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

FIRST SECTION

DECISION

Application no. 67607/17
Paweł SZCZYPIŃSKI
against Poland

The European Court of Human Rights (First Section), sitting on 18 January 2022 as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to the above application lodged on 6 September 2017,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Paweł Szczypiński, is a Polish national who was born in 1958 and lives in Borzęcin Duży. He was represented before the Court by Mr J. Kaczyński, a lawyer practising in Warszawa.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The background

4. On 9 February 1993 the applicant and his wife bought a plot of agricultural land in Borzęcin Duży. The land was located on the borders of the buffer zone of the Kampinos National Park. Since August 1993 the applicant has made attempts to obtain a building permit in order to be able to build on the land, but the proceedings were slow and unsuccessful because the land was designated in the local land-use plan as exclusively agricultural.

5. In October 1994 the applicant finished construction of a one-family house on the plot and moved into it with his wife and his son, who had been diagnosed with cancer. The Government submitted that the applicant's son's disability had been officially recognised only in 2001. According to the most recent disability certificate dated 12 November 2018 the applicant's son remains disabled.

6. On 10 December 1996 the mayor (*Wójt Gminy*) of Stare Babice issued a demolition order ("the 1996 demolition order") in respect of the applicant's house under section 37 of the 1974 Construction Act (*Ustawa Prawo Budowlane*). The decision indicated that the house measured six by six metres, plus a garage. According to the local land-use plan it had been built on land that had been designated for agricultural purposes, which excluded any possibility of housing construction. The decision ordered the demolition of the house by 31 December 1999, but stated that the applicant could apply for a change to be made to the land-use plan for his property or to request leave to remain in the property in the light of the family's farming activities. The order became final, as the applicant did not appeal against it.

7. Afterwards, the authorities took steps towards enforcing the 1996 demolition order. On 26 February 2002 and 5 April 2007 the District Building Inspector (*Powiatowy Inspektor Nadzoru Budowlanego*) issued decisions ordering the applicant to comply with the 1996 demolition order.

8. The applicant and his family have been living in the house since 1994. On his land the applicant runs a farm growing ornamental plants and organic vegetables, which necessitates his permanent presence.

9. On 30 June 2011 the local land-use plan was changed and the applicant's land was re-designated as farmland (*siedlisko rolnicze*), which encompassed family housing.

2. Proceedings under Article 155 § 1 of the Code of Administrative Procedure

10. On 9 November 2012 the applicant instituted proceedings for the quashing of the 1996 demolition order under Article 155 of the Code of Administrative Procedure ("the Code"; see paragraph 38 below). The applicant explained that since building his house in 1993 he had been making efforts to have the local land-use plan amended (the local authorities having explicitly suggested in the 1996 demolition order that he apply for a change

to be made to the land-use plan for his property). The applicant had created an organic farm partly in order to help his son, who while undergoing chemotherapy and radiotherapy had been instructed to follow a healthy diet. Moreover, he had extended his property and bought adjacent plots of land. Currently, the local land-use plan allows for the construction of farm buildings such as those built by the applicant.

11. The proceedings ended with a judgment delivered by the Supreme Administrative Court on 23 October 2015. The court considered that the principle of "certainty and durability of administrative decisions" would be destroyed if it were possible for final decisions to be quashed in order to accommodate the interest of one party. Such a possibility would also place such parties in an advantageous position *vis-à-vis* those who obeyed the law and complied with a final decision; it would also amount to discrimination, in breach of the Constitution. The court stated:

> "It cannot be expected that an enforceable decision ordering demolition could, after many years, be quashed or amended by the authorities, simply because it could be justified by 'a legitimate interest of a party [to the proceedings] who for many years had not complied with the obligation' specified in the demolition order".

3. Proceedings under Article 162 § 1 of the Code

12. On 8 April 2013 the applicant lodged a request seeking a finding that the 1996 demolition order had expired (*wniosek o stwierdzenie wygaśnięcia*) under Article 162 § 1 (1) of the Code (see paragraph 18 below). He submitted that in the light of the 30 June 2011 change to the local land-use plan, his house should no longer be considered illegal and the 1996 demolition order should be quashed.

13. On 8 May 2014 the District Building Inspector refused the applicant's request. He established that the 1996 demolition order remained in force and could not be annulled simply because the local land-use plan had been amended.

14. The applicant appealed, maintaining that his house met the standard technical requirements and complied with the current land-use plan. He also pointed to a ruling given by the administrative court to the effect that the quashing of a demolition order could not be excluded if the relevant land-use plan had been amended before that demolition order had been enforced.

15. On 27 June 2014 the Mazowiecki Regional Building Inspector upheld the district building inspector's decision. The decisions of both the district and regional building inspectors only examined the issue of whether the 1996 demolition order had become obsolete (*bezprzedmiotowy*) in view of the subsequent amendment to the local land-use plan.

16. The applicant appealed.

17. On 28 January 2015 the Warsaw Regional Administrative Court dismissed that appeal, citing the same line of reasoning as that indicated in the first- and second-instance decisions. The court deemed that there were no

grounds for quashing the decision, as the construction of the house had been illegal at the material time. Subsequent amendments to the land-use plan had not, under domestic law and practice, rendered the 1996 demolition order obsolete.

18. The applicant lodged an appeal on points of law. He argued, *inter alia*, that the authorities had disregarded what had been at stake for him and his family, who stood to lose their only home and source of income. Their material situation was very difficult and provided no possibility for them to demolish the building and build another house. The enforcement of the decision ordering demolition would cause the applicant and his family irreversible damage. The applicant also argued that the demolition of his house was not in the general interest either.

19. On 7 February 2017 the applicant's appeal on points of law was dismissed by the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) on the same grounds as relied on by the Regional Administrative Court on 28 January 2015 (see paragraph 17 above). The court reiterated that a change in legal circumstances had no influence on the legality of a demolition order issued previously. A decision could be rendered obsolete in the event that the object in question had ceased to exist – for instance, if a building had been destroyed in a fire. The court deemed that since it had been established that the 1996 demolition order had not become obsolete, there had been no grounds to examine any other considerations, such as what was in the best interests of either the party in question or the public.

4. Proceedings under Article 161 § 1 of the Code

20. On 12 May 2016 the applicant instituted another set of proceedings under the exceptional procedure provided for by Article 161 § 1 of the Code (*stan nagłej konieczności administracyjnej*, see paragraph 39 below), requesting the quashing of the 1996 demolition order.

21. On 22 December 2016 and 22 February 2018 the Main Building Inspector (*Główny Inspektor Nadzoru Budowlanego*) refused to quash the 1996 demolition order under Article 161 § 1 of the Code.

22. In his appeals the applicant relied, *inter alia*, on Article 8 of the Convention. He explained that he did not have the possibility of building a new house or of moving to a home away from the land that he had been cultivating. He also emphasised the fact that the decision to move to his property and to run an organic farm had been motivated by the need to ensure a special diet for his seriously ill son.

23. On 12 December 2018, following an appeal by the applicant, the Warsaw Regional Administrative Court dismissed the applicant's request and declined to quash the 1996 demolition order. The court reiterated that the only possible reason under Article 161 § 1 of the Code for quashing a final decision concerned exceptional circumstances in which the administrative

decision in question threatened some overriding interest and there was no way to remove that danger other than by quashing that decision. Article 161 § 1 of the Code may only be applied in exceptional circumstances, in the event of a threat to human life or health or a threat of serious damage being caused to the national economy or important State interests. Such a threat had to be real, actual, current, and objectively proven. The court considered that in the instant case the impending demolition of the applicant's house did not meet the criteria stipulated by Article 161 § 1 of the Code. The court dismissed the applicant's arguments that the 1996 demolition order should be quashed as the state of health of his son would deteriorate if the applicant's family were no longer able to run the farm that provided them with healthy food. Firstly, demolishing the property would not prevent the applicant's family from producing food, and even if the enforcement of this demolition order were to cause them hardship, the applicant had had over twenty years in which to prepare and mitigate the consequences of its enforcement. Secondly, the court emphasised the fact that it could not re-examine the original issue settled by the 1996 demolition order and that it could not therefore take into consideration the modified local land-use plan. Moreover, the applicant had attempted through almost all the available administrative avenues to have the 1996 demolition order quashed but had failed in all those attempts. For all those reasons it could not be concluded that there existed a real danger to the life and health of the applicant or his family.

24. It appears that cassation proceedings are pending before the Supreme Administrative Court.

5. Imposition of a fine

25. On 23 October 2007 the District Building Inspector ordered the applicant to pay a fine in the amount of 8,000 Polish zlotys (PLN; at the material time approximately 2,100 euros (EUR)).

26. On 22 May 2012 the District Building Inspector ordered the applicant to pay another fine of almost PLN 40,000 (at the material time approximately EUR 9,500) for failure to enforce the 1996 demolition order.

27. On 9 May 2017, in a final decision, the Supreme Administrative Court upheld the decision concerning the fine.

6. Further proceedings aimed at the demolition of the applicant's house

28. On 9 November 2012 the applicant lodged a request with the relevant authority for the enforcement of the 1996 demolition order to be postponed; by way of justification he cited his legitimate interest as a party to the proceedings and the changes that had been made to the local land-use plan. The applicant furthermore referred to his personal and family circumstances (in particular his sick child), the impossibility of his acquiring another

residence, and the fact that he needed to live near the farm in order to be able to run it properly.

29. Subsequently, the proceedings were stayed while the above-described administrative proceedings aimed at the quashing of the decision under the Article 162 § 2 of the Code were pending. On 2 October 2017 the proceedings were resumed (see paragraph 19 above).

30. On 7 December 2017 the District Building Inspector issued a decision refusing the applicant's request for the enforcement of the 1996 demolition order to be postponed. The inspector deemed that the legitimate interest of the applicant could not constitute grounds for postponing the demolition. The relevant provision of the Building Act provided that postponement could be allowed only for reasons related to social or economic considerations (*względy społeczne lub gospodarcze*).

31. The applicant appealed. On 8 February 2018 the Mazowiecki Regional Building Inspector upheld the impugned decision. The applicant appealed against that decision.

32. On 12 December 2018 the Warsaw Regional Administrative Court dismissed the applicant's appeal. The court was not persuaded that the applicant's arguments pertaining to the illness of his son, his lack of alternative dwelling, and his agricultural activities amounted to "social considerations" allowing for the postponement of the 1996 demolition order. The court furthermore stated:

> "The demolition, as is the case with any order of this kind, obviously entails hardship for the applicant (financial, personal and organisational); however, the circumstances of the case may not be regarded as amounting to social and economic considerations, as stipulated in [the law], that would justify the fresh postponement of the order. The applicant has had a considerable period of time in which to prepare [his family's] move from the building and to organise its demolition. The execution of the order would in no way amount to a prohibition on carrying out agricultural activity and food production. The fact that such activity would be rendered more difficult than it is today may not justify the necessity of further postponing the order, which concerns a residential building."

33. It appears that cassation proceedings are pending before the Supreme Administrative Court.

7. Proceedings concerning a farm building (a barn)

34. On 7 June 2002 the District Building Inspector issued a decision ordering the applicant to demolish a farm building. The applicant lodged a request for expiry of the decision under Article 162 § 1 of the Code.

35. On 12 October 2017 the Regional Administrative Court dismissed the request.

36. On 19 February 2020 the Supreme Administrative Court dismissed an appeal lodged by the applicant. The court reiterated that a subsequent change to the local land-use plan, allowing for the construction of a building identical

to that of the applicant, did not constitute a ground for annulling the final decision on demolition.

B. Relevant domestic law and practice

1. Constitution

37. The relevant provisions of the Constitution of the Republic of Poland read as follows:

Article 31

"3. Any limitation on the exercise of constitutional freedoms and rights may be imposed only by statute, and only when it is necessary in a democratic State for the protection of its security or public order, or for the protection of the natural environment, health or public morals, or the freedoms or rights of other persons. Such limitations shall not impair the essence of freedoms and rights."

Article 64

"1. Everyone shall have the right to ownership, other property rights and the right of succession.

2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession. ..."

2. Administrative-law provisions

38. Article 155 of the Code permits the quashing or amending (*uchylenie lub zmiana*) of any final administrative decision whenever it is in the general or individual interest, if that is not prohibited by specific legal provisions. A request for such quashing or amending is to be examined either by the public administration body that issued the impugned decision or a higher one.

39. Article 161 § 1 of the Code provides for the possibility to seek the exceptional quashing or amending of a final decision in an emergency (*uchylenie lub zmiana decyzji w stanie nagłej konieczności*). It reads as follows:

"A minister may quash or amend to the extent necessary any final decision if a factor endangering human life or health cannot otherwise be removed or if serious damage to the national economy or important interests of the State cannot be prevented."

40. Article 162 § 1 of the Code provides for the expiry or quashing (*wygaśniecie lub uchylenie*) of a final domestic decision. It reads as follows:

"A public administration body that has issued a decision at first instance shall confirm its expiry if that decision:

1) has become obsolete, and confirmation of the expiry of the decision is required by law or would be in the public interest or in the interest of the parties;

2) was issued subject to one of the parties fulfilling a certain condition and the party in question has not fulfilled that condition."

41. Section 3 of the 1974 Construction Act provided that buildings could be constructed only in areas designated for such purposes by local land-use plans. Section 37 provided the compulsory demolition of a building that had been built in violation of the relevant laws.

42. The new 1994 Construction Act provided that buildings that had been built without the relevant permit must be demolished (section 48).

3. The Constitutional Court's practice

43. In a judgment of 12 January 1999 (P 2/98) the Constitutional Court confirmed that section 48 of the 1994 Construction Act was not incompatible with the Constitution. The court stated as follows:

> "The primary objective of the regulation provided in section 48 of the Construction Act is to ensure, within the sphere of relations subject to the provisions of this Act, a state of compliance with the law, and the limitation of property rights is a consequence of illegal actions taken by any person for construction purposes who may dispose of real estate located on the territory of the Republic of Poland ...
>
> When restricting a specific right or freedom, the legislature is guided by concern for the proper, harmonious coexistence of members of society, which includes both the protection of the interests of individuals and certain social interests – including public property. The need for a particularly thorough analysis of the arguments related to the protection of the common good (the general interest) seems also to be fully justified in the light of Article 1 of Protocol No. 1 to [the Convention], which guarantees to every natural and legal person the peaceful use of his property, but which at the same time confirms the right of the State to issue regulations that, in its opinion, are necessary to control whether the use of property is in accordance with the general interest.
>
> In contrasting the regulations contained in section 48 of the Construction Act with the requirement to select such a measure to restrict the right of an individual as will serve to achieve the intended purpose, the Constitutional Court found that the legislature did not exceed in this respect the framework set out in Article 31 Section 3 of the Constitution, and in particular the requirement of [proportionality]. It should be emphasised once again that the obligatory issuance of a decision ordering the demolition of objects erected [illegally] amounts to a sanction for failure to meet the statutory requirement to obtain a building permit or to give notice of the intention to carry out construction."

44. In a judgment of 26 March 2002 (SK 2/01) the Constitutional Court found that section 48 of the 1994 Construction Act was compatible with Articles 64 and 31 of the Constitution.

> "Unauthorised construction (*samowola budowlana*) is a reprehensible act that requires the ... forcible restoration of the situation which preceded the violation of the law. [That] was the reason for the legislation adopted under section 48 of the Construction Act, which is undoubtedly absolute in respect of the perpetrator of the unauthorised construction ...
>
> The requirement of absolute observance of the obligation to obtain a building permit, which arises from section 48 of the Construction Act, fully corresponds to the conditions for the restriction of civil rights "necessary in a democratic society for [the maintenance of] public order, ... the protection of the environment, [and the] freedoms

and rights of others", as formulated in Article 31 § 3 of the Constitution. It should be added that the notion of "necessary restriction" includes not only the legal and material definition of the content of the restriction, but also the admissibility of the application of measures that are necessary to ensure that [parties bound by the restrictive rule] respect this restriction. Although it may be subject to an assessment as to whether the measure aimed at enforcing the desired behaviour is not too far-reaching, in the assessment of the onerous nature of the measure, it should be assumed that the perpetrator should take into account the fact that the minimum consequence of the infringement shall be (if the actual circumstances and nature of the infringement allow it) to restore the [previous] situation.

In the opinion of the Constitutional Court, the degree of intensity of an interference with the property rights of an individual is – in the case of the regulation under consideration – justified by the rank of the protected public interest. The limitation of the rights of an individual who violates the regulations in force and exposes himself to the effects provided for in the contested regulation is justified by the purpose that it serves ... The principle of proportionality cannot serve as a basis for protecting an interest arising out of an infringement."

COMPLAINT

45. The applicant complained that the impending demolition of his house would violate his rights to respect for his home and private and family life, as protected by Article 8 of the Convention.

THE LAW

46. The applicant complained that the impending demolition of his house would violate his right to respect for his home and private and family life. The Court notes that the applicant, in his observations on the admissibility and merits, did not comment on the question of whether his complaint could also raise an issue under Article 1 of Protocol No. 1. The Court therefore considers that the complaint should be examined solely under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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. The parties' submissions

47. The Government raised several objections regarding the admissibility of the application. Firstly, they considered that the applicant had abused the right of petition by submitting incomplete information to the Court. Specifically, he had failed to inform the Court of another set of proceedings

concerning the illegal construction of a barn (see paragraph 34 above). Moreover, the case, in so far as it concerned issues that had arisen prior to 1 May 1993, had been incompatible *ratione temporis* with the Convention. Lastly, the Government submitted that the applicant had not exhausted various domestic remedies available to him.

48. They maintained that the impending demolition of the applicant's house was compatible with Article 8 of the Convention. They agreed that demolition order had amounted to interference in the applicant's rights under Article 8. However, that interference had been provided by law (section 37 of the 1974 Construction Act) and had pursued the legitimate aim of preventing disorder and promoting the economic well-being of the country. The Government reiterated that town and country planning schemes involved the exercise of discretionary power, and that the national authorities were better placed to evaluate local needs and conditions.

49. The Government emphasised the fact that the applicant had knowingly built the house in flagrant violation of the building regulations in force at the material time. In such circumstances the authorities had had to issue a demolition order; nevertheless, those authorities had given the applicant a three-year time-limit to comply with it. The domestic law did not provide for the possibility of later legalising the construction. Therefore, the domestic authorities' refusals to quash the final demolition orders had constituted an adequate, legitimate, and necessary response to the applicant's illegal action. The Government emphasised that the applicant had alternative property in which he could live with his family, located some 70 km away. They submitted that the applicant had acted in total disregard of the domestic law and stressed the fact that over the twenty-two years of the applicant's non-compliance with the 1996 demolition order the public authorities had not made any attempt to execute the order in a forcible manner.

50. They also argued that the domestic proceedings had not focused solely on the question of whether the house had been built without the relevant permit but had also dealt with the question of whether the measure had been necessary and proportional. The domestic authorities had weighed the relevant interests involved in the case but had concluded that the public interest in safeguarding the rule of law outweighed the interests of the applicant, who from the outset had acted in bad faith. The Government submitted that the personal circumstances of the applicant had been taken into account by the authorities, who had examined the necessity and proportionality of the measure with respect to the overall situation and had also taken into account the applicant's actions and behaviour. Those issues had been considered, for instance, by the Supreme Administrative Court in its judgment of 23 October 2015 (see paragraph 11 above). Lastly, the Government emphasised that if it was true that the applicant and his family found themselves in a continued and prolonged stressful situation, that

situation would not have arisen had the applicant obeyed the law and complied with the 1996 demolition order.

51. The applicant contested all the preliminary objections raised by the Government. He considered that the set of proceedings relating to the barn had not concerned the core of his complaints under the Convention. Moreover, he complained about several sets of proceedings that had started in 1996 and were thus within the Court's jurisdiction *ratione temporis*. The applicant submitted that he had used all possible legal remedies in order to legalise the construction of his house.

52. The applicant submitted that he had built his house in order to live in it and to attend to his agricultural activities, which necessitated both his proximity and constant attention. On 30 June 2011 the local land-use plan had changed, and since then it should have been possible to legalise the building. However, in spite of his attempts and his use of the different administrative remedies provided for the quashing of final administrative decisions the authorities had denied him that possibility. The 1996 demolition order remained in force, which threatened the well-being of his family.

53. The applicant reiterated his argument that the decision-making process should also have involved an assessment of the interests protected under Article 8 of the Convention. However, the authorities had not undertaken such a balancing exercise. Rather, the authorities had embraced the absolute principle that the public interest in ensuring the implementation of the building regulation permitted no exceptions and took precedence over the individual rights of a person about to lose a home. The applicant submitted that the domestic law and practice had not excluded the possibility that a subsequent change to the local land-use plan could justify the annulment of a demolition order that had not been enforced.

B. The Court's assessment

1. General principles

54. To determine whether an interference entailed a violation of Article 8 of the Convention, the Court must examine whether it was justified under the second paragraph of that Article, that is, whether the interference was "in accordance with the law" and "necessary in a democratic society" for the pursuit of one of the "legitimate aims" specified in Article 8 (see *Dubská and Krejzová v. the Czech Republic* [GC], nos. 28859/11 and 28473/12, § 166, 15 November 2016). The Court reiterates that an impugned interference must have some basis in domestic law, which law must be adequately accessible and be formulated with sufficient precision to enable the citizen to regulate his or her conduct, he or she being able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *A, B and C v. Ireland*, cited above, § 220, with further references).

55. An interference will be considered "necessary in a democratic society" in order to realise a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, among other authorities, *Kay and Others v. the United Kingdom*, no. 37341/06, § 65, 21 September 2010, and *Connors v. the United Kingdom*, no. 66746/01, § 81, 27 May 2004).

56. In making their initial assessment of the necessity of a measure, the national authorities enjoy a margin of appreciation in recognition of the fact that they are better placed than international courts to evaluate local needs and conditions. The margin afforded to national authorities will vary, depending on the Convention right in issue and its importance for the individual in question. The Court set out its approach in *Connors* (cited above, § 82), in which it stated:

> "... The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (see, for example, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, p. 21, § 52, and *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A, no. 104, § 55). On the other hand, in spheres involving the application of social or economic policies, there is authority that the margin of appreciation is wide, as in the planning context where the Court has found that "[i]n so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation (see *Buckley v. the United Kingdom*, 26 September 1996, § 75 *in fine*, Reports of Judgments and Decisions 1996-IV, p. 1292) such as housing, which play a central role in the welfare and economic policies of modern societies, it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Mellacher and Others v Austria*, judgment of 19 December 1989, Series A no. 169, p. 27, § 45, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 49). It may be noted however that this was in the context of Article 1 of Protocol No. 1, not Article 8 which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (see, *mutatis mutandis*, *Gillow*, cited above, § 55*; Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III; and *Christine Goodwin v. the United Kingdom*, no. 28957/95, § 90, ECHR 2002-VI). Where general social and economic policy considerations have arisen in the context of Article 8 itself, the scope of the margin of appreciation depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (see *Hatton and others v. the United Kingdom*, [GC] no. 36022/97, ECHR 2003-..., §§ 103 and 123)."

57. Furthermore, it is clear from the case-law of the Court that the requirement under Article 8 § 2 that the interference be "necessary in a democratic society" raises a question of procedure as well as one of substance (see *Connors,* cited above, § 83, and *McCann v. the United Kingdom*,

no. 19009/04, § 49, ECHR 2008). The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Buckley v. the United Kingdom*, 25 September 1996, § 76, Reports of Judgments and Decisions 1996-IV; *Chapman v. the United Kingdom* [GC], no. 27138/95, § 92, ECHR 2001-I; and *Connors*, cited above, §§ 83 and 92). The mere possibility of obtaining judicial review of the administrative decision causing the loss of the home is thus not enough; the person concerned must be able to challenge that decision on the grounds that it is disproportionate in view of his or her personal circumstances (see *Ćosić v. Croatia*, no. 28261/06, §§ 21-23, 15 January 2009, and *Kay and Others*, § 69-74, cited above).

58. The Court has emphasised that the right to respect for one's home under Article 8 of the Convention touches upon issues of central importance to the individual's physical and moral integrity, the maintenance of relationships with others, and a settled and secure place in the community. Therefore, the balancing exercise under that provision in cases where the interference consists in the loss of a person's only home is of a different order, with particular significance attaching to the extent of the intrusion into the personal sphere of those concerned (see *Ivanova and Cherkezov*, cited above, § 54).

2. Application of the general principles to the present case

59. The Court finds it unnecessary to rule on the Government's preliminary objections since it considers the applicant's complaint to be in any event manifestly ill-founded, for the following reasons.

60. It is not disputed that the applicant owns the plot of land and the house built on it. He has been continually living there since its construction in 1994. It is therefore home to him and his family, and the order for its demolition amounts to an interference with his right to respect for that home (see among many other *Winterstein and Others v. France*, no. 27013/07, § 141-143, 17 October 2013, with further references). That interference was lawful, as the 1996 demolition order had a clear legal basis in the domestic law (see paragraphs 6 and 41 above). The Court is furthermore satisfied that the demolition would pursue the legitimate aim of re-establishing the rule of law, as the building was constructed without a permit and in breach of the local land-use plan. It remains to be established whether the demolition of the applicant's home is necessary in a democratic society.

61. The Court notes that it is not contested by the parties that in October 1994 the applicant knowingly built his house in breach of domestic legal regulations. Firstly, the local land-use plan had not allowed for any housing

on the plot of land owned by the applicant, and secondly, no building permit had been issued. Since the applicant built the house anyway, the authorities issued a demolition order, against which the applicant did not appeal. He did not comply with the order, which indicated that he had three years in which to demolish the house. Instead, since 2012, the applicant has been making repeated efforts, under various procedures provided by law, to have the final demolition order quashed.

62. In the domestic proceedings the applicant relied on the above-mentioned change in situation – namely the issuance of a new land-use plan, which came into force in 2012, on the basis of which the construction of a building similar to that of the applicant would be allowed. Furthermore, the applicant raised various arguments citing rights protected by Article 8 of the Convention. He stressed his own and his family's strong personal and professional links with the house. The applicant noted (i) that it was necessary for them to live on the land that they had been cultivating; (ii) the respectful nature of his activities in regard to the environment; and (iii) the positive impact of those activities on the well-being of his son, who had a medical condition.

63. The Court notes that the domestic administrative authorities and courts found no grounds for quashing the 1996 demolition order, as the construction of the house had been illegal at the time that the order had been issued. The authorities considered whether the subsequent change to the local land-use plan, which allowed the construction of buildings similar to that of the applicant, could constitute grounds for quashing the 1996 demolition order. However, they concluded that under the domestic law it was not possible to successfully cite such a subsequent change in situation if a house had been built illegally in the first place. In particular, in the course of the above-mentioned proceedings during which the applicant sought the finding that the 1996 demolition order under 162 § 1 of the Code had expired, the Regional Administrative Court (on 28 January 2015) and the Supreme Administrative Court (on 7 February 2017) emphasised this principle (see paragraphs 17 and 19 above).

64. The parties disagreed as to whether or not the domestic authorities had taken the personal circumstances of the applicant and his family into account and had examined the proportionality of the measure. The Court notes that the Government cited the judgment given by the Supreme Administrative Court on 23 October 2015 (see paragraph 12 above), which balanced the interests of an individual in having a final decision quashed against the principle of the legal certainty of administrative decisions (see paragraph 11 above). The court concluded that the legitimate interest of the applicant should not constitute grounds for quashing the 1996 demolition order, given the circumstances of the case, in view of the fact that the applicant had for many years avoided complying with the law.

65. The Court furthermore notes that on 12 May 2016 the applicant instituted proceedings under a procedure provided for by Article 161 § 1 of the Code asserting the existence of exceptional grounds for quashing the 1996 demolition order (see paragraph 20 above). In those proceedings the authorities dealt expressly with his argument that the continuation in force of the 1996 demolition order would carry a risk to the life and well-being of the applicant and his family. On 12 December 2018 the Warsaw Regional Administrative Court examined and dismissed the applicant's argument that the demolition would impose excessive hardship on him and his family, would lead to a deterioration in his son's health, would prevent the family from continuing their agricultural activities, and would in general put their life and health at risk (see paragraph 23 above). Furthermore, the Court would refer to the judgment of the Warsaw Regional Administrative Court of the same date that was given in a different set of proceedings, which concerned the applicant's request for the postponement of the 1996 demolition order (see paragraph 32 above). In this judgment the court examined whether the illness of the applicant's son, the family's lack of alternative accommodation, and the applicant's agricultural activities amounted to "social considerations" allowing for the postponement of the 1996 demolition order. Given the circumstances of the case, the court ruled that those considerations were not sufficient to justify the further postponement of that order.

66. The Court thus considers that in the present case the authorities did balance, on the one hand, the interest of the applicant in keeping his house and, on the other, the interests of society. As regards the latter, the courts gave weight to the principle that a final administrative decision should enjoy legal certainty, assuming that questions of facts and law had been correctly assessed; to do otherwise would be to afford unequal treatment to, on the one hand, those individuals who complied with the law and, on the other hand, the applicant, who for twenty years had avoided such compliance. The domestic courts acknowledged the hardship that the demolition of the house might cause but considered that public interest in the effective implementation of the building regulations should be given prevalence. The domestic authorities considered important the fact that the applicant had had over twenty years to prepare and to mitigate the consequences of the demolition of the house.

67. In that context, the Court emphasises that in making their assessment of the necessity of a measure, the national authorities enjoy a margin of appreciation, in recognition of the fact that they are better placed than international courts to evaluate local needs and conditions. Where there is no reason to doubt the procedure followed, the margin of appreciation allowed to the domestic courts in such cases will therefore be a wide one (see *Pinnock and Walker v. the United Kingdom* (dec.), no. 31673/11, § 28, 24 September 2013).

68. The Court furthermore notes that at the material time the Constitutional Court had already examined the constitutionality of the legal provisions ordering the demolition of illegally constructed houses, and had emphasised that the proper and harmonious coexistence of the members of society required the State to issue regulations with the aim of controlling the use of property. The demolition of a house that had been built without a relevant permit was a consequence of illegal actions on the part of the individual in question and was considered to constitute an adequate response to it (see paragraph 43 above). In another judgment the Constitutional Court held that unauthorised construction was a reprehensible act that required the forcible restoration of the state of affairs preceding the impugned violation of the law. According to the Constitutional Court intensity of the interference in question was considered justified by the importance of the protected right (see paragraph 44 above).

69. The Court also notes that under the domestic law the changes in legal circumstances occurring later would not automatically render the final demolition order obsolete.

70. Lastly, the Court notes that the Government submitted that the applicant had alternative housing and that he had not contested that assertion. Moreover, some sets of proceedings are still pending, and the applicant still has the possibility of raising his complaints before the Supreme Administrative Court (see paragraphs 24 and 33 above).

71. Having regard to the particular circumstances of the case the Court therefore concludes that the applicant could have raised his personal circumstances in the various sets of proceedings instituted by him and that it was open to him to challenge the 1996 demolition order by citing his rights under Article 8 of the Convention. Consequently, the domestic proceedings conducted in the case did meet the procedural requirements, as set out in the Court's case-law (compare and contrast *Ivanova and Cherkezov*, cited above, § 53).

72. Regard being had to the above, the Court concludes that the domestic authorities did not exceed their margin of appreciation in finding that the 1996 demolition order of the applicant's house should be upheld. It follows that the facts of the case disclose no appearance of a violation of Article 8. The application is accordingly inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 February 2022.

Renata Degener Section Registrar	Marko Bošnjak President