



## Failure to enforce a judicial decision requiring a neighbour to demolish a building: violation of the right to a court

In today's **Chamber** judgment<sup>1</sup> in the case of **C.M. v. Belgium** (application no. 67957/12) the European Court of Human Rights held, by a majority (five votes to two), that there had been:

**a violation of Article 6 § 1 (right of access to a court)** of the European Convention on Human Rights.

The case concerned the failure to enforce judicial decisions ordering C.M.'s neighbour to carry out rehabilitation work in order to comply with the urban planning regulations.

The Court found in particular that C.M. had not received effective assistance from the administrative authorities in order to compel his neighbour to comply with the judgment ordering him to carry out the work. Furthermore, neither the fines procedure nor the option for C.M. himself to have the work performed had proved adequate in practice to remedy the situation of which he had complained.

### Principal facts

The applicant, C.M., is a French national who was born in 1927 and lives in Quiévrain (Belgium).

In 1992 the authorities granted T.R. (C.M.'s neighbour) planning permission to build a commercial property on land adjoining C.M.'s property. The planning official subsequently appealed unsuccessfully against that decision.

In 1993 T.R. was informed that the planning permission had come into effect and that he could arrange for construction to begin, which he did on the same day. In the meantime, C.M., who complained, among other things, that the building would block his sunlight, lodged an application for judicial review, which was allowed by the *Conseil d'État* in 1997.

In 1999 T.R. lodged an unsuccessful planning application with a view to regularise the 1993 construction. The proceedings concluded in 2008 when the *Conseil d'État* rejected his application for judicial review.

In 2009 C.M. and his wife brought proceedings against T.R. in the Criminal Court. T.R. was ordered to carry out the necessary alterations and demolition work within one year, in order to return the site to its designated use as courtyards and gardens. On 22 February 2011 the Mons Court of Appeal upheld that judgment and gave the neighbour one year to complete the work. T.R. was also ordered to pay compensation in respect of non-pecuniary damage and court fees.

In 2013 C.M. and his wife, on being informed that T.R. planned to sell the property in question, brought proceedings against him in the Court of First Instance seeking an order for him to pay a fine of 1,000 euros (EUR) for each day's delay from the date of the judgment that was to be delivered. The property was sold in 2014.

In 2016 the Court of First Instance ruled that the request for a fine to be imposed on T.R. was unfounded since T.R. no longer had any control over the building in question or any rights in relation

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](http://www.coe.int/t/dghl/monitoring/execution).

to it. The court ordered the new owners, by 30 June 2017 at the latest, to carry out the alterations which the Criminal Court had ordered in T.R.'s case. It also ordered them to pay a fine of EUR 125 for each day's delay, payable to the planning official and to C.M. and his wife; the fine would not take effect until the judgment had been served.

In 2017 the judgment was served on the new owners, at the request of C.M. and his wife, who sought payment of the fine from the date of service until the work had been completed. By 21 September 2017 the planning official had still been unable to request service of the judgment in order for work to re-start, owing to administrative and procedural difficulties.

According to a report written in July 2017, the work had reached the stage where the building was no longer standing. However, the site could not yet be considered to have been rehabilitated since the concrete floor slab, the wall footing and the concrete posts were still in the ground.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, C.M. complained of the failure to enforce the Mons Court of Appeal judgment of 22 February 2011. The Court decided to examine the complaint from the standpoint of Article 6 § 1 (right to a court) of the Convention.

The application was lodged with the European Court of Human Rights on 15 October 2012.

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

Robert **Spano** (Iceland), *President*,  
 Paul **Lemmens** (Belgium),  
 Işıl **Karakaş** (Turkey),  
 Nebojša **Vučinić** (Montenegro),  
 Valeriu **Griţco** (the Republic of Moldova),  
 Jon Fridrik **Kjølbro** (Denmark),  
 Stéphanie **Mourou-Vikström** (Monaco),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### Article 6 § 1 (right of access to a court)

Under domestic law, persons affected by an infringement of the urban planning regulations had two means of obtaining enforcement of a judicial decision ordering the offender to restore the site to its original state. The persons in question could (1) request the court to order the offender to pay a fine in the event of failure to comply, or (2) proceed to enforce the decision themselves.

The Government stressed that C.M. himself should have ensured effective enforcement of the Court of Appeal judgment of 22 February 2011 by bearing the costs in advance in order to have the work carried out. The Court observed that the cost of the work was considerable (approximately EUR 34,000) and that C.M. had stated that he did not have the necessary funds. The Court therefore considered that the option for C.M. himself to proceed to enforce the judgment ordering T.R. to carry out work was not a realistic one.

With regard to the fine (Article 1385*bis* of the Judicial Code), the Court noted that C.M. had not remained inactive. When T.R. had not complied with the judicial decisions of his own accord, C.M. and his wife, on being informed that he planned to sell the property in question, had brought proceedings against him in the civil courts seeking an order for him to pay a daily fine until the work was completed. However, the fines procedure, which had been initiated in 2013, had not been

concluded until October 2016. As the neighbour had sold the property in the meantime, the new owners had to be ordered to carry out the work and a new deadline had to be given for its completion, subject to a fine for each day's delay from 1 July 2017 onwards. However, the demolition work had not been completely finished by July 2017. The Court therefore considered that the effectiveness of the fines procedure had been open to doubt in the present case.

The Court also noted that under domestic law it was open to the competent authorities – the municipal council and the planning official – to proceed on their own initiative to enforce a judicial decision ordering a site to be restored to its original state. While this was an option rather than an obligation, the Court considered that it should be assessed in the light of the State's positive obligation to secure, by its own choice of means, the enforcement of final judicial decisions, including those in disputes between private individuals. The municipal council had not intervened at any stage to assist C.M. in obtaining enforcement of the Court of Appeal judgment, nor had the planning official exercised his powers to enforce the judgment of the Mons Court of Appeal of his own motion. No justification on public-interest grounds had been advanced by the Government to explain this position on the part of the regional authority with regard to a judicial decision finding an infringement of the urban planning regulations, which the planning official was supposed to enforce. Moreover, the planning official had sought an order for payment of a fine only after joining the civil proceedings as an intervener at the request of C.M. and his wife.

Accordingly, the Court found that C.M. had not received effective assistance from the administrative authorities in order to compel his neighbour to comply with the judgment requiring him to carry out the work. Furthermore, neither the fines procedure nor the option for C.M. himself to have the work carried out had proved adequate in practice to remedy the situation of which he complained. **There had therefore been a violation of Article 6 § 1 of the Convention.**

#### Article 41 (just satisfaction)

The Court held that Belgium was to pay the applicant EUR 12,000 in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

#### Separate opinions

Judge Spano expressed a concurring opinion and Judges Lemmens and Kjølbro expressed a joint dissenting opinion. These are annexed to the judgment.

*The judgment is available only in French.*

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