

Demolition order for Bay of Naples property: no violation

In today's **Chamber judgment**¹ in the case of [Ayala Flores v. Italy](#) (application no. 16803/21) the European Court of Human Rights held, by 6 votes to one, that there had been:

no violation of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights.

The case concerned a demolition order for the unauthorised construction of a house on the island of Procida belonging to Ms Ayala Flores, the applicant. Her complaint specifically focussed on the issue of whether the authorities had struck a fair balance between her individual right to her home and the public interest in issuing and enforcing the demolition order.

The Court found in particular that the courts had weighed up the competing interests at stake and had taken into account the applicant's arguments, but had found them to be vague, unsubstantiated and insufficient to outweigh the significant interest in enforcing the demolition. It stressed that the applicant had weakened her position in that balancing exercise as she had continued living in the property in conscious defiance of the law for 15 years, and in the knowledge that it was on an environmentally protected site and an area at risk of seismic activity.

Principal facts

The applicant, Elisabeth Ayala Flores, is a Peruvian national who was born in 1957 and lives on the island of Procida in the Bay of Naples (Italy).

In the early 1990s the applicant and her husband built a 30 sq. m house on a plot of land he owned on Procida and set up home there.

In August 1996 the local authorities determined that the house had been built without a building permit, which had been required given that it was located in a highly seismic zone and an area of outstanding natural beauty.

In May 2002 the applicant was found guilty of the offence of unauthorised construction. The judgment against her became final in October 2003. Consequently, a demolition order was issued by the criminal court.

She continued living in the house, and meanwhile applied for a building amnesty, without success.

In March 2016 the Public Prosecutor served the applicant with a notice to comply with the demolition order which had been issued with her conviction.

She then started review proceedings seeking to prevent, or at least to stay, the demolition. This appeal was dismissed in November 2018.

The applicant appealed on points of law, which the Court of Cassation rejected as inadmissible in July 2020. It found that although the demolition had been ordered 15 years before, the applicant could not have had a legitimate expectation to keep living in the building, which she had always

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

known was unauthorised. It also found that she had failed to substantiate her arguments that the house in Procida was her only home and that she was in a difficult financial situation. Overall, the demolition was necessary in order to restore the site to its original state.

The building has not yet apparently been demolished.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life and home), Ms Ayala Flores complained that the enforcement of the demolition order would disproportionately affect her as a widow living alone in a difficult financial situation. Specifically, she alleged that the domestic courts had failed to review whether a balance had been struck between her right to respect for her home and the public interest in having the house in Procida demolished.

The application was lodged with the European Court of Human Rights on 20 March 2021.

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

Ivana Jelić (Montenegro), *President*,
 Erik Wennerström (Sweden),
 Raffaele Sabato (Italy),
 Frédéric Krenc (Belgium),
 Davor Derenčinović (Croatia),
 Alain Chablais (Liechtenstein),
 Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, *Section Registrar*.

Decision of the Court

First of all, the Court found that the applicant had had sufficient and continuing links with the house in Procida for it to be considered her “home” within the meaning of the Convention. In particular, she had submitted a certificate of residence to prove she had been living in the house since 2001, while recent police reports provided by the Government showed that a new fence and shutters had been installed.

The applicant had no further legal recourse against the demolition order, which had been upheld by a final court decision and was enforceable. There had therefore been an interference with her right to respect for her home. That interference pursued the legitimate aim of protecting an area of environmental interest.

The Court went on to note that the loss of one’s home was the most extreme form of interference with Article 8 and that any person at risk of such interference should in principle be able to have the competing private and public interests at issue reviewed.

It did not, however, share the applicant’s view that a review had not been carried out in her case. The Court of Cassation had taken into account her arguments, but had found them to be vague, unsubstantiated and insufficient to outweigh the significant interest in enforcing the demolition. She had not submitted any documents to the national courts detailing her financial situation or living conditions.

It pointed out in particular that those like the applicant who continued living in property in conscious defiance of the law weakened their position in the balancing exercise of competing interests. This was especially so in the applicant’s case given that her home was on an environmentally protected site and an area at risk of seismic activity.

The onus had therefore been on the applicant herself to substantiate her position, and all the more so given that the demolition order had been upheld by a final judgment and a number of years had gone by without her taking any steps to comply with the order.

The Court concluded that the Italian authorities had assessed the relevant circumstances as presented by the applicant and had not overstepped their room for manoeuvre (“margin of appreciation”) to decide on such matters. There had accordingly been no violation of Article 8 of the Convention.

Separate opinions

Judges Krenč expressed a dissenting separate opinion annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int.

Follow the Court on Bluesky [@echr.coe.int](https://bsky.app/profile/echr.coe.int), X [ECHR CEDH](https://twitter.com/ECHR_CEDH), [LinkedIn](https://www.linkedin.com/company/echr-coe-int), and [YouTube](https://www.youtube.com/channel/UCk1jW1W1W1W1W1W1W1W1W1).

Contact [ECHRPress](mailto:echrp@echr.coe.int) to subscribe to the press-release mailing list.

Where can the Court’s press releases be found? [HUDOC - Press collection](https://www.echr.coe.int/press-releases)

Press contacts

echrp@echr.coe.int | tel.: +33 3 90 21 42 08

We are happy to receive journalists’ enquiries via either email or telephone.

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Jane Swift (tel: + 33 3 88 41 29 04)

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