

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

THIRD SECTION

CASE OF SIMONOVA v. BULGARIA

(Application no. 30782/16)

JUDGMENT

Art 8 • Home • Order, without proportionality assessment, for demolition of unlawfully erected building, the home of the applicant and her minor children • Failure to consider risk of leaving family homeless and to take steps to alleviate resulting serious hardship

STRASBOURG

11 April 2023

FINAL

11/07/2023

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



In the case of Simonova v. Bulgaria,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 30782/16) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Veska Atanasova Simonova ("the applicant"), on 25 May 2016;

the decision to give the Bulgarian Government ("the Government") notice of the complaint concerning the alleged interference with the applicant's right to respect for her home and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 14 March 2023,

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

INTRODUCTION

1. The case chiefly concerns the question whether an order for the demolition of an illegally erected building alleged to have been the only home of the applicant, a single mother, and her minor children was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention, given that neither the authority which made the order nor the court which later reviewed it analysed whether demolition would be proportionate in the light of the applicant's individual circumstances.

THE FACTS

2. The applicant was born in 1972 and lives in Kuklen. She was represented by Ms D. Spilkova, a lawyer practising in Plovdiv.

3. The Government were represented by their Agent, Ms I. Nedyalkova, of the Ministry of Justice.

I. BUILDING INHABITED BY THE APPLICANT AND HER CHILDREN

4. The applicant, who is not married, has seven children, born in 1996, 1997, 1999, 2003, 2006, 2008 and 2011.

5. In 2007 the applicant, along with another person, acquired two-thirds of a plot of 793 square metres of agricultural land near Kuklen, a town with a population of about 6,000 people in southern Bulgaria, at the foothills of the Rhodope Mountains and about fifteen kilometres south of Plovdiv. In April 2009 the two of them, along with the owner of the remaining one-third of the plot, obtained a permit to erect a service building measuring up to 35 square metres. The building was completed on an unknown later date, and, according to the applicant, she and her children began living in it.

II. THE DEMOLITION ORDERS AND THE APPLICANT'S CHALLENGES AGAINST THEM

6. Following complaints in June and October 2013 by the owner of a neighbouring plot that part of the building stood on his land, in March 2014 a municipal commission inspected the site and noted that the building stood on land belonging to someone else, that no papers had been drawn up to certify its conformity with the building regulations, and that it was being used for residential purposes even though when seeking permission to erect it the applicant had declared that it would be used for agricultural purposes.

7. On the basis of those findings, in May 2014 Kuklen's deputy mayor found that the building was unlawful and ordered that it be demolished.

8. The applicant sought judicial review, and in December 2014 the Plovdiv Administrative Court quashed that order (see *реш. № 2804 от 16.12.2014 г. по адм. д. № 1737/2014 г., АдмС-Пловдив*). It noted that the identification number of the plot on which the building stood, according to the report drawn up by the commission which had inspected the site, was that of the plot owned by the applicant rather than the neighbouring one. No subsequent efforts had been made to elucidate the point. By issuing the order without ascertaining the building's precise location, the deputy mayor had breached the rules of procedure.

9. Following a further complaint by the owner of the neighbouring plot, on 21 January 2015 a municipal commission again inspected the site and noted that the building had been erected on land belonging to someone else, in breach of the building permit obtained by the applicant, that no papers had been drawn up to certify its conformity with the building regulations, and that it was being used by the applicant's family for residential purposes, in breach of the planning legislation. The commission further noted that the building did not have an electrical, water-supply or sewage installations.

10. The following day, 22 January 2015, the municipal authorities informed the social services of the situation, with a view to their taking steps to assist the applicant and her children.

11. On 4 March 2015 Kuklen's deputy mayor again ordered that the building be demolished, in the exercise of his powers under the planning legislation and on the basis that the building had been erected without the requisite papers. He gave the applicant and her co-owners sixty days to comply, failing which the order would be enforced by the authorities.

12. The applicant sought judicial review. In her claim, drawn up by a lawyer, she argued that the building did have the requisite papers and had been erected on her own land. It was true that there was a dispute with the neighbour about the boundaries of their respective plots, but that dispute had no bearing on the question whether the building had been lawfully erected, since under the Supreme Administrative Court's case-law, disputes about title to the underlying land were irrelevant to the lawfulness of a building, and the boundary dispute was subject to resolution by the civil courts. The applicant went on to say that the order did not make it clear in what capacity she was its addressee.

13. In written submissions filed in June and November 2015, counsel for the applicant raised various arguments as to why the order was unlawful, but did not mention that the applicant was living in the building with her children or contend that its demolition would disproportionately interfere with her right to respect for her home. The submissions cited Article 6 of the Code of Administrative Procedure (see paragraph 27 below) in support of an argument that the municipal authorities had been biased and had failed to ensure a proper procedural balance between the parties. Counsel for the applicant did not put forward arguments about the proportionality of the demolition at the hearing of the case either.

14. In written submissions which the applicant filed herself in November 2015, she stated, among other things, that she had four minor children with whom she lived in the property.

15. In a final judgment of 25 November 2015, the Plovdiv Administrative Court upheld the demolition order *vis-à-vis* the applicant (see *реш. № 2383 от 25.11.2015 г. по адм. д. № 815/2015 г., АдмС-Пловдив*). It noted that the permit obtained by her had been for a building standing on her plot rather than on the neighbouring one, whereas, according to the evidence obtained in the course of the proceedings, the building stood almost entirely on the neighbouring plot. It was hence unlawful and subject to demolition. The order, being intended to combat unlawful construction, pursued a proper aim. Towards the end of its judgment, the bulk of which dealt with the lawfulness of the building, the court briefly noted the following in response to the applicant's contention that she was the mother of four minor children with whom she lived in the building (see paragraph 14 above):

> "As regards the submissions by [the applicant] in which she indicates that she is the mother of four children, it must be reiterated that already on 22 January 2015 the chief architect of Kuklen municipality sent a letter to the [social services] for them to take steps *vis-a-vis* the family of [the applicant] within the scope of their ... powers [see paragraph 10 above].
>
> This court also finds that in this instance [the Court]'s judgment in [*Yordanova and Others v. Bulgaria* (no. 25446/06, 24 April 2012)] is inapposite, in view of the differences in the subject matters of the present case and of that case, namely that that case [concerned] an order [for eviction from municipal property] under section 65 of the Municipal Property Act [1996]."

16. In early 2016 the applicant sought reopening of the judicial-review proceedings. In June 2016 the Supreme Administrative Court refused her request (see *реш. № 7099 до 14.06.2016 г. по адм. д. № 1458/2016 г., ВАС, II о.*).

III. ENFORCEMENT OF THE MARCH 2015 DEMOLITION ORDER

17. On an unspecified date in mid-2016 the social services informed the applicant that if she could not ensure accommodation for her minor children after the planned demolition of the building, for example with relatives, they would place them in a specialised institution. On 3 August 2016 Kuklen's mayor invited the applicant to discuss the proposal with the municipality and a representative of the social services on 9 August 2016, but she apparently did not come to the meeting.

18. Almost a year later, on 31 July 2017, municipal officials visited the site and recorded that the demolition order had not been complied with.

19. In a letter dated 1 August 2017, Kuklen's mayor advised the applicant and the social services that the demolition would take place on 30 August 2017. The applicant refused to receive the letter, noting that she had applied to the Court.

20. In a letter dated 21 August 2017, the social services informed the mayor of Kuklen that they had visited the building and established that the applicant was living in it with four of her children. The social services proposed a meeting on 24 August 2017 with the applicant and municipal officials at which to discuss whether it would be possible for the municipality to provide the family with temporary or permanent accommodation, or failing that, to place the children with relatives or in accommodation run by the social services. It is unclear whether that meeting took place.

21. On 25 August 2017 Kuklen's deputy mayor and two municipal officials discussed the impending demolition with the applicant. They advised her that the social services intended to take her children out of the building on 29 August 2017, the day before its planned demolition, and place them in sheltered accommodation for a period of forty-eight hours. They recommended to the applicant that she should send the children to live with

relatives of hers in a nearby village. The applicant refused, and stated that she and her children had no intention of moving out of the building.

22. In a further discussion which took place three days later, on 28 August 2017, the applicant relented and said that she and her children would move in with relatives. She refused help from the social services, stating that she and the children's father could take care of them.

23. The demolition could not take place on 30 August 2017 as the company which was due to carry it out had technical difficulties. It was finally effected on 17 November 2017, and the roof and one of the walls of the building were pulled down. According to the applicant, this happened without the requisite formalities having been observed.

24. It appears that on an unknown date in 2018 the applicant rebuilt the building and resumed living in it.

RELEVANT LEGAL FRAMEWORK

25. The statutory provisions and case-law relating to the issuing and enforcement of orders for the demolition of unlawfully erected buildings have been set out in *Ivanova and Cherkezov* v. *Bulgaria* (no. 46577/15, §§ 25-40, 21 April 2016) and *Aydarov and Others v. Bulgaria* ((dec.), no. 33586/15, §§ 41-43, 2 October 2018). In the latter the Court noted, in particular, that the Bulgarian Supreme Administrative Court had until at least mid-2017 fully adhered to its traditional position that the building-control authorities had no discretion with respect to the removal of unlawful buildings; that the only course of action open to those authorities in such cases was to order the buildings' demolition; and that in such cases those authorities were not bound by a general requirement of proportionality because that requirement only applied when the relevant authority had a discretion (see *Aydarov and Others*, cited above, § 42).

26. In this case, it should additionally be noted that in its case-law under Article 294 of the Code of Administrative Procedure – which provides for a judicial review, from which no appeal lies, of the steps taken by the authorities to enforce administrative decisions (see *Ivanova and Cherkezov*, cited above, § 35) – the Plovdiv Administrative Court has held, in line with the traditional stance of the Bulgarian administrative courts in this area (ibid., §§ 36-40), that the demolition, owing to irregularities, of a building which is someone's only home is by definition not a disproportionate interference with the rights guaranteed under Article 8 of the Convention (see *реш. № 1711 от 24.07.2018 г. по адм. д. № 1878/2018 г., АдмС-Пловдив*). It was only in late 2018 that that court started assessing the proportionality of such measures in the light of the individual circumstances of the people concerned in proceedings under Article 294 (see *реш. № 2654 от 13.12.2018г. по адм. д. № 2438/2018 г., АдмС-Пловдив*; *реш. № 1522 от 11.07.2019 г. по адм. д. № 513/2019 г., АдмС-Пловдив*; *реш. № 1524 от 11.07.2019 г. по адм. д.*

№ 485/2019 г., АдмС-Пловдив; and *реш. № 2589 от 11.12.2019 г. по адм. д. № 512/2019 г., АдмС-Пловдив*).

27. Article 6 of the Code of Administrative Procedure enunciates several general principles of administrative law and procedure: that the authorities must carry out their duties reasonably, in good faith and justly (§ 1); that an administrative decision and its enforcement must not affect rights or lawful interests more than strictly necessary (§ 2); that if an administrative decision affects rights or gives rise to duties for private persons, the authorities must choose the course of action which would be most favourable for those private persons if it still permits the statutory purpose to be attained (§ 3); that out of two or more possible courses of action, the authorities must opt for the one which is most economical and favourable for the State and society (§ 4); and that the authorities must refrain from decisions or actions which could cause obviously disproportionate harm (§ 5).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant complained that the March 2015 order for the demolition of the building in which she lived with her children had disproportionately interfered with her right to respect for her home. She relied on Article 8 of the Convention, which reads, so far as relevant:

> "1. Everyone has the right to respect for ... his home ...
>
> 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. Applicability of Article 8 of the Convention

(a) The parties' submissions

29. The Government pointed out that the applicant had not specified when the building had been erected or when she had started living in it. On that basis, they queried whether she had had sufficiently long-lasting links with it, such that it could be seen as her home. They went on to say that the first solid information about the applicant living in the building dated from March 2014, whereas the authorities had first ordered its demolition about two months later, in May 2014. The complaint was hence incompatible *ratione materiae* with the Convention.

30. The applicant submitted that she had bought the land on which the building stood, and that the authorities had approved the plan for the building

and had given her a building permit. It was obvious that if someone had invested money and effort to erect a building to live in, she would consider that building her home, especially since she did not have another one. More than five years had elapsed between the construction and the issuing of the March 2015 demolition order; that time had been sufficient for her to form strong enough links with the building to see it as her and her children's home.

(b) The Court's assessment

31. The municipal commission which inspected the building in March 2014 noted that the applicant was using it for residential purposes (see paragraph 6 above). Although there is no information about when exactly after 2009 the building was erected and when the applicant and her children moved in (see paragraph 5 above), the period of nearly one year between March 2014 and March 2015 – when the mayor issued the demolition order at issue in the present case (see paragraph 11 above) – is long enough to accept that the applicant's links with the building were sufficient and continuous, so that it qualified as her "home" (compare *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, §§ 8, 12 and 49, 21 April 2016; *Sharxhi and Others v. Albania*, no. 10613/16, §§ 9, 11 and 112, 11 January 2018; and *Ghailan and Others v. Spain*, no. 36366/14, § 55, 23 March 2021, and contrast *Zabor v. Poland* (dec.), no. 33690/06, § 74, 7 January 2014). The Government did not suggest, and there is no evidence, that the applicant had a home elsewhere (compare *Gillow v. the United Kingdom*, 24 November 1986, § 46, Series A no. 109; *Prokopovich v. Russia*, no. 58255/00, § 38, ECHR 2004-XI (extracts); and *Hasanali Aliyev and Others v. Azerbaijan*, no. 42858/11, § 35, 9 June 2022, and contrast *Kaminskas v. Lithuania*, no. 44817/18, § 43, 4 August 2020). Nor can her situation be equated to that of the applicants in *Hirtu and Others v. France* (no. 24720/13, §§ 5 and 65, 14 May 2020): putting one's caravan onto a caravan site for six months is not the same as living for more than a year in a building one has erected. It is, moreover, plain that the applicant kept on living in the building until it was demolished more than two years later, in November 2017 (see paragraphs 17-23 above, and compare *Zehentner v. Austria*, no. 20082/02, § 53, 16 July 2009).

32. Article 8 of the Convention therefore applies.

2. Exhaustion of domestic remedies

(a) The parties' submissions

33. The Government submitted that the applicant had failed to exhaust domestic remedies, given that when seeking judicial review of the demolition order she had not relied expressly or in substance on Article 8 of the Convention, nor had she put her case on the basis that the demolition would disproportionately interfere with her right to respect for her home. The mere mention in her November 2015 submissions that she lived in the building

with her four minor children had not been an argument to that effect. The reference to Article 6 of the Code of Administrative Procedure in a different context had not been such an argument either. The applicant had, moreover, not challenged the enforcement of the demolition order under Article 294 of the Code of Administrative Procedure.

34. The applicant submitted that even if she had not spelt out in terms that the demolition would be disproportionate, the authorities had been under a duty to have regard to the principle of proportionality, since it was a general principle of law, laid down in Article 6 of the Code of Administrative Procedure. That provision had been cited in the submissions made on her behalf to the Plovdiv Administrative Court. As for the possibility of challenging the enforcement of the demolition order under Article 294 of the Code of Administrative Procedure, it was irrelevant since at the time when she had applied to the Court the order had not yet been enforced; this had happened more than a year later.

(b) The Court's assessment

35. It is true that in the present case the grounds on which applicant sought judicial review of the March 2015 demolition order were unrelated to her rights under Article 8 of the Convention. It is also true that the submissions made by her counsel did not cite that provision or at least contain arguments to the effect that the order unjustifiably interfered with the applicant's right to respect for her home (see paragraphs 12 and 13 above). The bare reference to Article 6 of the Code of Administrative Procedure in another context (see paragraph 27 above) cannot be seen as sufficient in that respect. But in submissions which she filed herself with the court hearing her application for judicial review, the applicant stated that she had four minor children with whom she lived in the building, and in its ensuing judgment that court took that as an argument against the necessity of the demolition, which even prompted it to clarify why in its view her case could be distinguished from *Yordanova and Others v. Bulgaria* (no. 25446/06, 24 April 2012) – the first case in which the Court found a breach of Article 8 of the Convention in respect of Bulgaria in relation to the proportionality of an eviction order (see paragraphs 14 and 15 above). In these specific circumstances, it can be accepted that the applicant sufficiently brought her Article 8 grievance to the attention of the competent national court.

36. The applicant did not then try to challenge the enforcement of the demolition order under Article 294 of the Code of Administrative Procedure, which provides for a judicial review, from which no appeal lies, of steps taken to enforce administrative decisions (see paragraph 26 above). A remedy capable of leading to an examination of the proportionality of the measure at the stage of its enforcement can in principle be effective in cases such as this one (see *Ivanova and Cherkezov*, cited above, § 58, and *Aydarov and Others v. Bulgaria* (dec.), no. 33586/15, § 70, 2 October 2018). But such proceedings

would have taken place solely in the Plovdiv Administrative Court, which had already found that the order did not unduly affect the applicant's right to respect for her home. She cannot therefore be criticised for not attempting such proceedings. Moreover, a perusal of the relevant decisions of that court (see paragraph 26 above) shows that it only began assessing the proportionality of such measures in the light of the individual circumstances of the people concerned in proceedings under Article 294 in late 2018, whereas the building in this case was demolished in November 2017 (compare *Aydarov and Others*, cited above, § 70 *in fine*).

37. The Government's two-pronged objection of failure to exhaust domestic remedies must therefore be dismissed.

3. Compliance with the six-month time-limit

(a) The parties' submissions

38. Alternatively to their first non-exhaustion plea (see paragraph 33 above), the Government argued that the complaint was out of time. They submitted that the application for judicial review of the demolition order had not been an effective remedy, since at the time the Bulgarian administrative courts had adhered to the position that the only course of action open to the authorities with respect to unlawfully erected buildings was to order their demolition, and had not assessed the proportionality of such decisions with reference to the individual circumstances of the people concerned. The applicant should have been aware of this and have realised that her claim would fail. It followed that she should have turned to the Court within six months of the order itself.

39. The applicant submitted that she had applied to the Court within six months of the final domestic decision: the judgment given by the Plovdiv Administrative Court on 25 November 2015.

(b) The Court's assessment

40. When the applicant sought judicial review of the March 2015 demolition order, the general position of the Bulgarian administrative courts was that the demolition of a building owing to administrative irregularities in its construction was by definition not a disproportionate interference with the Article 8 rights of the people affected by that demolition (see *Ivanova and Cherkezov*, §§ 26-27, and *Aydarov and Others*, § 42, both cited above). It can nevertheless be accepted that the ineffectiveness of that remedy was not already apparent to the applicant when the order was issued, and transpired only when the Plovdiv Administrative Court then dismissed her application for judicial review (see *Aydarov and Others*, cited above, § 68), especially since she had already managed to obtain, albeit on different grounds, the quashing of the earlier demolition order by that court (see paragraph 8 above). Her application for judicial review of the March 2015 demolition order

cannot be seen as a misconceived attempt to obtain redress which ought to be discounted for the purpose of assessing compliance with the six-month time-limit under Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Hizb Ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, § 59, 12 June 2012, and *Pintar and Others v. Slovenia*, nos. 49969/14 and 4 others, § 107, 14 September 2021). Indeed, the Government's first non-exhaustion plea (see paragraph 33 above) was based on the assumption that those judicial-review proceedings were capable of making good the applicant's Article 8 grievance. She cannot be faulted for having proceeded on the basis of the same assumption. It is true that at the time such a claim only offered a remote prospect of success. It was, however, not an altogether futile step, and the judicial-review proceedings brought by the applicant can hence be taken into account when assessing compliance with the six-month time-limit (see, *mutatis mutandis*, *B. v. France*, 25 March 1992, § 42, Series A no. 232-C; *A. v. France*, 23 November 1993, § 30, Series A no. 277-B; and *Ünal Tekeli v. Turkey*, no. 29865/96, § 38, ECHR 2004-X (extracts)). She applied to the Court exactly six months after the final judgment in those proceedings.

41. Penalising the applicant for attempting to challenge the demolition order domestically – as she was entitled to do under Bulgarian law – instead of turning directly to the Court would be contrary to the principle of subsidiarity, and would, moreover, remove any incentive for the national courts to develop their case-law (see, *mutatis mutandis*, *Kušić and Others v. Croatia* (dec.), no. 71667/17, § 87, 10 December 2019).

42. The Government's objection that the complaint was raised out of the six-month time-limit under Article 35 § 1 of the Convention (as worded at the relevant time) must therefore be dismissed.

4. Conclusion on the admissibility of the complaint

43. The complaint is furthermore not manifestly ill-founded or inadmissible on other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The applicant submitted that her situation had not been taken into account when the demolition order had been issued. There was, moreover, no indication that the authorities had offered her and her children municipal housing or advised her of any possibility of putting herself on a waiting list for such housing. Nor had the authorities checked whether the relatives with whom she was supposed to place her children could accept them and in what conditions. It was in any event disproportionate to expect her to be separated from her children. The demolition, which had at first been scheduled during the summer, had eventually been carried out in late autumn, leaving her and

her children without shelter during the winter. The only form of social assistance she had been provided with had been persuasion to leave the building of her own volition before its demolition.

45. The Government submitted that the demolition order had been lawful and had pursued a legitimate aim. It had, moreover, been *de facto* proportionate, since the authorities had tried to carry out a proportionality exercise when enforcing it, but had been met with refusal on the applicant's part to cooperate or avail herself of the offers of assistance extended to her. Moreover, a considerable time had elapsed between the issuing of the order and its enforcement; the applicant could have used that time to secure alternative accommodation. In view of that and of the applicant's failure to plead in terms in the judicial-review proceedings that the demolition would disproportionately affect her right to respect for her home, it could not be said that she had been made to bear an excessive burden.

2. The Court's assessment

46. The demolition order, which interfered with the applicant's right to respect for her home, was "in accordance with the law" (see *Ivanova and Cherkezov*, cited above, § 50).

47. The order may also be seen as pursuing a legitimate aim. By its terms, it sought to implement the statutory requirement that no buildings can be erected without the requisite construction papers (see paragraph 11 above). In the context under examination, this may be seen as falling under the rubric of "prevention of disorder" and as promoting the "economic well-being of the country" (see *Ivanova and Cherkezov*, cited above, § 51). Although the order itself cited solely the lack of such papers, when upholding it the Plovdiv Administrative Court also noted that the building had been almost entirely erected on a neighbouring plot which belonged to someone else (see paragraph 15 above). The order may thus be also seen as indirectly protecting "the rights of others" (see, *mutatis mutandis*, *Yordanova and Others*, cited above, § 111, and *Bagdonavicius and Others v. Russia*, no. 19841/06, § 96, 11 October 2016).

48. The salient issue is whether the interference entailed by the demolition order was "necessary in a democratic society". The general principles bearing on this point, in relation to orders for the demolition of unlawfully erected buildings which are someone's only "home", were set out in *Ivanova and Cherkezov* (cited above, §§ 53-55). 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.

49. The present case also falls to be decided in accordance with those principles.

50. The demolition order itself did not contain any analysis of whether it would disproportionately affect the applicant in the light of her own particular circumstances (see paragraph 11 above). Nor is there any evidence that, when issuing the order, Kuklen's deputy mayor sought to weigh the aim pursued by his order against the applicant's individual circumstances.

51. This in itself does not pose a problem. But when the order then came before it for examination following the applicant's claim for judicial review, the Plovdiv Administrative Court did not explore the issue either (compare *Ivanova and Cherkezov*, cited above, § 53). It confined its reasoning on the point to the observation that the social services had been informed of the applicant's family situation, and to the remark that her case was different from *Yordanova and Others* (cited above) (see paragraph 15 above). That court did not have regard to all factors capable of bearing on the proportionality of the interference – tentatively set out, in a non-exhaustive manner, in *Ivanova and Cherkezov* (cited above, § 53) – or attempt to balance the applicant's interest in continuing to live in the building with her children against the considerations militating in favour of its demolition (contrast *Pinnock and Walker v. the United Kingdom* (dec.), no. 31673/11, § 33, 24 September 2013). It is true that the applicant did not elaborate on the point, but it seems unlikely that her doing so would have led that court to engage in such analysis, since under the Supreme Administrative Court's case-law at the time, such issues had no bearing on the lawfulness of a demolition order (see the judgments cited in *Ivanova and Cherkezov*, §§ 26-27, and in *Aydarov and Others*, § 42, both cited above, and contrast, *mutatis mutandis*, *Zrilić v. Croatia*, no. 46726/11, § 69, 3 October 2013). In the applicant's case, some of those factors – for instance, that the building was, in breach of its permit, being used for residential rather than agricultural purposes, that, not having an electrical, water-supply and sewage installations, it was very probably ill-suited for human habitation, and that it had been partly erected on land belonging to someone else – strongly pointed towards a conclusion that the demolition order ought to be upheld, in particular because the building could apparently not be rendered compliant with the relevant construction rules. At the same time, considerations relating to the risk of a family comprising at least four minor children becoming homeless as a result could be seen as a powerful argument in favour of accompanying the demolition with steps intended to alleviate properly the serious hardship flowing from it – for instance, genuine steps by the social or other authorities meant to ensure that the applicant and her children would be able to find promptly suitable alternative accommodation, whether by the applicant's

own means, through assistance by others, or through assistance by the authorities. The Plovdiv Administrative Court does not appear to have been presented with comprehensive information on all these points when deciding the applicant's case, or to have sought to elucidate them.

52. Nor could the applicant obtain an examination of the proportionality of the demolition in the light of her own specific circumstances later, when the demolition order was being enforced. As noted in paragraph 37 above, at the relevant time an application for judicial review of the enforcement of the order under Article 294 of the Code of Administrative Procedure would not have led to such an examination. Nor could that outcome have been achieved by way of a claim for a judicial declaration under Article 292 of that Code (see *Ivanova and Cherkezov*, § 59, and *Aydarov and Others*, §§ 42 *in fine* and 70, both cited above).

53. For the Government, the absence of a proper examination of the applicant's individual circumstances in the judicial-review proceedings had been made good by the authorities' *de facto* manner of proceeding when enforcing the demolition order (see paragraph 45 above). It is true that the delay in the enforcement of the order and the concomitant negotiations and discussions about the possibilities of resettling the applicant and her minor children (see paragraphs 17 to 23 above) suggest that the authorities were seeking a balanced approach to the situation. It is also true that the applicant appears not to have properly engaged with them in relation to that matter. But in the circumstances this cannot be seen as decisive. For one thing, those attempts by the authorities to find a solution to the applicant's housing problem did not take place within a formal procedure entailing a comprehensive review of the proportionality of the interference in the light of her individual circumstances (see, *mutatis mutandis*, *Buckland v. the United Kingdom*, no. 40060/08, §§ 67-68, 18 September 2012; *Yordanova and Others*, cited above, § 136; and *Ivanova and Cherkezov*, cited above, § 60). Moreover, it does not appear that in the course of those discussions the authorities offered the applicant a comprehensive solution: their only definite proposal appears to have been to temporarily place her children in accommodation run by the social services (see paragraphs 20-21 above). The delay in the enforcement of the demolition order, while undoubtedly offering the applicant some reprieve, did not in itself lead to any proper solution to the problem she was facing.

54. There has therefore been a breach of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

56. The applicant claimed 5,000 euros (EUR) in respect of the value of the demolished building.

57. In the Government's view, the causal link between the breach of Article 8 of the Convention and the pecuniary damage allegedly sustained by the applicant was not clear. Moreover, the applicant had had enough time to comply with the demolition order and minimise that damage. Lastly, the claim was not supported by any documents, and was hence unsubstantiated. It was in any event excessive.

58. The Court notes that the breach of Article 8 of the Convention was procedural in character, and that it is far from certain that if a national court had duly assessed the proportionality of the demolition order with reference to the applicant's individual circumstances it would have refrained from upholding it. The applicant's claim in respect of the value of the demolished building must therefore be rejected.

B. Non-pecuniary damage

59. The applicant claimed EUR 10,000 in respect of the humiliation and anxiety resulting from the demolition order and its enforcement, noting that it had rendered her homeless during the winter of 2017-18. She also claimed EUR 1,000 on behalf of each of her four children living with her.

60. The Government reiterated that the applicant had not raised in terms her Article 8 grievance before the Plovdiv Administrative Court and that she had turned down all offers of social assistance for her or her children. On that basis, they argued that the claim was unfounded and in any event excessive. They went on to note that the applicant's children were not applicants in the case, and hence were not entitled to just satisfaction.

61. The Court notes that although it is a matter of speculation whether the demolition of the building inhabited by the applicant and her children would have been avoided if the requisite balancing exercise had been undertaken, the applicant was deprived of her home without the opportunity to have such an exercise carried out. She therefore suffered non-pecuniary damage which cannot be sufficiently compensated for by the finding of a violation (see *McCann v. the United Kingdom*, no. 19009/04, § 59, ECHR 2008). There are, by contrast, no grounds to make awards to the applicant's children. Nothing

prevented them from applying to the Court, if need be through her, and claiming to be victims in their own right; they did not do so (see *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 118, 25 November 2010). That said, the applicant must have experienced additional anxiety and distress as a result of the effects of the interference on her children, and this must be taken into account when assessing the non-pecuniary damage suffered by her (ibid.). The Court awards her EUR 4,500, plus any tax that may be chargeable.

C. Costs and expenses

1. The applicant's claims and the Government's comments on them

62. The applicant sought reimbursement of:

(a) 10 Bulgarian levs (BGN) (equivalent to EUR 5.11) and BGN 700 (equivalent to EUR 357.90), which she had allegedly incurred in, respectively, court fees and lawyer's fees for the proceedings in which she had sought judicial review of the March 2015 demolition order;

(b) an unspecified amount, not lower than BGN 1,200 (equivalent to EUR 613.55), for the services of her legal representative in the proceedings before the Court;

(c) EUR 16 for postage; and

(d) BGN 150 (equivalent to EUR 76.69) for the translation of her written submissions to the Court into English.

63. In support of her claims, the applicant submitted (a) a retainer under whose terms the applicant's lawyer agreed to represent her before the Court free of charge, and (b) an invoice and a receipt attesting that the lawyer had paid BGN 150 for the translation of documents relating to the case.

64. The Government submitted that the applicant had not incurred any costs for her representation before the Court, and that her claims in respect of the fees incurred in the domestic proceedings and postage were not supported by appropriate documents, such as retainers or receipts. As for the translation expenses, they had not been sufficiently specified, and it was open to doubt whether they had been necessarily incurred.

2. The Court's assessment

65. According to the Court's settled case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum.

66. The applicant did not submit any documents in support of her claims in respect of postage and the lawyer's and court fees said to have been incurred in the domestic proceedings (see paragraph 62 (a) and (c) above). It

follows that those claims cannot be allowed (Rule 60 §§ 2 and 3 of the Rules of Court).

67. The claim in respect of lawyer's fees for the proceedings before the Court (see paragraph 62 (b) above) must be rejected as well. According to the Court's case-law, such fees have been actually incurred if the applicant has either paid them or is liable to pay them (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324; *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017; and *B and C v. Switzerland*, nos. 889/19 and 43987/16, § 79, 17 November 2020). In this case, the retainer between the applicant and her lawyer expressly stated that the latter's services were free of charge (see paragraph 63 above). There is hence no evidence that the applicant has paid or is liable to pay any fees to the lawyer; the possibility of a lawyer seeking fees from the opposing party does not amount to actually incurring those fees (compare with the circumstances in *Palfreeman v. Bulgaria* [Committee], no. 840/18, § 107, 8 June 2021).

68. The claim in respect of translation expenses (see paragraph 62 (d) above) must be rejected as well. It is true that it was supported by an invoice and a receipt showing that the applicant's lawyer had incurred those expenses (see paragraph 63 above). But there is no evidence that she then passed them on to the applicant (contrast *Stoyanova v. Bulgaria*, no. 56070/18, § 91, 14 June 2022). A representative cannot seek just satisfaction for himself or herself, since he or she is not an "injured party" within the meaning of Article 41 (former Article 50) of the Convention (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36; *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no. 41; and *Campbell and Cosans v. the United Kingdom* (Article 50), 22 March 1983, § 14 (a), Series A no. 60).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President