



Demolition of residential house built without permit would be unjustified without taking residents' circumstances into account

The case of [Ivanova and Cherkezev v. Bulgaria](#) (application no. 46577/15) principally concerned a complaint by a couple about the threatened demolition of the house in which they live.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held:

by a majority (six votes to one), that there would be a violation of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights if the order for the demolition of the house were to be enforced without a proper review of its proportionality in the light of the applicants' personal circumstances, and

unanimously, that there would be no violation of Article 1 of Protocol No. 1 (protection of property) to the Convention if the order for the demolition of the house were to be enforced.

The Court found in particular that the applicants had not had available a procedure, under domestic law, to obtain a comprehensive review of the proportionality of the intended demolition of the house, which was their only home.

Principal facts

The applicants, Mavruda Ivanova and Ivan Cherkezev, are Bulgarian nationals who were born in 1959 and 1947 respectively and live in the village of Sinemorets, on the southern Black Sea coast (Bulgaria).

In 2005 the applicants moved from Burgas, where, according to their submissions, they were no longer able to afford living, to Sinemorets. Ms Ivanova had become the owner of around 77% of the shares in a plot of land of 625 square metres there following the death of her father in 1986 and the transfer of her mother's shares in the plot to her in 1999. In 2004 and 2005 the applicants reconstructed a dilapidated cabin situated on the plot, converting it into a solid one-storey brick house, without having applied for a building permit. Since then, they have been living in that house.

In 2006 two of the co-owners of the plot notified Ms Ivanova that they did not agree with the reconstruction. In 2009 all other heirs of her parents obtained a judicial declaration that they were the owners of the remaining shares of the plot and the house built on it.

Prompted by some of the co-owners of the plot, municipal officers inspected the house in 2011 and found that it had been constructed illegally. The National Building Control Directorate subsequently opened proceedings for the demolition of the house, and in September 2013 the head of the Directorate's regional office found that the house had been constructed without a building permit, in breach of the applicable provisions, and decided that it was to be demolished. The first-instance administrative court dismissed Ms Ivanova's request for judicial review of that decision. That judgment was upheld by the Supreme Administrative Court in a final judgment of March 2015. As

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.

Ms Ivanova refused to comply with the demolition order, the authorities made a call for tenders from private companies to carry out the demolition.

After the Bulgarian Government had been given notice of the applicants' case before the European Court of Human Rights, the National Building Control Directorate asked the municipal authorities to explore whether, if necessary, they could provide alternative accommodation for Ms Ivanova. Subsequently Ms Ivanova was also contacted by a social worker who explained to her the possibility of requesting social services.

Complaints, procedure and composition of the Court

The applicants complained that the demolition of the house in which they live would be in violation of their rights under Article 8 of the Convention (right to respect for private and family life and the home). Ms Ivanova also maintained that it would violate her rights under Article 1 of Protocol No. 1 (protection of property). Finally, the applicants complained that they did not have an effective domestic remedy available in respect of their complaint under Article 8, in breach of Article 13 of the Convention (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 15 September 2015.

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

Angelika **Nußberger** (Germany), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Erik **Møse** (Norway),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8 of the Convention

Although only Ms Ivanova had legal rights to the house in question, both applicants had lived in it for a number of years. The Court therefore considered that it was “home” to both of them, and that the order for its demolition amounted to an interference with their right to respect for that home. The interference was lawful, as it had a clear basis in the relevant domestic legislation, namely the Territorial Organisation Act. Furthermore, the Court was satisfied that the demolition would pursue a legitimate aim. Having regard in particular to the fact that the problem of illegal construction was widespread in Bulgaria, the purpose of ensuring the effective implementation of the requirement that buildings could not be constructed without permit could be considered as the “prevention of disorder” and as promoting the “economic well-being of the country” within the meaning of Article 8.

However, as regards the necessity of the interference, the Court considered that the domestic proceedings fell short of the procedural requirements under its case-law, under which any person risking a loss of his or her home – whether or not belonging to a vulnerable group – should in principle be able to have the proportionality of the measure leading to the loss of the home determined by an independent tribunal. Those proceedings, in which Ms Ivanova had sought judicial review of the demolition order, had focused entirely on whether the house had been built without a permit and whether it was exempt from demolition under a transitional rule of the domestic law. In

her appeal, Ms Ivanova had raised the arguments that the house was her only home and that she would be severely affected by its demolition. However, the Supreme Administrative Court had not addressed those points, as under Bulgarian law they were not relevant for the demolition order's lawfulness. Under the relevant provisions, as interpreted by the administrative courts, it was not open to the authorities to refrain from demolishing a house on the basis that this would cause disproportionate harm to those affected by the measure.

Under the relevant provisions of administrative procedural law, the applicants could only have obtained a temporary deferment of the measure rather than a comprehensive examination of its proportionality. The case-law under the relevant provisions of domestic law showed that the Bulgarian administrative courts as a rule declined to examine arguments relating to the individual situation of the persons concerned by the demolition of a house. Furthermore, it was unclear whether a person in the position of Mr Cherkezov, who had no property rights over the house in question, would have standing to bring any such challenge. The applicants could, moreover, not have obtained a proper examination of the proportionality of the demolition under any other provision of the domestic law. The Court emphasised that the balance between the rights of those who stand to lose their homes as a result of a demolition order and the public interest to ensure the effective implementation of the building regulations could not as a rule properly be struck by way of an absolute rule permitting of no exceptions; this could normally only be examined case by case.

Finally, the involvement of the social services, which had only occurred after notice of the case before the European Court of Human Rights had been given to the Government, could not make good the lack of a proper proportionality assessment. In any event, in their submissions to the Court, the Government had emphasised that the authorities had no obligation to provide the applicants with alternative accommodation.

In conclusion, the applicants had not had available a procedure to obtain comprehensive review of the proportionality of the intended demolition of the house. Accordingly, there would be a violation of Article 8 if the order for the demolition of the house were to be enforced without such a review.

Article 1 of Protocol No. 1

At the same time, the Court did not find that the implementation of the demolition order would be in breach of Ms Ivanova's rights under Article 1 of Protocol No. 1. While the intended demolition of the house would amount to an interference with her possessions, the order had a clear legal basis under domestic law and it could be said to be "in accordance with the general interest" within the meaning of Article 1 of Protocol No. 1, seeking to ensure compliance with building regulations. Furthermore, the fact that the house had been knowingly built without a permit was a crucial consideration. The order for its demolition would also serve to deter other potential lawbreakers, which had to be taken into account, having regard to the widespread problem of illegal construction in Bulgaria. In view of the fact that the State enjoyed a wide room for manoeuvre ("margin of appreciation") in choosing the means of enforcement, those considerations could not be outweighed by Ms Ivanova's proprietary interest.

Other articles

Having regard to its findings under Article 8, the Court did not consider it necessary to examine separately the complaint under Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation of the Convention was sufficient just satisfaction for any non-pecuniary damage suffered by the applicants. The Court further held that Bulgaria was to pay the applicants 2,013.73 euros (EUR) in respect of costs and expenses.

Separate opinion

Judge Vehabović expressed a partly dissenting opinion, which is 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. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

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

Nina Salomon (tel: + 33 3 90 21 49 79)

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)

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.