant town planning or environmental interests.

...

8. If [the mayor] fails to act ... the head of the regional authority (*Giunta regionale*) ... shall adopt the measures required, simultaneously notifying the competent judicial authority for the purposes of prosecution.

...”

42. The relevant part of section 7(9) of Law no. 47 of 1985, which was incorporated without amendment into Article 31 § 9 of the Consolidated Law on Construction, provided as follows:

“In the event of a conviction for the offence referred to in ... section 20 of this Law in respect of the unauthorised work referred to in this section, the judge shall order the demolition of the work if it has not yet been carried out otherwise.”

43. As a part of the sentence, the enforcement of the demolition order issued with a criminal conviction is entrusted to the public prosecutor (see *Longo*, cited above, § 42).

44. Under section 10 of Law no. 47 of 1985, incorporated without amendment into Article 37 of the Consolidated Law on Construction, the mayor is entitled to order that a site be restored to its original state if the building work was carried out in an area subject to restrictions.

45. Section 20(c) of Law no. 47 of 1985, which was incorporated without amendment into Article 44(c) of the Consolidated Law on Construction, provided for the punishment of those who carried out building work in areas subject to historical, artistic, archaeological, landscape or environmental constraints (*vincoli*) without or in contravention of a building permit with up to two years' detention (*arresto*) and a fine ranging from ITL 30,000,000 Italian lire (ITL – EUR 15,493) to ITL 100,000,000 (EUR 51,645).

46. The protection of areas of outstanding natural beauty (*bellezze naturali*) is regulated by Law no. 1497 of 29 June 1939, which lays down the State's right to impose "special landscape protection orders" (*vincolo paesaggistico*) in respect of the sites to be protected.

47. Decree-Law no. 312 of 27 June 1985, converted with amendments into Law no. 431 of 8 August 1985, identified areas "of specific environmental interest" (*zone di particolare interesse ambientale*) on which an environmental constraint and an absolute ban on building work were in place, including in coastal areas.

48. Building amnesties (*condoni*) are measures of exceptional nature which are introduced by specific national laws; they may be granted to regularise "substantial" violations, provided that the conditions set out in the relevant amnesty law are met and an amnesty fee (*oblazione*) is paid (see *Longo*, cited above, § 30). A building amnesty was introduced by section 32 of Decree-Law no. 269 of 30 September 2003, converted with amendments into Law no. 326 of 24 November 2003.

Under section 32(27) of the Decree-Law, building work carried out on areas subject to landscape and environmental constraints could not benefit from the building amnesty.

49. Article 349 of the Criminal Code (*violazione dei sigilli*) provides for a penalty of imprisonment for a period of between six months and three years, and a fine ranging from EUR 103 to EUR 1,032, for any person who breaks seals placed by law or by order of the authorities with a view to ensuring the preservation or the identity of an item.

II. RELEVANT DOMESTIC PRACTICE

50. The relevant domestic practice concerning the demolition order issued with a criminal conviction is once again summarised in *Longo* (cited above, §§ 42-51).

51. Demolition orders issued by the municipality (see paragraph 41 above) can be challenged before the administrative courts.

52. As to demolition orders issued with a criminal conviction, the Court of Cassation, called upon to rule on appeals on points of law within proceedings for the review of the enforcement order in which the right to a home under Article 8 of the Convention was invoked, has developed a consistent line of case-law, the main findings of which are outlined below.

53. The Court of Cassation (judgment no. 27840 of 2016) has acknowledged that the courts need to carry out a case-by-case proportionality assessment of measures interfering with an individual's right to a home under Article 8 of the Convention, in keeping with the Court's relevant case-law (see *Ivanova and Cherkezov*, cited above), thus balancing the competing interests.

54. The Court of Cassation (judgments no. 18949 of 2016; no. 24882 of 2018) has further considered that Article 8 of the Convention does not confer an absolute right to a home, allowing lawful interferences with that right which aim to restore the site to its original state, such as the demolition order. Accordingly, the enforcement of the demolition order is not prevented by Article 8, provided that the measure is proportionate to the aim pursued in accordance with the requirements of necessity, adequacy and strict proportionality (judgment no. 48021 of 2019).

55. Under the settled practice of the Court of Cassation (*inter alia*, judgments no. 423 of 2020; no. 5822 of 2022; no. 21198 of 2023 and no. 45425 of 2024), the enforcement judge, called upon to decide on the enforcement of a demolition order, is bound to comply with the principle of proportionality as set out in the Court's case-law (see *Ivanova and Cherkezov*, cited above, and *Kaminskas v. Lithuania*, no. 44817/18, 4 August 2020), provided that the individual concerned specifically asks for his or her personal circumstances to be taken into account in a proportionality assessment.

56. An application for review of an enforcement order can be submitted at any time (see *Licandro v. Italy*, dec., no. 40004/16, § 27, 7 November 2023).

57. In this connection, the Court of Cassation has specified that the principle of proportionality comes into play in respect of the enforcement of the demolition order for reasons unrelated to the conditions for its issuance, but rather pertaining to the personal situation of the individual concerned. As such, it is for the person seeking to prevent the enforcement of an order issued with a final judgment to exhaustively provide the relevant facts (see, *inter alia*, judgment no. 21198 of 2023).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained that the enforcement of the demolition order issued with her conviction would disproportionately affect her and that the domestic courts had failed to carry out a proportionality assessment of the contested measure, in breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. The parties' submissions

59. The Government raised two, closely interrelated, preliminary objections. Firstly, they contended that the application had been submitted out of time, as the six-month time-limit provided for by Article 35 § 1 of the Convention ought to run from the date on which the applicant had been served with the demolition orders issued by the municipality, in 1996 and 1998 respectively (see paragraphs 6 and 7 above), or in 2003 when her conviction had become final (see paragraph 11 above), or at the latest when she had been served with the eviction notice from the municipality in February 2016 (see paragraph 15 above).

60. In support of their contention, the Government emphasised that the appeal for a review of the enforcement order cannot constitute an effective remedy whenever the alleged violation stems from an order or judgment which could have been appealed against to the competent court. In that connection, they pointed out that the applicant had not challenged the demolition orders issued by the municipality before the administrative courts and had not lodged an appeal on points of law to the Court of Cassation against the Court of Appeal's ruling upholding her conviction and the demolition order (see paragraph 10 above). Accordingly, the review proceedings would not have been useful for the applicant, as the enforcement court would never set aside a final demolition order for reasons of legal certainty.

61. Secondly, the Government argued that the applicant had failed to exhaust several domestic remedies.

They reiterated that she had not appealed against the Court of Appeal's judgment of 7 July 2003 to the Court of Cassation (see paragraph 10 above) and she had not brought an action to the administrative courts against the demolition orders issued by the municipality (see paragraphs 6 and 7 above).

In addition, they emphasised that, even assuming that the appeal for a review of the enforcement order could be considered *in abstracto* an effective remedy, the applicant had failed to exhaust it correctly. In fact, the Court of Cassation had rejected her appeal on points of law as inadmissible owing to procedural irregularities (see paragraphs 24-28 above) and, at any rate, she had not raised any complaint under Article 8 of the Convention in her original

appeal; she had only done so in her additional written submissions, but she had failed to attach them to her appeal on points of law.

62. The applicant replied, relying on the Court of Cassation's case-law (cited in *Longo*, cited above, § 48), that a demolition order issued with a criminal conviction could not become "final" under domestic law, as the enforcement court was allowed to assess its legality and its consistency with the public interest in the light of the decisions taken by the municipality after the conviction.

In that regard, the applicant relied on the fact that she had applied for a building amnesty after her final conviction (see paragraph 12 above), which, according to the Court of Cassation's case-law (cited in *Longo*, cited above, § 48), could lead to the lifting of the demolition order by the enforcement court.

63. The applicant further emphasised that her complaint hinged on the enforcement of the demolition order issued by the criminal courts, thereby an appeal for the review of the enforcement order was the appropriate remedy. She pointed out that the eviction notice served on her by the municipality (see paragraph 15 above) was part of the enforcement procedure of the order in question, therefore the administrative courts would have lacked jurisdiction.

64. As to the outcome of her appeal on points of law within the review proceedings, she contended that possible procedural flaws should not have prevented the domestic courts from examining the merits of the case when a fundamental right was at stake and that, at any rate, the Court of Cassation had taken a stand on her complaint under Article 8 of the Convention.

2. The Court's assessment

65. The Court reiterates that the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month¹ period are closely interrelated, as they are not only combined in the same Article, but also expressed in a single sentence whose grammatical construction implies such a correlation (see *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018). Thus, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 259, ECHR 2014 (extracts), and *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009). Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter

¹ Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the final domestic decisions were taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached. However, this provision allows only remedies which are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see, among many other authorities, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 130-32, 19 December 2017). It follows that if an applicant has recourse to a remedy which is doomed to fail from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016, and *Lekić*, cited above, § 65).

66. The general principles on exhaustion of domestic remedies were set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and recently quoted in *Duarte Agostinho and Others v. Portugal and 32 Others* ((dec.) [GC], no. 39371/20, § 215, 9 April 2024).

67. In ruling on the issue of whether an applicant has complied with the obligation to exhaust domestic remedies having regard to the specific circumstances of his or her case, the Court must first identify the act of the respondent State's authorities complained of by the applicant (*Jeronovičs*, cited above, § 76).

68. Turning to the present case, the Court observes at the outset that the applicant did not raise her complaint in respect of the actions taken by the municipality within its powers (see paragraphs 6-7 above), nor did she complain that the demolition order issued with her conviction had been unlawful. She rather specifically contested the enforcement of that demolition order by the public prosecutor, stating that, in the light of her individual situation, it would disproportionately affect her (see paragraph 58 above).

69. Consequently, given the applicant's choice to challenge the enforcement of the demolition order, the Court cannot share the Government's view that the starting point for the six-month period should be identified by the dates of the issuance of the demolition orders by the municipality, or by the date on which the applicant's conviction became final, or even by the date on which she was served with the notice of eviction, which was in connection with the enforcement initiatives of the prosecutor (see paragraphs 14-15 above).

70. Having received from the public prosecutor on 21 March 2016 a notice ordering her to comply with the demolition order issued with her conviction (see paragraph 16 above), the applicant lodged an application for a review of the enforcement order. The relevant proceedings ended with Court of Cassation's judgment no. 26334 of 15 July 2020, deposited in the registry on 21 September 2020 (see paragraph 24 above). Even though by the

date of the latest information provided to the Court (7 April 2025) the construction had not yet been demolished (see paragraph 37 above), the demolition order had been upheld by a final court decision and had become enforceable (see paragraphs 11, 16 and 28 above), and it does not appear that the applicant took any further legal recourse against it.

71. The Court takes note that, according to domestic practice, in the context of criminal proceedings demolition cannot be ordered or maintained when it is incompatible with the measures adopted by the administration, and its enforcement can be stayed, under certain conditions, if a request for retrospective permission or amnesty is submitted to the administration after conviction. In these cases, even after a conviction has become final, the order may be revoked or suspended by means of a request for a review of the enforcement order (see *Longo*, cited above, § 48). The Court is therefore not persuaded by the Government's arguments that the enforcement court would never be entitled to set aside a demolition order for reasons of legal certainty.

72. Moreover, the Court takes note that, according to the practice of the Court of Cassation: an appeal for a review of the enforcement order may be submitted at any time (see paragraph 56 above); the issue of the proportionality does not concern the conditions for the issuance of the demolition order, but specifically the possibility of carrying out its enforcement (see paragraph 57 above); thus, the enforcement judge is entitled to scrutinise the proportionality of the enforcement of a demolition order issued with a final conviction (see paragraph 52-55 above).

73. Against this background, although the applicant could have requested a review of the proportionality of the demolition order at any time, penalising her for attempting to challenge the notice of enforcement of the demolition order domestically – as she was entitled to do under Italian law – instead of turning directly to the Court would be contrary to the principle of subsidiarity, and would moreover remove any incentive for national courts to develop their case-law (see, *mutatis mutandis*, *Simonova v. Bulgaria*, no. 30782/16, § 41, 11 April 2023).

74. Having regard to the fact that the application was lodged with the Court on 20 March 2021, that is within six months of the above-mentioned Court of Cassation's judgment ending the review proceedings (the "final domestic decision"), the Court finds that the applicant complied with the time-limit provided for by Article 35 § 1 of the Convention. The Government's objection in this regard must therefore be dismissed.

75. In the light of the applicant's complaint, the Court further considers that an action before the administrative courts would have been of no avail, given that the contested measure was issued with a criminal conviction and consequently enforced by the public prosecutor, and such courts lack jurisdiction in this area (see paragraph 43 above).

76. As to the applicant's failure to lodge an appeal against her conviction with the Court of Cassation; her alleged failure to raise her grievances under

Article 8 of the Convention in the proceedings for the review of the enforcement order; and the scope of the judicial review exercised by the enforcement court, the Court considers that these aspects are closely linked to the substance of the applicant's complaint and should therefore be joined to the merits of the case.

77. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

78. The applicant stated that she had been living in the unauthorised construction for many years, as confirmed in the written statements she attached to her observations (see paragraph 35 above). She further contended that, even if an individual does not reside permanently in the property, in the Court's case-law (citing *McCann v. the United Kingdom*, no. 19009/04, ECHR 2008) a stable and lasting connection with it is considered sufficient to engage the protection afforded by Article 8 of the Convention. Thus, the demolition of the small dwelling would at any rate amount to an interference with her right to a home.

79. The applicant submitted that, based on the Court's case-law (*Evans v. the United Kingdom* [GC], no. 6339/05, ECHR 2007-I; *Buckley v. the United Kingdom*, 25 September 1996, *Reports of Judgments and Decisions* 1996-IV; and *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, 1 April 2016) she had the right to have the proportionality of such an interference specifically assessed in the light of her individual circumstances, but the domestic courts had failed to do so.

80. She then argued that the enforcement of the demolition order could not be considered necessary in a democratic society, in the light of several factors, namely: the fact that she had applied for the regularisation of the unauthorised construction; the modest size of it and its limited impact on the environment; the tolerance showed by State authorities which had failed to enforce the demolition order for many years; her unsuccessful request for public housing; and her personal situation as a widow living alone in a difficult financial situation, unable to afford rent, on an island where all the available apartments were rented to tourists.

81. The Government, at the outset, disputed that the applicant had been living in the construction facing demolition, based on the content of the three police reports (provided to the Court) written by municipal officials who had carried out inspections of the area where the construction erected by the applicant was located (see paragraphs 30-34 above).

82. They contended that there had not been an interference with the applicant's right to a home since the demolition order had been lawful, the

unauthorised nature of the construction was undisputed and the measure aimed at restoring the site to its original state (see *Longo*, cited above). In their view that was the purpose of the demolition order, which prevailed over the right to live in the illegally built property.

83. As to the proportionality of the demolition order, the Government highlighted that the dwelling had been erected unlawfully and that the applicant had been well aware of its illegality at least since her conviction in 2003. They added that the construction had been erected in an area subject to landscape constraints and there was a risk of seismic activity in the area, so allowing the construction to remain would constitute a danger to the public. Furthermore, a building amnesty could not have been granted in respect of the applicant's house given the environmental restrictions and the ban on building work placed on the area. Those factors, in their view, should outweigh the applicant's private interest.

84. Lastly, relying on the Court's findings in *Kaminskas v. Lithuania* (no. 44817/18, 4 August 2020), the Government concluded that the above-mentioned circumstances proved that the principle of proportionality had been complied with, as the demolition order had been the sole measure that the national authorities could take.

2. The Court's assessment

(a) Whether there has been an interference with the rights protected by Article 8

85. The Court reiterates that the concept of "home" within the meaning of Article 8 of the Convention is not limited to premises which are lawfully occupied, or which have been lawfully established (see *McCann*, cited above, § 46; *Yordanova and Others v. Bulgaria*, no. 25446/06, § 103, 24 April 2012; *Ahmadova v. Azerbaijan*, no. 9437/12, § 41, 18 November 2021; and *Caldarar and Others v. Poland*, no. 6142/16, § 105, 16 January 2025). It is an autonomous concept which does not depend on classification under domestic law. Whether or not a particular premises constitutes a "home" which attracts the protection of Article 8 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Yevgeniy Zakharov v. Russia*, no. 66610/10, § 30, 14 March 2017, and the references therein, and *Kaminskas*, cited above, § 42). The Court has never attached importance to the technical aspects of the dwellings in question, whether those were caravans, cabins, bungalows, makeshift houses or apartment rooms (see *Caldarar and Others*, cited above, § 109, and the references therein).

86. In the instant case, the applicant stated that she had been living in the small dwelling on the island of Procida since its construction in the early 1990s (see paragraph 5 above). The Government did not contest that assertion, but disputed that the premises were still the applicant's home because on three separate occasions in recent years a municipal official had

inspected the site and had found the place to be uninhabited (see the Government's submissions in paragraphs 81-82 above and the applicant's response in paragraph 78 above).

87. The Court observes, first of all, that the domestic courts did not question the applicant's assertion that the premises facing demolition were her home. In such circumstances, the Court considers that it should limit its assessment to the factual circumstances established in the domestic proceedings (see *Kaminskas*, cited above, § 43).

88. In any event, the following considerations are of relevance. It is true that two out of the three police reports relied upon by the Government were dated 18 January 2022 and 3 December 2024 respectively (see paragraphs 31-34 above), that is after the conclusion of the domestic review proceedings. However, the reports themselves showed that the condition of the premises had been modified over the years with the placement of a fence and the instalment of shutters on the openings of the construction (see paragraphs 31-34 above), facts which appear to be indicative of a continuous connection with the site. Moreover, the applicant submitted a certificate of residence according to which she had been living in the premises since 2001 (see paragraph 36 above). While refusing to consider such premises as the applicant's home, the Government omitted to indicate what other premises could have been her "home" (see *Prokopovich v. Russia*, no. 58255/00, § 38, ECHR 2004-XI (extracts); compare *Hasanali Aliyev and Others v. Azerbaijan*, no. 42858/11, § 35, 9 June 2022).

89. Having regard to the factual circumstances outlined above, the Court is willing to consider that the applicant had sufficient and continuing links with the building at issue for it to be considered her "home" for the purposes of Article 8 of the Convention (compare *Orlić v. Croatia*, no. 48833/07, § 55, 21 June 2011).

90. Furthermore, the demolition order had been upheld by a final court decision and had become enforceable (see paragraphs 11, 16 and 28 above), and it does not appear that the applicant had any further legal recourse against it. Accordingly, the Court has no reason to doubt that there has been an interference with her right to respect for her home (see *Ahmadova*, cited above, § 43, and *Kaminskas*, cited above, § 45, and the references therein).

(b) Whether the interference was justified

(i) Whether the interference was in accordance with the law

91. It is undisputed that the contested measure had a basis in domestic law (see paragraph 42 above) and the Court has no reason to find otherwise.

(ii) Whether the interference pursued a legitimate aim

92. The Court is satisfied that the demolition would pursue a legitimate aim. The Government, in line with the reasons provided by the domestic

courts, submitted that the demolition order aimed at restoring the site to its original state (see *Longo*, cited above, § 65) and sought to reestablish the rule of law by ensuring the effective implementation of the regulatory requirement that no buildings could be constructed without a permit. The Court has already observed that such a purpose may be regarded as falling under “prevention of disorder” and as promoting the “economic well-being of the country” (see, *inter alia*, *Ivanova and Cherkezov*, cited above, § 51, and *Ghailan and Others v. Spain*, no. 36366/14, §§ 60-61, 23 March 2021).

93. The Court also takes note – as it appears from the applicant’s charges within the criminal proceedings, it has been mentioned by the Government and was not disputed by the applicant – that the construction facing demolition is located in an area characterised by a risk of seismic activity. In this connection, it observes that the static and dynamic properties of a building, ensuring its stability and safety, are in general important, but even more so in the circumstances of the case. The design, materials, scale, features and quality of the construction are also relevant as the area is subject to landscape constraints. Moreover, the area is under a general ban on building work owing to its specific environmental interest (see paragraph 8 above).

94. Having regard to the risk of seismic activity, the demolition order pursued the aim of protecting public safety (see, *mutatis mutandis*, *Alif Ahmadov and Others v. Azerbaijan*, no. 22619/14, § 59, 4 May 2023). In this regard, the Court reiterates the State’s obligation to regulate and monitor existing buildings in order to prevent risks to the population wherever possible (see, in the context of Article 2 of the Convention, *Erdal Muhammet Arslan and Others v. Türkiye*, no. 42749/19, § 130, 21 November 2023).

95. The Court further reiterates that environmental conservation, which in today’s society is an increasingly important consideration, has become a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities (see *Depalle v. France* [GC], no. 34044/02, § 81, ECHR 2010, and the cases cited therein). It has stressed this point a number of times (see *Kaminskas*, cited above, § 48, and the references therein). It is therefore satisfied that the demolition order sought to preserve an area of environmental interest, thereby protecting the “rights and freedoms of others” (*ibid.*, § 51).

96. It follows that the impugned measure pursued legitimate aims under Article 8 § 2 of the Convention.

(iii) Whether the interference was necessary in a democratic society

97. The salient issue in the present case concerns its “necessity in a democratic society” within the meaning of that provision and the Court’s case-law. The general principles concerning the necessity of an interference with an individual’s home were summarised in *Winterstein and Others v. France* (no. 27013/07, §§ 147-48, 17 October 2013, and the cases cited therein) and *Ivanova and Cherkezov* (cited above, § 53).

98. In particular, a margin of appreciation must be left to the competent national authorities in this assessment. The breadth of this margin varies and depends on a number of factors, including the nature of the Convention right in issue (compare, under Article 1 of Protocol No. 1 to the Convention, *Longo*, cited above, § 82), its importance for the individual, the nature of the interference and the object pursued by the interference (see *Winterstein and Others*, cited above, § 148).

99. Where a dwelling has been established without the building permit which is needed under the national law there is a conflict of interest between the right of the individual under Article 8 of the Convention to respect for his or her home and the right of others in the community, including the right to environmental protection. When considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established, this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of the home in a particular place was unlawful, the position of the individual objecting to an order to move is less strong. The Court will be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the Court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 102, ECHR 2001-I; *Winterstein and Others*, § 148; and *Kaminskas*, § 56, both cited above). This is all the more so when an unlawful construction is erected on an area with a risk of seismic activity, given the State's preventive obligation which requires it to adopt the appropriate measures to minimise the effects of seismic events. Indeed, earthquakes can have catastrophic repercussions in terms of human lives when buildings which do not meet safety and construction standards collapse. Compliance with the rules of earthquake-resistant construction therefore implies taking into account the risk of seismic activity at all stages of construction, and then during the life of the building (see, in the context of Article 2 of the Convention, *Erdal Muhammet Arslan and Others*, cited above, § 129).

100. In the event of a deliberate violation and where it is impossible to regularise the construction, the Court has previously held that the public authorities could reasonably only order the demolition of the disputed construction to meet the requirements of the above-mentioned causes of public interest, when the competing interests had been properly balanced².

² See, for illustrative purposes, *Rubio v. France* [Committee], no. 40046/22, § 15, 28 September 2023.

101. Lastly, the Court reiterates, as it is clear from its case-law, that the requirement under Article 8 § 2 that the interference be “necessary in a democratic society” raises a question of procedure as well as one of substance. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation (see *Szczypiński v. Poland* (dec.), no. 67607/17, § 57, 18 January 2022, and the references therein).

102. Since the loss of one’s home is the most extreme form of interference with the right to respect for the home, any person at risk of this – whether belonging to a vulnerable group or not – should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under that Article in relation to unlawfully erected buildings. There is no need to repeat all of them here, except to emphasise that:

(a) they require that people who stand to lose their only home as a result of its planned demolition must be able to seek and obtain – at some point in the proceedings which lead to the demolition – a proper examination of its proportionality in the light of their individual circumstances; and that

(b) it would only be in exceptional cases that such people would succeed in raising an arguable claim that demolition would be disproportionate in their specific circumstances (see *Simonova*, cited above, § 48).

103. Turning to the present case, the Court notes that it is undisputed that the applicant and her late husband had built the house unlawfully (in particular, in breach of the ban on building work owing to the specific environmental interest of the area; see paragraph 8 above) and had done so knowingly. The applicant has not claimed, and there is no evidence, that she challenged the demolition orders issued by the administrative authorities in 1996 and 1998 (paragraphs 6 and 7 above). Nor did she appeal against the judgment of 2002 finding her guilty of unauthorised construction and ordering the demolition of the construction (see paragraphs 10-11 above). Only after the final conviction did the applicant apply for a building amnesty (see paragraph 12 above), which – according to the Government’s submission which appear to be supported by the relevant domestic legal framework – could not be granted in respect of the applicant’s house given the landscape and environmental constraints placed on the area (see paragraph 48 above).

104. The Court further notes that on 21 March 2016 the public prosecutor served the applicant with a notice to comply with the demolition order issued with her conviction – which she had failed to do voluntarily – urging her to demolish the dwelling within ninety days (see paragraph 16 above). At that point she sought to prevent, or at least stay, the forced demolition by way of lodging an application for a review of the enforcement order (see paragraph 18 above). The Court observes that in her appeal she did not raise – not even

in substance – any complaint under Article 8 of the Convention (see paragraph 19 above).

105. The applicant argued that she had presented to the enforcement judge additional written submissions in which, relying on the Court's case-law under that Article, she had contended that the enforcement of the demolition order would disproportionately affect her (see paragraph 23 above). The Government disputed that assertion, relying on the fact that, within the review proceedings, the Court of Cassation had rejected the applicant's appeal on points of law as inadmissible, owing to the fact that, *inter alia*, she had not provided evidence that those additional written submissions had actually been filed with the enforcement judge (see paragraphs 24 and 28 above). The Government used this as the basis for their objection of non-exhaustion of domestic remedies (see paragraph 61 above).

106. The Court observes that it was provided with the document containing those additional written submissions, however there is no indication that it was actually deposited in the registry of the Court of Appeal, which was acting as the enforcement judge.

107. Nonetheless, its content was reproduced in its entirety in the applicant's appeal on points of law (see paragraph 23 above). In it, the applicant stated that the unauthorised construction was her only home, that she had been living there for more than fifteen years after her conviction, and that she was in a difficult financial situation (see paragraph 20 above). The Court therefore finds that the applicant raised in substance her complaint under Article 8 of the Convention (see *Alif Ahmadov and Others*, cited above, § 52).

108. According to the Government, the finding of inadmissibility of the appeal by the Court of Cassation would demonstrate that the applicant failed to comply with procedural domestic laws on the lodging of appeals on points of law, therefore it could not be said that she correctly exhausted domestic remedies.

109. The Court observes that, while ruling on the inadmissibility of her appeal, the Court of Cassation did take a stand on the applicant's submissions (see paragraphs 25-28 above). The question for the Court to answer is therefore whether the Court of Cassation's reasoning hinged exclusively on the compliance with procedural rules or also addressed the merits of the applicant's complaint, and, if so, whether the Court of Cassation provided an assessment of the proportionality of the demolition of the applicant's home.

110. At the outset, the Court of Cassation referred to the Court's case-law (namely, *Ivanova and Cherkezov*, cited above, § 53) according to which any person risking the loss of his or her home should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention and in respect of his or her individual circumstances (see paragraph 25 above). It then referred to its own case-law where that principle had already been

emphasised. In this regard, the Court acknowledges that in the practice of the Court of Cassation the need for a proportionality assessment of demolition orders issued with criminal convictions has been consistently reiterated (see paragraphs 50-55 above).

111. Against that background, the Court of Cassation observed that the applicant had failed to provide details of her complaint, as she had merely relied on the above-mentioned principle without presenting specific factors capable of outweighing the public interests underlying the enforcement of the demolition order. It reiterated that Article 8 of the Convention did not guarantee an absolute right to a home and that the demolition order satisfied the public interest in the restoration of the site to its original state (see paragraph 27 above).

112. The Court of Cassation further addressed the applicant's contention (once again, encompassed in the additional written submissions reproduced in the appeal on points of law) that the enforcement of the demolition order would amount to a disproportionate interference with her right to a home, given that fifteen years had elapsed since its issuance, no action had been taken by the authorities during that time-frame and that she had consequently developed a legitimate expectation to maintain her home.

The Court of Cassation dismissed that contention observing, *inter alia*, that the applicant had been aware of the unauthorised nature of the construction from the start and that the mere passage of time did not change its nature, therefore she could not claim any legitimate expectation. It reaffirmed that the demolition order was a necessary measure in order to restore the site to its original state and added that the applicant had failed to prove that the construction had been erected out of necessity (see paragraphs 26-28 above).

113. In the light of the above, the Court finds that, independent of the issue (disputed between the parties) whether the Court of Appeal had in fact received the applicant's submissions and had failed to reply, the Court of Cassation did not merely reject the applicant's ground of appeal under Article 8 of the Convention as inadmissible for procedural reasons, as the Government contended, but also addressed its content, providing an assessment of the applicant's statements.

114. The Court reiterates, as to the rule requiring applicants to exhaust domestic remedies before lodging their complaints before the Court, that domestic remedies have not been exhausted when an appeal is not accepted for examination because of a procedural mistake by the applicant. However, non-exhaustion of domestic remedies cannot be held against him or her if, in spite of his or her failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the appeal (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010, and the references therein).

115. In the Court's view, such an examination was carried out in the present case. It follows that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

116. That said, the parties disagreed as to whether the domestic authorities, and specifically the Court of Cassation, had engaged in a proportionality assessment of the contested measure in the light of the applicant's personal circumstances.

117. The Court notes that it is undisputed that the judgment convicting the applicant and ordering the demolition of the unauthorised construction did not provide any reasoning as to whether such demolition was necessary in a democratic society. Nonetheless, the Court has already considered that this in itself does not pose a problem under Article 8 of the Convention so long as the applicant could obtain a proportionality assessment at the enforcement stage (see *Simonova*, cited above, §§ 51-52).

118. The Court observes that the applicant, while stating that the unauthorised construction facing demolition was her only home and that she was in a difficult financial situation, did not provide the national courts with any elaboration on those points. She attached to her application and to the observations filed with the Court her pension certificate, a certificate concerning the financial situation of her household and a request for social housing submitted to the municipality of Procida on 24 February 2021, that is after the conclusion of the review proceedings (see paragraphs 35-36 above). None of these documents were submitted to the domestic courts and no specification or further argument (such as special needs or a possible situation of vulnerability) was, in fact, provided to them concerning the applicant's financial situation and living conditions at the time (see *Ghailan and Others*, cited above, § 76). As to the applicant's request for a building amnesty (see paragraph 13 above), left unanswered by the municipality, it is not for the Court to take a stand on its validity or its effects. At any rate, its submission was not even mentioned by the applicant in her domestic appeals. The Court of Cassation explicitly referred to the Court's case-law concerning the need for a specific proportionality assessment of measures entailing the loss of one's home (citing *Ivanova and Cherkeзов*, cited above), pointed out the vagueness of the applicant's statements and consequently considered that there were no substantiated individual circumstances indicating a disproportionate interference with the applicant's rights under Article 8 of the Convention (see paragraph 26 above). In this connection, the Court further notes that the issue of the time span between the issuance of the demolition order and its enforcement, raised by the applicant, was also addressed by the Court of Cassation (see paragraph 27 above).

119. In this context, the Court cannot share the applicant's view that no proportionality review was carried out in her case and finds that the present case therefore needs to be distinguished from those in which the domestic courts focused exclusively on the unlawfulness of the construction, failing to

weigh the competing interests (compare and contrast *Ahmadova*, cited above, § 47; *Alif Ahmadov and Others*, cited above, § 61; and *Bagdonavicius and Others v. Russia*, no. 19841/06, §§ 102-103, 11 October 2016). Indeed, the applicant was able to present her arguments under Article 8 of the Convention. Those arguments were taken into account, but ultimately deemed insufficient to stop the enforcement of the demolition order (see *Szczypiński*, cited above, § 71). The fact that a more thorough examination of the proportionality of the measure was not carried out is a consequence of the applicant's own conduct (see, *mutatis mutandis*, *Ghailan and Others*, cited above, § 72).

120. In particular, the Court acknowledges that the domestic authorities – which are not subject to any time-limit (see *Longo*, cited above, § 80) – waited several years for the applicant to voluntarily comply with the demolition order issued with her conviction before initiating enforcement proceedings. However, it observes that the question to be answered in the present case is not whether the State's inactivity in that regard can be acceptable or not in itself, but whether the particular circumstances of the case disclose a violation of the applicant's right to respect for her home under Article 8 of the Convention (compare *Ghailan and Others*, cited above, § 65).

The Court reiterates that the notice of enforcement served on her by the prosecutor was the sole measure complained of by the applicant, who did not criticise the municipality's actions before the domestic courts (see paragraph 103 above) or before the Court. It notes that the authorities initially had a prompt reaction and took a firm standpoint as regards the unlawfulness of the construction and the need for it to be demolished (compare and contrast *Orlić*, cited above, § 70 *in fine*). It further notes that the applicant was afforded the opportunity to dispute the necessity of the demolition but failed to properly do so. Indeed, the domestic courts considered that, in a system where the demolition order created an obligation for the addressee and did not become time-barred, the period of time between the conviction and the enforcement notice, relied upon by the applicant, could not alone justify the contested measure being lifted. They also took into account the fact that she had been unable to put forward any substantiated arguments in that regard.

The Court thus finds that, in the circumstance of the present case, the State did not overstep its margin of appreciation (see *Kaminskas*, cited above, § 65).

121. In this regard, the Court wishes to reiterate that, in the balancing of the competing interests, the position of the individual objecting to an order to move from a dwelling built in conscious defiance of the prohibitions of the law is less strong, especially if the home was established on an environmentally protected site (see *Kaminskas*, cited above, § 56) or in an area at risk of seismic activity (see paragraph 99 above), or in an area where urban planning prohibits construction and regularisation is not possible (see paragraph 93 above).

122. In those cases, it would be for the individual to specifically mention and (if possible) to support his or her statements with appropriate evidence as to the specific individual factors that should prevent the authorities from carrying out measures aimed at removing unauthorised or unsafe constructions, thus protecting the rights of other people in the community.

123. The Court emphasises that that would be particularly so whenever the demolition order was issued with or upheld by a final judgment and the individual concerned had several years to comply but did not take any initiative (compare and contrast, *Ivanova and Cherkeзов*, cited above, § 59 *in fine*). In fact, deeming otherwise would entail allowing the individual to benefit from a protracted unlawful situation to the detriment of the community.

124. Lastly, the Court notes that the applicant only sought accommodation in public housing from the municipality after the conclusion of the proceedings for the review of the enforcement order (see paragraph 29 above), despite having been aware of the demolition order for many years. It further observes that, in any event, the Convention does not bind the authorities to provide alternative accommodation of their own motion in any circumstance (see *Winterstein*, cited above, § 159), as the possibility for the individual concerned to find alternative accommodation is but one of the factors to be considered in the proportionality assessment (see *Ivanova and Cherkeзов*, cited above, § 53).

125. In the light of the foregoing, the Court is satisfied that the domestic authorities assessed the relevant circumstances as presented by the applicant and did not exceed the margin of appreciation accorded to them (*Kaminskas*, § 65, and *Ghailan and Others*, § 80, both cited above).

126. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to dismiss the Government's preliminary objection concerning compliance with the six-month time-limit;
2. *Decides*, unanimously, to join to the merits the Government's preliminary objection concerning the non-exhaustion of domestic remedies and dismisses it;
3. *Declares*, unanimously, the application admissible;
4. *Holds*, by 6 votes to 1, that there has been no violation of Article 8 of the Convention.

AYALA FLORES v. ITALY JUDGMENT

Done in English, and notified in writing on 23 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge F. Krenc is annexed to this judgment.

DISSENTING OPINION OF JUDGE KRENC

1. In a State governed by the rule of law, it is not only the authorities who are required to respect the law. Individuals, too, must comply with it.

In particular, urban and environmental regulations are of paramount importance. Compliance with them is imperative, and the Convention cannot be invoked to argue otherwise. Environmental degradation directly affects everyone’s health, safety and life (through, for example, pollution, natural disasters and seismic activities). That is why States Parties are bound by positive obligations under the Convention (see *Cannavacciuolo and Others v. Italy*, nos. 51567/14 and 3 others, 30 January 2025). Among these obligations is the State’s duty to take all appropriate measures to prevent, as far as possible, danger resulting from seismic risks (see *Erdal Muhammet Arslan and Others v. Türkiye*, no. 42749/19, §§ 126-33, 21 November 2023). As pointed out in the present judgment, “earthquakes can have catastrophic repercussions in terms of human lives when buildings which do not meet safety and construction standards collapse” (see paragraph 99).

2. The present judgment finds that there has been no violation of Article 8 of the Convention in respect of the enforcement of a demolition order issued following the applicant’s conviction for unauthorised construction.

Yet, the present judgment accepts that the disputed demolition concerns the applicant’s home (see paragraphs 86-90). This is not a case concerning Article 1 of Protocol No. 1 to the Convention (compare *Longo v. Italy* (dec.), no. 35780/18, 27 August 2024, where an order to demolish a warehouse was examined under this provision). The Court has already held that “the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1” (see *Gladysheva v. Russia*, no. 7097/10, § 93, 6 December 2011, with further references).

Furthermore, the present judgment rightly emphasises that “the loss of one’s home is the most extreme form of interference with the right to respect for the home” so that a proportionality assessment of any demolition order must be carried out (see paragraph 102).

I fully agree that, when examining whether a demolition order is proportionate, “it is highly relevant whether or not the home was established unlawfully” (see paragraph 99). However, mere unlawfulness cannot automatically justify a demolition (see *Ahmadova v. Azerbaijan*, no. 9437/12, §§ 46-53, 18 November 2021). In its case-law, the Court has listed some of the main factors to be taken into account when assessing the proportionality of a demolition order:

“When it comes to illegal construction, the factors likely to be of prominence when determining the proportionality of the measure are whether or not the home was established unlawfully, whether or not the persons concerned did so knowingly, what is the nature and degree of the illegality at issue, what is the precise nature of the interest

sought to be protected by the demolition, whether suitable alternative accommodation is available to the persons affected by the demolition and whether there are less severe ways of dealing with the case; the list is not exhaustive.” (See *Ghailan and Others v. Spain*, no. 36366/14, § 64, 23 March 2021; see also *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 53, 21 April 2016.)

I am not convinced that all these elements were duly considered in the present case. The demolition order was essentially, if not exclusively, motivated by the illegality of the construction (see paragraphs 22 and 27 of the present judgment).

3. In particular, the present judgment overlooks, in my view, one factual element which is important under the necessity test: the passage of time¹. Nearly thirteen years had elapsed between the final conviction of the applicant (see paragraph 11) and the demolition order issued by the public prosecutor (see paragraph 14).

Indeed, what is striking is the passivity of the national authorities over so many years, and the fact that this inaction was not justified before our Court.

This inevitably calls into question the necessity of the contested demolition. If, as the respondent State argued before the Court, it was necessary because “allowing the construction to remain would constitute a danger to the public” (see paragraph 83 of the present judgment), how can one explain the authorities’ inaction for so many years?

4. In support of its findings, the present judgment highlights that the applicant “failed” to dispute the necessity of the demolition before the domestic courts (see paragraph 120). I must admit that this part of the reasoning is somewhat puzzling. The applicant claimed to have relied on Article 8 of the Convention and referred to the above-mentioned *Ivanova and Cherkezov* case-law to support her argument that the demolition of her house would be disproportionate (see paragraphs 20 and 23 of the present judgment). In those submissions, she invoked, among other elements, the passage of time (see paragraph 20 of the present judgment). The Government disputed that these observations were submitted, and it is, of course, difficult for the Court to take a position on this point from Strasbourg. In any event, if the applicant “failed” to challenge the necessity of the demolition, it raises the question of why her complaint – exclusively focused on the lack of proportionality (see paragraph 58 of the present judgment) – was not declared inadmissible for non-exhaustion of domestic remedies. Indeed, pursuant to Article 35 § 1 of the Convention, a complaint cannot be brought before the Court if it has not first been raised before the domestic authorities.

Since the present judgment has come to the conclusion that the complaint relating to the lack of proportionality was brought before the domestic courts (see paragraphs 113-15), those courts should have carefully examined it,

¹ See, in a different context, *Éditions Plon v. France*, no. 58148/00, § 53, ECHR 2004-IV, which stresses the importance of the passage of time in the proportionality test.

based on all the relevant elements, taking into account not only the applicant's conduct but also that of the authorities.

5. On this point, I distance myself from the present judgment when it states that “the question to be answered in the present case is not whether the State's inactivity (...) can be acceptable or not in itself, but whether the particular circumstances of the case disclose a violation of the applicant's right to respect for her home under Article 8 of the Convention” (see paragraph 120). It is indisputable that the question that the Court, as ultimate guardian of the Convention, had to decide was only whether Article 8 had been violated. Nevertheless, the conduct of the authorities constitutes one of the relevant factors in this regard and cannot be dissociated from the proportionality assessment required by this provision.

6. Yet, it is emphasised that under Italian law, demolition orders are not subject to a limitation period. I take note of this. However, under the Convention and its Article 8, national authorities still have to demonstrate the necessity of the demolition, namely why this measure was necessary to achieve the aim pursued. Likewise, they are obliged under Articles 2 and 8 of the Convention to take all appropriate measures to protect the environment and to prevent seismic risks that may affect individuals' lives. The present judgment expressly highlights “the State's preventive obligation which requires it to adopt the appropriate measures to minimise the effects of seismic events” (see paragraph 99), and the Government also relied on it. In my opinion, this obligation must be taken seriously. Once invoked, diligence and consistency are required.

Demolition orders issued decades after the final conviction – twenty, thirty, forty, or even fifty years later – may be called into question under Article 8 of the Convention and the necessity requirement. How can the compelling need to prevent the effects of significant seismic risks, invoked by the national authorities, still remain a credible justification after such a long period of time? I can conceive of a risk suddenly increasing, but this is not what was argued in the present case.

7. As the Court has repeatedly stated, “[t]he Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions” (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 75, 24 January 2017, with further references). I attach the utmost importance to this holistic reading of the Convention. Concretely, the obligation incumbent on States Parties to take adequate measures to prevent the danger of seismic events, on the one hand, and the respect due to the applicant's home under Article 8 of the Convention, on the other, called both for a swifter and more coherent response from the domestic authorities.

From this perspective, my point is not that unlawful constructions should be encouraged under the Convention – quite the contrary. It is to underscore the necessity of taking adequate measures to protect the environment and to

prevent risks for public safety, as well as the need to combat unlawfulness with diligence and consistency, in full respect of all the guarantees under the Convention. A demolition measure does not, in itself, run counter to Article 8 of the Convention, but it cannot be exempt from the basic safeguards and the necessity assessment required under this provision.

8. For all these reasons, and with due respect for my esteemed colleagues, I am not satisfied that the domestic authorities assessed the relevant circumstances of the present case in the light of the above-mentioned requirements.