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

THIRD SECTION

DECISION

Application no. 3537/13
Mohamed RAJI and others
against Spain

The European Court of Human Rights (Third Section), sitting on 16 December 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 15 January 2013,

Having regard to the interim measure indicated to the respondent Government of Spain under Rule 39 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicants are a married couple of Moroccan nationals (the first and the second applicants) and their daughter (the third applicant), who has Spanish nationality. They were born in 1966, 1976 and 2004 respectively, and all live in Madrid. They are represented by F.J. Rubio Gil.

2. The Spanish Government ("the Government") were represented by their Agents, Ms M. L. García Blanco and Mr F.A. Sanz Gandasegui, State Attorneys.

3. The applicants lived since late 2009 in 118-F Sector 4 of *Cañada Real Galiana* (Madrid) a former livestock route. Since the 1960s there has been

considerable unauthorised construction. As from 2005 the Madrid city council began to restore the area, introducing administrative proceedings which involved the demolition of the houses.

4. Social tension grew as a consequence of the number of people affected by the demolition orders and the issue attracted political and media attention. Discussions were held between political parties, regional government, municipalities affected and stakeholders in order to find a solution. A regional law (Law 2/2011) was approved on 15 March 2011. The law provided for (i) the declassification of the area as a livestock route (ii) the attribution of ownership on the area to the Region of Madrid; (iii) the possibility for the Region of Madrid to cede part or the whole area to the municipalities affected: Madrid city, Coslada and Rivas-Vaciamadrid; (iv) the possibility for these municipalities to cede or sell parts of the area to the people already living in it; (v) a negotiation process between stakeholders in order to give a global solution to the social and urban problem. The law provided for consultation with the persons affected duly represented in neighbours' associations. Specifically, section 3 (3) and first additional provision of Law 2/2011 provided for the preparation of a social framework agreement in this regard.

5. From the case file it appears that the house was ceded to the applicants by the people formerly living in it (that person seems to be someone called F.S.). On 30 March 2009 the Director General of Execution and Supervision of Building Policies approved a decision of eviction and demolition of the applicants' home within the period of a month.

6. Given that the former "owners" of the house did not vacate it within that period, by a decision of 20 November 2009 the Director General of Execution and Supervision of Building Policies ordered the initiation of the demolition works in order to restore urban legality. The decision stated that the house had been built on land which was not building land by Ms F. S. EUR 9,491.55 were provisionally requested from Ms F. S. as charges for the demolition.

7. On 13 May 2010 given that the administration had unsuccessfully tried to serve that decision of the person affected, the order was advertised in the official journal of the Madrid region. The advertisement clearly stated that the Director General's order could be appealed against within two months before the administrative courts or within a month before the General Coordinator of Urban Policies.

8. On 17 November 2010 the Madrid city council served on the first applicant the order of demolition. The applicant did not appeal against that order.

9. On 13 January 2012 the Madrid city council requested a judicial authorisation from the Madrid administrative judge no. 10 to enter into the applicants' home so as to enforce the demolition order. On 23 February

2012 the Madrid administrative judge no. 10 served on the first applicant the city council's request for authorisation to enter into his home.

10. On 21 May and 19 July 2012 the first applicant made representations before the judge expressly invoking Article 8 of the Convention. He also referred to the risk of social exclusion faced by his family in case the eviction and demolition of their home took place.

11. On 27 July 2012 the Madrid administrative judge no. 10 authorised the entry into the applicants' home. The judge found that the decision to demolish the applicants' home had been lawfully taken by the administration and that it had been rightly served on the applicants, they having failed to introduce proceedings against that decision. Given that the applicants refused to vacate the house, the entry into their home in order to enforce the demolition order was proportionate.

12. On 4 September 2012 the Madrid administrative judge no. 10 served the first applicant with a copy of the decision authorising the relevant authorities to enter into his home.

13. On 5 October 2012 the first applicant lodged an appeal against the decision authorising the entry into his home. He invoked the Convention and requested that the authorisation was suspended until a decision on appeal was delivered.

14. On 5 November 2012, the administrative judge no. 10 admitted the appeal before the Madrid high court of justice but rejected the suspension of the authorisation to enter into his home.

15. On 15 January 2013 the applicants sought interim measures from the Court under Rule 39 of the Rules of Court invoking Articles 2, 3, 4, 8 and 13 of the Convention. On 31 January 2013 Rule 39 was applied and the Acting President of the Section indicated to the Government that the applicants should not be evicted until the Government had provided the Court with precise and accurate information as to the arrangements made by the domestic authorities for securing adequate housing and social services to the applicants.

16. On 14 February 2013 the applicants lodged an application with the Court. The applicants complained under Article 3 of the Convention that their eviction amounted to inhuman or degrading treatment. They argued that this was particularly true in relation to their eight-year-old daughter. Invoking Article 8 of the Convention the applicants complained that their eviction from their home after decades of tolerance on the part of the administration towards the construction of houses in the area will amount to a violation of their home and private and family life. Lastly, they complained under Article 13 of the Convention taken alone and in connection with Articles 3 and 8 of the Convention that the proceedings for the examination of the substance of their case did not have an automatic suspensive effect.

17. On 22 May 2013, the President of the Section to which the case has been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Spain and that the Government should be invited to submit written observations on the admissibility and merits of the case.

18. On 9 October 2013 the Court received the Government's observations on the application. The Government stated that the Madrid city council would not enforce the judicial authorisation against the applicants since the administrations affected were preparing a social framework agreement pursuant to Law 2/2011 that would establish the basis for the legalisation of the applicants' home. Indeed, the Madrid city council had decided to stay all demolition and enforcement proceedings as of the illegal constructions of the *Cañada Real Galiana*. This decision was aimed at providing stability to the affected families during the negotiations carried out to tackle the social and urban problems.

19. In particular, the Government submitted the Madrid city council's decision of 3 October 2013 to withdraw the judicial proceedings followed before the Madrid administrative judge no. 10 against the first and the second applicants aimed at granting authorisation to enter into the applicants' home so as to enforce the demolition order. The Madrid city council reserved the right to request the reopening of the enforcement proceedings in case of failure of the initiatives pursuing the restoration of urban legality and the inhabitants' alternative housing.

The Government further submitted (i) the Urban Planning and Housing Secretary General of the Madrid city council's decision of 7 February 2013 to stay the demolition proceedings as of the illegal constructions of the *Cañada Real Galiana*, (ii) the Madrid city council's decision of 7 February 2013 to withdraw judicial authorisation proceedings to enter into the *Cañada Real Galiana* inhabitants' houses.

20. The Government requested the Court to strike the application out of its list of cases, for the matter had been resolved and consequently, the applicants had ceased to have victim status. The Government also requested the interim measure in place under Rule 39 to be lifted.

21. The applicants' observations were submitted on 2 December 2013. They agreed to the lifting of the Rule 39 measure in the light of the Madrid city council's decision to stay the enforcement of the eviction. The applicants however opposed to the striking out of the case and requested the Court to continue to examine the merits of the case, as they considered that the judicial authorisation order to enter into the applicants' home amounted *per se* to a violation of Article 8 of the Convention even though it had not been enforced. They relied on the case *Yordanova and others v. Bulgaria* (no. 25446/06, 24 April 2012). They also underlined that the Madrid city council had reserved the right to request the reopening of the enforcement proceedings.

22. On 16 January 2014 the Government lodged further observations in the case, noting that, unlike in the *Yordanova* case, the domestic authorities had decided not to enforce the eviction and demolition orders against the applicants and the rest of inhabitants affected in order to provide them with stability during the negotiations. The authorities were also taking steps to find solutions to the social and urban problems.

23. On 3 September 2014 the applicants submitted a copy of the Madrid high court of justice's judgment of 21 May 2014 dismissing the first and second applicants' appeal against the Madrid administrative judge no. 10's order of 27 July 2012 granting authorisation to enter into the applicants' home. The Madrid high court of justice noted that it was for the administration to enforce its decisions. The administration however must request judicial authorisation in those cases in which the enforcement of the decision may interfere with a fundamental right (inviolability of home). In the authorisation proceedings, the court must be satisfied that the administration had respected procedural guarantees established by law. It was however not for the court to examine further submissions on the merits of the case that could have been raised in the framework of appeal proceedings against the administrative eviction and demolition decision, which the applicants had failed to do. The applicants further submitted a copy of the social framework agreement of *Cañada Real Galiana* of 30 April 2014 signed between the Madrid regional government, the Madrid city council, the Rivas Vaciamadrid city council and the Coslada city council pursuant to section 3 (3) and first additional provision of Law 2/2011.

THE LAW

24. The Court takes note of the Madrid city council's decision of 3 October 2013 to withdraw the authorisation proceedings to enter into the applicants' home as to enforce the demolition order. The Court also notes that the Government have taken different steps in order to provide the applicants and the rest of the affected inhabitants stability during the negotiations and have collaborated in tackling the problems of the *Cañada Real Galiana (*see *contrario sensu Yordanova,* cited above). The Madrid city council have decided not to enforce the demolition and eviction proceedings regarding the affected families during the negotiations. Regional and local administrations have signed the social framework agreement of *Cañada Real* of 30 April 2014 as foreseen by Law 2/2011. This agreement provides for a negotiation process between stakeholders in order to give a global solution to the social and urban problem.

25. The Court is satisfied that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention and that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of the application under Article 37 § 1 *in fine*.

26. In view of the above, it is appropriate to strike the case out of the list. The interim measure applied accordingly also comes to an end.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

Stephen Phillips
Registrar

Josep Casadevall
President

APPENDIX

1. Mohamed RAJI is a Moroccan national who was born in 1966
2. Zaidi BOUCHRA is a Moroccan national who was born in 1976
3. Sara RAJI is a Spanish national who was born in 2004