



Failure to enforce a decision entailing the demolition of the dangerous parts of a building next door to the applicant's house: two violations

In today's **Chamber** judgment¹ in the case of [Chatzigiannakou v. Greece](#) (application no. 58774/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy).

The case concerned the failure to enforce a decision entailing the demolition of parts of a building in Athens on account of its non-compliance with anti-seismic regulations. Ms Chatzigiannakou lived next door to the building and she alleged that her house would be at risk if it were to collapse.

The Court noted that the authorities had called for measures to be taken to rectify the illegality of the building. They had then recorded the failure to implement those measures and had acknowledged that they were powerless to ensure enforcement.

Ms Chatzigiannakou's inability to obtain the enforcement of an administrative decision – of which the relevance and validity had never been challenged and which had significant repercussions for her property – had thus upset the fair balance between the requirements of the general interest of the community and the imperatives of safeguarding individual rights.

The Court further found that the domestic remedy invoked by the Government was purely compensatory and would not have enabled Ms Chatzigiannakou to make an effective complaint on the basis that the authorities had not acted to force the building company to comply with the decision entailing the mandatory evacuation of the flats in the building and the immediate demolition of the dangerous parts.

Principal facts

The applicant, Maria-Aggeliki Chatzigiannakou, is a Greek national who was born in 1982 and lives in Uppsala (Sweden). She owns a house in Athens that she acquired from her mother and grandmother in 2009.

In 2000, when a company began building a block of flats on land adjacent to her mother's house, she asked the planning department of the Athens municipal authorities to verify certain aspects of the new construction to ensure conformity with anti-seismic regulations. That department, which found defects, asked the directorate for illegal and dangerous buildings to order the discontinuance of the work and impose sanctions on the company.

On 31 October 2001 the Secretary General of the Attica Region decided to apply the provisions of the decree² on dangerous building work and gave the company a deadline to bring the construction

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² Decree of 13 April 1929.

into conformity with anti-seismic regulations. That decision became final but the necessary work was never completed by the company even though the deadline had passed.

On 27 September 2002 Ms Chatzigiannakou's mother asked the Secretary General for the Attica Region to take all the necessary measures to enforce the decision of 31 October 2001, namely the mandatory evacuation of the flats in the building and the immediate demolition of its dangerous parts. Following the tacit rejection of her request, her mother appealed to the Supreme Administrative Court. Later, by 2010, Ms Chatzigiannakou had become the owner and replaced her mother in the proceedings.

On 7 March 2012 the Supreme Administrative Court declared Ms Chatzigiannakou's appeal inadmissible. It noted that the decision of 31 October 2001 had become final but had not been enforced. It was of the view, however, that the authorities' failure to enforce the decision was not subject to an administrative appeal.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, Ms Chatzigiannakou complained of the failure by the planning authorities to enforce their own decisions ordering the building to be brought into conformity with anti-seismic norms, failing which the dangerous parts were to be demolished.

The application was lodged with the European Court of Human Rights on 6 September 2012.

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

Ksenija **Turković** (Croatia), *President*,
 Krzysztof **Wojtyczek** (Poland),
 Linos-Alexandre **Sicilianos** (Greece),
 Aleš **Pejchal** (the Czech Republic),
 Armen **Harutyunyan** (Armenia),
 Pauliine **Koskelo** (Finland),
 Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 1 of Protocol No. 1 (protection of property)

The Court began by observing that the failure of the administrative authorities to comply with the decision of the Secretary General of the Attica region of 31 October 2001 resulted in the erected building remaining in breach of the anti-seismic safety norms, thus exposing Ms Chatzigiannakou's house to the risk of serious damage in the event of an earthquake and diminished its value. The Court thus found that the authorities were responsible for the interference with Ms Chatzigiannakou's property rights.

The Court further noted that the authorities had been aware of the illegality and had called for measures to be taken to rectify the situation. They had then recorded the failure to implement those measures, while acknowledging that they were powerless to ensure enforcement. The Supreme Administrative Court had subsequently taken the view that the non-enforcement fell outside its remit.

Lastly, Ms Chatzigiannakou's inability to obtain the enforcement of an administrative decision – of which the relevance and validity had never been challenged and which had significant repercussions

for her property – had thus upset the fair balance between the requirements of the general interest of the community and the imperatives of safeguarding individual rights. **There had thus been a violation of Article 1 of Protocol No. 1.**

Article 13 (right to an effective remedy)

The Government had argued that the action for damages under sections 105 and 106 of the Civil Code Implementation Act was an effective remedy for the protection of property rights in the event of failure to demolish illegal constructions.

The Court nevertheless took the view that this remedy was purely compensatory, only enabling claims for damages in the event of illegal acts or omissions on the part of the authorities, and would not have enabled Ms Chatzigiannakou to make an effective complaint on the basis that the authorities had not acted to force the building company to comply with the decision of 31 October 2001. **There had thus been a violation of Article 13 of the Convention.**

Just satisfaction (Article 41)

The Court held that Greece was to pay Ms Chatzigiannakou 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,515.39 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.