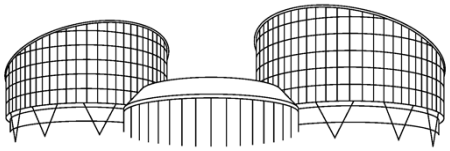

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GHAILAN AND OTHERS v. SPAIN

(Application no. 36366/14)

JUDGMENT

Art 8 • Respect for home • Justified demolition of applicants' illegally constructed home and eviction • Lack of exhaustive and thorough examination of proportionality of demolition attributable to applicants' unexplained failure to use the existing legal remedies available to them

STRASBOURG

23 March 2021

FINAL

23/06/2021

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

In the case of Ghailan and Others v. Spain,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
María Elósegui,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 36366/14) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Moroccan nationals, Mr Abdelilah Ghailan ("the first applicant"), Ms Fatima Zahra Alami Wahabi ("the second applicant") and their two minor children (together "the applicants"), on 3 May 2014;

the decision to give notice to the Spanish Government ("the Government") of the complaint under Article 8 of the Convention concerning the applicants' eviction and the demolition of their home, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 16 February 2021,

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

INTRODUCTION

1. The application concerns the applicants' eviction and the demolition of their only home. The principal issue is whether the interference with the applicants' right to respect for their home under Article 8 of the Convention was "necessary in a democratic society" and, in particular, whether it was proportionate to the legitimate aims pursued.

THE FACTS

2. The first applicant was born in 1977, the second applicant in 1984 and their two sons in 2004 and 2007 respectively. They live in Madrid. The applicants were represented by Mr F.J. Rubio Gil, a lawyer practising in Madrid.

3. The Government were represented by their Agent, Mr R.A. León Cavero, State Attorney.

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

I. THE RELEVANT BACKGROUND

5. According to the applicants, the first applicant moved to Spain in the late 1990s. According to the population register, the first applicant has been residing in Madrid since 2001 and the second applicant since 2003 – they got married in Morocco in 2001. The first and second applicants were at that time registered at the same address in Madrid. On an unspecified date in late 2004 or beginning 2005 – this was disputed by the parties – they started unlawfully building a house on public land in the section of the Cañada Real Galiana located within the Municipality of Madrid ("the Municipality"). They, together with one of their children (who was born in July 2004), registered it as their place of residence on 4 April 2005. At the time, the first applicant was working as a self-employed in the construction sector. The second applicant's residence permit did not authorise her to work. The younger son was born in August 2007. According to the first and second applicants, at the time of introduction of the application to the Court they were unemployed and not receiving any unemployment benefits, and were collecting scrap to make a living.

6. The Cañada Real Galiana was a route traditionally used for the movement and transhumance of livestock (*vía pecuaria*). It crossed the Autonomous Region of Madrid through the municipalities of Coslada, Getafe, Madrid, Rivas-Vaciamadrid and San Fernando de Henares. Until the entry into force of the Cañada Real Galiana Act (see paragraph 42 below), the route's legal status was defined as a property of "public domain" (public property allocated for general use or public service) of the Autonomous Region of Madrid. The route partly ran through a natural area, and was classified as land for protection of livestock routes which could not be developed (*suelo no urbanizable*). Any private use or construction activity was forbidden. Despite this, particularly from the 1960s, many slum houses were illegally erected in the area as the livestock route had fallen into disuse. A population census undertaken in 2011 – as required by the Cañada Real Galiana Act – estimated a population of more than 5,000 people only in the section of the Cañada Real Galiana located within the Municipality, mainly Spanish (and some foreign) nationals of Roma ethnicity (approximately 40%) followed by other Spanish nationals (27.2%) and then Moroccan nationals (26.1%). This census also reported high rates of unemployment and low incomes. Some 12% of the people living in this area were in a situation of "extreme vulnerability". The overall population of the settlement was estimated at more than 7,000 people when those living within the Municipalities of Coslada and Rivas-Vaciamadrid were included.

7. The settlement was tolerated by the relevant authorities for many years. However, mainly from the year 2005 onwards, the Municipality started to systematically take measures against unlawful construction, initiating a large number of administrative proceedings against occupants of

unauthorised buildings in order to restore legality. The municipal authorities argued that, in addition to the unlawful occupation of public property, the continuing building of illegal dwellings in the area was causing problems of public order, safety and security as well as health, educational and social problems. In 2013 the Municipality (temporarily) suspended all demolition of unlawful construction on the Cañada Real Galiana, and the proceedings to enforce them, with the purpose of giving stability and tranquillity to families in view of the ongoing process to find a final and comprehensive solution to the special problems of the Cañada Real Galiana (see paragraphs 42 and 43 below). It appears that (at the time of the adoption of the present judgment) the suspension has not yet been lifted.

II. FIRST DEMOLITION OF THE APPLICANTS' HOME

8. On 17 March 2005, in the course of a regular inspection of the area, a municipal police officer noticed the non-authorised construction of a house in the Cañada Real Galiana (plot no. 40-A) by the first applicant. The police officer issued a formal warning (*denuncia*) to the first applicant – handing over a copy to him in person – and reported it to the relevant authorities. As a result, on 1 April 2005 the authorities of the Municipality ordered the first applicant to immediately suspend the work, warning him of the consequences of non-compliance – namely sealing off the premises, imposing a fine or requesting that the prosecutor's office bring criminal proceedings. The order was personally served on the first applicant's brother on 9 April 2005. The notification included information on the available (administrative and judicial) remedies against the decision. The first applicant however failed to avail himself of such remedies.

9. On 7 May 2005 the first applicant was personally served with a decision of the Municipality of 28 April 2005 stating that the construction was being carried out without the requisite planning permission on land reserved for protection of livestock routes, and that it could not be legalised as it did not meet the urban-planning regulations. The first applicant was given a fifteen-day time-limit for making comments on the demolition of the building in accordance with section 194(2) of the Autonomous Region of Madrid Land Act (see paragraph 39 below). The first applicant failed to submit any observations in that connection.

10. On 23 June 2005 the Director General for Urban Planning issued a demolition order. It obliged the first applicant to demolish the building within fifteen days, and warned him that failure to do so would prompt the authorities to enforce the order at his expense. It was personally served on the first applicant on 5 July 2005. The notification included information on the available (administrative and judicial) remedies against the decision. The first applicant failed to avail himself of them.

11. On 24 November 2005 the municipal authorities noted that the first applicant had not voluntarily complied with the demolition order and estimated that the cost to enforce the demolition would amount to 10,767.12 euros (EUR).

12. On 28 February 2006 the authorities decided to initiate proceedings to enforce the demolition order and granted a fifteen-day time-limit for the first applicant to make comments in defence of his rights. The decision was personally served on the second applicant on 7 March 2006. The applicants failed to submit any observations in this connection.

13. On 14 July 2006 municipal police officers reported and documented the building of an extension and upgrades to the applicants' dwelling, including the building of a new floor.

14. As the applicants had failed to comply with the demolition order, on 29 November 2006 the relevant authorities ordered the enforcement of the demolition, which was later scheduled for 29 January 2007. The notification of that decision to the first applicant included information on the available (administrative and judicial) remedies against the decision. After unsuccessful attempts to serve the decision at the applicants' dwelling, it could only be personally served on the first applicant on the same date set for enforcing the demolition order (29 January 2007). In view of this, and having regard to the fact that the applicants were effectively living in the dwelling and did not give consent to entering their home, the demolition was not carried out. The applicants did not make use of any of the remedies available to them under domestic law to challenge the aforementioned decision to enforce the demolition.

15. The authorities then requested judicial authorisation to enter the applicants' home with a view to carrying out their eviction and the subsequent demolition of the dwelling. The application was assigned to the Madrid Administrative Court no. 7, which invited the first applicant to submit observations – that invitation was only served through posting on the court's notice board after unsuccessful attempts to serve it through other means. On 12 September 2007 the court authorised entry into the applicants' home (decision no. 659/07). The court, making reference to case-law of the Supreme and Constitutional Courts, clarified the scope of the instant set of proceedings. It noted that their purpose was not to conduct an exhaustive review of the administrative decisions intended to be enforced – remedy which was available by bringing an application for judicial review with the relevant administrative court as provided for by law – but to examine firstly whether the administrative decision appeared prima facie to have been rendered in accordance with the law (appearance of legality), and secondly the proportionality of the measure requested to the effect that entry into a home was absolutely necessary to enforce the administrative decision. As to the particular circumstances of the case, and having regard to the limited scope of the proceedings, the court held that the administrative

decisions had strictly complied with the law and the measure requested was proportionate. The court noted that the applicants had been duly served with the demolition order and the decision to initiate its enforcement, and that despite this they had failed to voluntarily leave the house within the time-limit given to do so. It also highlighted that the applicants had not submitted observations on the authorities' applications within the framework of the instant judicial proceedings, despite the fact that they had been fully aware of them. Although the court decision itself expressly pointed out that the decision was subject to appeal before the Madrid High Court of Justice, the applicants did not contest the decision.

16. On 11 October 2007 the second applicant was personally served with a decision setting the exact date and time in which the demolition order would be enforced by public authorities. The presence of emergency services and police had been envisaged in anticipation of public disturbances. The municipal social services were also informed of the eviction, just in case the applicants required social support.

17. On 18 October 2007 the applicants were evicted and their home was demolished. The authorities reported serious incidents that had resulted in some people being injured, including a number of police officers. Some individuals were detained in the course of events. The expenses effectively incurred for the demolition amounted to EUR 4,708.17.

III. SECOND DEMOLITION OF THE APPLICANTS' HOME AND THE ENSUING JUDICIAL PROCEEDINGS

18. On 20 October 2007 municipal police officers reported that a large group of people had started rebuilding the applicants' dwelling. The police closely followed up and documented the situation during the following days. On 27 November 2007 a police officer issued a formal warning to the first applicant while he was carrying out work to rebuild the house - handing over a copy to him in person –, informing him of the illegality of his actions. The first applicant kept on rebuilding the house, disregarding the warnings given by the police. On 24 January 2008 municipal police officers reported that the house was practically rebuilt and that the first applicant claimed that he had been resident there while carrying out the work.

19. On 14 April 2008 the relevant municipal authorities adopted a decision requiring the first applicant to leave the dwelling and to demolish the work carried out to rebuild the house, within a non-renewable period of fifteen days. It also warned the first applicant that should he fail to comply with that obligation, a new judicial authorisation to enter his home would be requested with a view to evicting the family and demolishing the dwelling, at his expense and with the intervention of the police if need be. The decision was taken within the framework of the same administrative proceedings which had given rise to the demolition enforced on 18 October

2007. Accordingly, it stated that it was not subject to appeal on the grounds that it only reproduced the prior decision of 19 November 2006 ordering the enforcement of the demolition (see paragraph 14 above), which had become final. After unsuccessful attempts to personally serve the decision on the first applicant in his house – those staying there claimed not to know the first applicant – the decision was published in the Official Gazette of the Region of Madrid on 7 July 2008 and displayed on the notice board at the town hall of Madrid for a period of one month thereafter.

20. On 22 September 2008 municipal police officers reported that the applicants were effectively living in the house that had been rebuilt.

21. On 26 February 2009 the Governing Board (*Junta de Gobierno*) of the City of Madrid decided to apply for a new judicial authorisation to enter the applicants' home with a view to enforcing the demolition order. The relevant authorities submitted the application on 23 March 2009. However, on 2 September 2009 the Madrid Administrative Court no. 8 decided to strike the application out and discontinue the proceedings (decision no. 1220/09), on the basis that a person different from the first applicant (probably because of the unofficial addresses in the area) – who had claimed not to know him – had been notified of the authorities' application and, despite the court's request, the authorities had failed to submit observations in that connection. The court considered that it was no longer justified to continue the examination of the application. The authorities did not lodge an appeal against that decision and it accordingly became final.

22. On 23 October 2009 the municipal authorities again notified the first applicant of their decision of 14 April 2008 (see paragraph 19 above). This time it was personally served on him on 28 November 2009. On 12 December 2009 the first applicant requested that the authorities send any further notifications to the professional address of his legal representative. He also claimed to be residing in the house in the Cañada Real Galiana together with the second applicant and their two children (five and two years old at the time).

23. On 1 February 2010 the authorities again required the first applicant to immediately vacate the dwelling. On 15 February 2010, following a request by the authorities, municipal police officers reported that the dwelling was still occupied by the applicants.

24. On 2 November 2010 the authorities applied for a new judicial authorisation to enter the applicants' home with a view to enforcing the demolition order of 23 June 2005 (see paragraph 10 above).

25. On 24 January 2011 the first applicant submitted observations on the application, arguing the following: (i) the demolition to be enforced had no legal basis and was therefore unlawful. The demolition order of 23 June 2005 had been effectively enforced on 18 October 2007, and no new demolition order had been issued after the applicants had built a new dwelling in the same location. Moreover, the first applicant claimed that a

new decision of the City of Madrid's Governing Board to request authorisation to enter their home was required for instituting the instant proceedings. He also stated that he was going to lodge an application for judicial review of the decision of 14 April 2008 (see paragraph 19 above), and consequently the proceedings would be pending; (ii) the institutional context had varied significantly as a result of the agreement to find a comprehensive solution for the Cañada Real Galiana reached in 2009 by the Municipality and the other public bodies concerned. A draft Law – that could have an impact on the applicants' situation – was being prepared in this connection; (iii) the demolition carried out in 2007 had failed to comply with minimum guarantees on forced evictions, in contravention of international human-rights standards; (iv) the children were enrolled in a school located five hundred metres away from their home, and therefore the enforcement of the eviction and demolition would negatively affect their right to education and personal development. Alternatively, should entry into the applicants' home be authorised, the first applicant requested the suspension of the demolition until the school year had finished.

26. On 8 April 2011 the first applicant submitted additional observations, stating that any individual measure – such as the demolition of the applicants' home – carried out outside the general framework of the agreed solution for the Cañada Real Galiana provided by the Cañada Real Galiana Act (see paragraph 42 below) – which had entered into force on 30 March 2011 – would be unlawful, arbitrary and discriminatory. Accordingly, a decision granting authorisation to enter the applicants' home would be disproportionate and would amount to a breach of their right to respect for the home.

27. On 20 April 2011 the Madrid Administrative Court no. 30 authorised entry into the applicants' home with a view to carrying out the eviction and the demolition of the dwelling. It however upheld the applicants' request to grant authorisation only once the school year had finished.

The court firstly referred to the limited scope of the proceedings, noting that the authorities' request for judicial authorisation to enter the applicants' home had been necessary, prior to the enforcement of the measure, in the absence of consent to enter their home, in order to guarantee their right to respect for the home under Article 18 § 2 of the Constitution. The court was thus required to strike a balance between the interests at stake. In that connection, the court further noted that the instant judicial review was restricted to examining the appearance of legality of the administrative decision intended to be enforced, and to determining whether authorisation to enter the home in question was necessary.

Secondly, as to the particular circumstances of the case, and having regard to the limited scope of the proceedings, the court found that the demolition order had been in accordance with the law. It noted that the first applicant had had the opportunity to submit observations within the

administrative proceedings; but having failed to contest the demolition order, it had become final. The enforcement of the demolition order was thus the result of the first applicant's failure to voluntarily comply with the order. The court also held that the first applicant had acted with complete disregard for the administrative and judicial decisions ordering the demolition of the illegal construction – by rebuilding the dwelling almost the day following its demolition – and had carried out actions intended at hindering compliance with the demolition order. The court furthermore found that the applicants' house had been unlawfully constructed, a status that had not been modified by the entry into force of the Cañada Real Galiana Act. Lastly, the court considered that the authorisation to enter the applicants' home was the only means to enforce the eviction and demolition order.

28. On 15 July 2011 the first applicant lodged an appeal against the decision authorising entry into his home. He firstly claimed that the decision had not given a response to some of his arguments, specifically to his claim that a new decision of the City of Madrid's Governing Board was required to initiate the instant proceedings. Secondly, the first applicant reiterated the argument that the demolition of the applicants' home was unlawful because it required a new demolition order. He also alleged other shortcomings in the administrative proceedings. Lastly, he claimed that non-compliance with urban-planning regulations could not serve as the basis for dismantling a settlement like the Cañada Real Galiana, which had been tolerated by the authorities for decades, particularly after the entry into force of the Cañada Real Galiana Act. He also stressed that any demolition outside "the process for social dialogue" (*acuerdo de contenido social*) provided for by the Cañada Real Galiana Act would be unlawful, and that there were legal alternatives to the demolition of the applicants' only home.

29. On 28 July 2011 the relevant authorities of the Municipality declared inadmissible an application submitted by the first applicant requesting them to review the decisions of 14 April 2008 (see paragraph 19 above) and 1 February 2010 (see paragraph 23 above), on the basis that such administrative decisions were unlawful as a result of the enactment of the Cañada Real Galiana Act. The authorities found that the application was not based on any of the grounds for review provided for by law. Although the inadmissibility decision was subject to both administrative and judicial review, the first applicant failed to avail himself of any remedies against it.

30. On 6 September 2011, starting at 5 a.m., the applicants were evicted and their home was demolished – according to the official report issued by the emergency services (SAMUR), the children (seven and four years old at the time) were sleeping in a relative's house. The eviction took place without incident. The applicants had not previously been informed of the date and time of the eviction to prevent serious incidents from happening, as those which had occurred during the eviction of 18 October 2007

(see paragraph 17 above). The presence of the SAMUR – to provide assistance to the applicants – and a significant number of police officers – in anticipation of public disturbances – had been ordered. The presence of neighbours and other people from certain social movements gathering around the applicants' home, and the setting up of roadblocks on the access routes to the settlement, had been noted by the police in the weeks prior - which, together with the submission of the application for review referred to in the paragraph above, had caused the enforcement of the demolition, initially scheduled for 6 July 2011, to be delayed on several occasions. The municipal social services had also been requested in advance to inform the applicants about the public resources they could utilise with the aim of helping them ease the situation caused by the loss of their home. The SAMUR – present during the eviction – reported that the applicants had on the spot been offered emergency accommodation for a few days and social support while other (more permanent) solutions were being arranged with the district social services. The applicants reportedly refused emergency assistance, stating that they had support from their social network and family, with whom they would stay because they lived in the same area. As the applicants refused their assistance, the SAMUR informed them of the possibility to come back to them should they need any emergency assistance (such as accommodation, clothing or food) and referred the case to the municipal (primary) social services so they could follow up on the applicants' situation. Reportedly, the applicants never got back to the SAMUR. The expenses incurred for the demolition amounted to EUR 6,058.20.

31. By a judgment of 8 March 2012, the Madrid High Court of Justice (Administrative Chamber) dismissed the first applicant's appeal against the decision authorising entry into the applicants' home. The court firstly found that the decision of the City of Madrid's Governing Board to initiate the current proceedings had been valid and in accordance with the law, and accordingly no new decision was required. Secondly, it also held that the Cañada Real Galiana Act had no bearing on the State's authority to restore legality to urban areas, and had not derogated, or suspended the application of, the urban-planning regulations in force at the time. The Law had not granted the applicants the "right to build" (*ius aedificandi*). Lastly, the court noted that the first applicant's conduct had constituted an abuse of rights, and referred the case to the prosecutor's office to consider if his acts could have amounted to a criminal offence.

32. On 28 March 2012 the first applicant was served with a decision of the relevant authorities of the Municipality of 18 November 2011 requiring him to pay a total amount of EUR 10,766.97 for the expenses incurred by the authorities in carrying out the first and second demolitions (see paragraphs 17 and 30 above). The first applicant lodged an application for judicial review, which was dismissed by the Madrid Administrative

Court no. 4 on 28 January 2014. The applicants have failed to show, and it is not clear from the case file, whether they have paid that amount.

33. On 20 June 2012 the first applicant lodged an *amparo* appeal with the Constitutional Court, claiming that his and his family eviction and the demolition of their home had amounted to a violation of Article 18 § 2 of the Spanish Constitution (right to respect for the home) and Article 8 of the Convention. The first applicant argued that demolitions carried out in the Cañada Real Galiana outside the process for social dialogue set down in the Cañada Real Galiana Act – as in the present case – were contrary to law because they undermined the spirit and letter of that Act. After the entry into force of the Cañada Real Galiana Act, and particularly taking into account that unauthorised constructions within the Cañada Real Galiana had been tolerated by the authorities for decades, their eviction and the demolition of their home did not pursue a legitimate aim and was not necessary in a democratic society. In his view, the impugned measure was not proportionate owing to the fact that the Cañada Real Galiana Act provided for alternatives to the demolition of the applicants' only home. The first applicant stated that the impugned measure was discriminatory because it *de facto* excluded him from the process to tackle the problems of the Cañada Real Galiana initiated by the Cañada Real Galiana Act. Lastly, he submitted that their eviction had failed to comply with minimum guarantees on forced evictions.

34. The Constitutional Court dismissed the first applicant's *amparo* appeal in a judgment of 4 November 2013. The Constitutional Court started by reiterating the limited scope of the ordinary proceedings in similar terms as those expressed by the first- and second-instance judgments, noting that the role of the courts in authorising entry into the applicants' home had been limited to guaranteeing that such entry had been carried out after striking a balance between the rights and interests at stake and only if it had been strictly necessary. In this context, the Constitutional Court held that the courts had duly examined both the measure's accordance with the law and its proportionality. On the one hand, the Constitutional Court found that the instant situation and the alleged (and non-existent) formal defects in the administrative proceedings had been caused by the first applicant himself, who had rebuilt the dwelling the day following its demolition, knowing that doing so had been in breach of urban-planning regulations and that the administrative decisions had become final. The court noted that the first applicant should have challenged the merits of the administrative decisions given within the framework of the urban-planning procedure by lodging an application for judicial review. Having failed to do so, he could not seek their full review subsequently by contesting their enforcement and, in particular, the request for authorisation to enter their home. On the other hand, the Constitutional Court noted that the Cañada Real Galiana Act had only entered into force after the administrative decisions intended to be

enforced by the public authorities had become final. It found that the authorisation to enter the applicants' home with a view to carrying out their eviction and the demolition of the dwelling had been proportionate and the only means to enforce the administrative decisions, which had been aimed at protecting the legal order of the city and which had become final. As an example, the Constitutional Court noted that the domestic courts had ensured the children's right to education by authorising entry in the applicants' home only after the school year had finished.

35. The Constitutional Court's judgment contained a dissenting opinion of two judges (of a five-judge panel), asserting that the *amparo* appeal should have been upheld. In short, the dissenting judges noted that the municipal authorities could have been more scrupulous in respecting the safeguards of the administrative procedure. For instance, they could have issued a new demolition order for the second demolition (instead of resorting to the one of 23 June 2005), could have adopted a new decision ordering the enforcement of the demolition order prior to requesting judicial authorisation to enter the applicants' home (instead of invoking that of 14 April 2008), and could have indicated, without misleading, that the decision of 14 April 2008 had been subject to appeal. Furthermore, in respect of the impugned judicial decisions there had been a failure to duly assess the proportionality of the measure. Their approach had focused on the irregular nature of the building, failing to identify what the pressing social need justifying the measures or their urgency had been, and failing to consider the expectations created by the tolerance of the settlement or possible alternative measures. In their view, the decisions had not sufficiently weighed the relevance of the Cañada Real Galiana Act, whose entry into force should have automatically brought any ongoing eviction and demolition proceedings to a standstill, even in the absence of an express provision in the Law. The issue at stake had concerned a whole community and a settlement that had existed for a long period, and accordingly it should have been treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property.

IV. THE APPLICANTS' REQUESTS FOR SOCIAL HOUSING

36. On 12 November 2007 the first applicant submitted a first application for social housing to the relevant body of the Autonomous Region of Madrid under a procedure established for people with special needs. He based the request on their eviction and the demolition of their home, and submitted a tax declaration in support of the application, reporting an annual income amounting to EUR 11,409. It appears that the request was not granted, yet the case file contains no information as to the grounds. This type of application for social housing had to be submitted on a yearly basis – if not granted, they needed to be submitted anew.

37. On 20 January 2011 the first applicant submitted a second application for social housing, this time arguing that the special needs were their living in substandard housing. He reported an annual family income of EUR 8,000 – reportedly obtained from scrap collection – but he did not submit a tax declaration as was required to apply for social housing. The application was considered to be incomplete, and the first applicant was accordingly requested to submit certain additional documents. He however failed to do so.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

38. The relevant provisions of the Constitution read as follows:

Article 18

"1. The right to respect for honour, for private and family life and for one's own image shall be guaranteed.

2. The home shall be inviolable. It shall not be entered or searched without the consent of the householder or a judicial decision, save in cases of *flagrante delicto*.

..."

II. RELEVANT PROVISIONS CONCERNING URBAN PLANNING

39. The use of land and land planning in the Autonomous Region of Madrid is regulated by the Autonomous Region of Madrid Land Act (Law 9/2001, of 17 July – *Ley del Suelo de la Comunidad de Madrid*). Section 194 (concerning construction work already underway) and Section 195 (concerning completed buildings) of that Law provide for the demolition of buildings constructed without the requisite planning permission, at the expense of the person concerned, when that person has not requested the legalisation of the construction within the time-limit or such a request has not been granted – for instance, if it was built in breach of urban-planning regulations.

III. OTHER RELEVANT PROVISIONS CONCERNING PROCEDURE IN ADMINISTRATIVE MATTERS

40. The Public Service and Common Administrative Procedure (Legal Regime) Act (Law 30/1992 – *Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), as in force at the relevant time, provided that public authorities cannot take any action limiting rights of individuals with the purpose of enforcing decisions unless a decision that serves as the legal basis has been previously adopted

(section 93). After a warning, they may proceed to the compulsory enforcement of administrative decisions, except in cases where the Constitution or the law requires the intervention of the courts (section 95). Such enforcement must always be carried out in accordance with the principle of proportionality, using the least restrictive means for the individual freedom from those available, and if it is necessary to enter the affected person's home, the public authorities must obtain her or his consent or, in its absence, judicial authorisation (section 96). Failure on the part of the person concerned to comply with an administrative decision can result in the public administration enforcing it at her or his expense (section 98).

IV. RELEVANT PROVISIONS CONCERNING LIVESTOCK ROUTES

41. The basic State legislation governing livestock routes in Spain is the Livestock Routes Act (Law 3/1995, of 23 March – *Ley de Vías Pecuarias*). This regulation is supplemented by regional laws. At the material time, the Cañada Real Galiana was governed by regional Law 8/1998, of 15 June, regulating livestock routes in the Autonomous Region of Madrid. Livestock routes going through the region of Madrid were accordingly "public domain" (public property allocated for general use or public service) of the Autonomous Region of Madrid.

42. As a result of a negotiating board set up by the State, regional and local authorities concerned (including the Municipality) with the purpose of addressing the "problems" which had arisen in the Cañada Real Galiana, and the ensuing agreement reached in July 2009 (that included a proposal of a draft Law), on 15 March 2011 the Madrid Regional Parliament adopted the Cañada Real Galiana Act (regional Law 2/2011). It entered into force on 30 March 2011.

The Act provided for a change in the legal regime applicable to the section of the Cañada Real Galiana within the Municipalities of Coslada, Madrid and Rivas-Vaciamadrid. The area accordingly lost its status as "public domain" and a livestock route – it was considered to no longer be suitable for the movement of livestock and could not be given a compatible use – and became property of "private domain" (*bien patrimonial*) of the Autonomous Region of Madrid (public property not allocated for general use or public service). Consequently, the Autonomous Region of Madrid can transfer or cede the land affected to, preferably, the municipalities concerned or, in the event they did not exercise that preferential option, transfer its ownership to third parties. Such transactions however require a prior social-framework agreement (*acuerdo de contenido social*) by the public entities involved (as referred to in the first additional provision to the Act), aimed at resolving all the issues resulting from the occupation, loss of status as public domain (*desafectación*) and the use of the land of the Cañada Real Galiana that is the subject of the Act, with the participation of

those affected duly represented by associations, and that the municipalities, after such an agreement, adapt the classification of the land in the exercise of their urban planning powers.

Furthermore, section 4(2) of the Act provides that the use to be given to any plot of land transferred in accordance with the Act must be consistent with the relevant land-use planning regulations, and in no case does the transfer entail the legalisation of construction which may have been carried out in the land. In addition, the municipalities to which the land has been ceded may later transfer it to those individuals occupying it. The Act also provides that those natural or legal persons holding title to land may assert their rights before both the Autonomous Region of Madrid and the municipality concerned (second additional provision to the Act).

This particularly concerns those individuals living in areas that have already lost their status as public domain owing to previous legislative changes, the Act being consequently beneficial to individuals living in the said area for a long period.

43. On 30 April 2014 the Autonomous Region of Madrid and the Municipalities of Madrid and Coslada signed the social-framework agreement for the Cañada Real Galiana referred to in the first additional provision to the Cañada Real Galiana Act. It included actions relating to security, urban, housing and social matters. This agreement was later replaced by a regional pact for the Cañada Real Galiana, which was signed by all the State, regional and local authorities concerned (including the Municipality) on 17 May 2017. It encompassed lines of action in urban and housing matters, which would affect all the residents in the Cañada Real Galiana registered therein before the end of 2011 (see, in that regard, paragraph 48 below), who were to have, whenever possible, the right to housing in the Cañada Real Galiana itself. That measure also envisaged the amendment of urban-planning regulations by the public entities concerned. The authorities also undertook to make the necessary legislative amendments, including the amendment of the Cañada Real Galiana Act (a proposal of draft law was included as an annex to the pact). The pact also included measures concerning social integration and to improve living conditions in the Cañada Real Galiana.

V. RELEVANT PROVISIONS OF THE CIVIL CODE

Article 348

> "Property is the enjoyment and disposal of a thing with no more limitations than those established by law. The owner can reclaim a thing (*cosa*) of his property through a legal action against the individual exercising a right of possession over that same thing."

Article 349

"No one can be deprived of her or his property except for when deprivation is carried out by the competent authority through a decision based on public utility which must be preceded by the correspondent indemnisation ..."

Article 360

"The owner of land on which she or he made, by himself or through others, farmland, buildings or building work being carried out with others' material, must pay for its value; and, if she or he acted in bad faith, she or he will, in addition, be obliged to pay damages. The owner of the material will have a right to have the latter removed provided there is no detriment to the building work, farmland, and buildings resulting from such an action."

Article 363

"The owner of the land on which there is a building, farmland or which has already been sown [or built on] in bad faith will be able to claim the demolition or the pulling up of the farmland and sown land, restoring things to their original state at the expense of the person who built, planted and sowed in bad faith."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicants complained that their eviction and the demolition of their home after decades of tolerance on the part of the authorities towards the construction of houses in the Cañada Real Galiana had amounted to a violation of their right to respect for their private and family life. They relied on 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. Admissibility

45. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

46. The applicants submitted that, although the impugned measure had been provided for by law, it had not pursued a legitimate aim and had not been necessary in a democratic society, particularly after the entry into force of the Cañada Real Galiana Act and having regard to the fact that the public authorities had not taken into consideration minimum safeguards such as alternative housing. In their view, their situation had not differed from that of other residents in the Cañada Real Galiana. In the Municipality alone the local authorities had initiated at least 263 sets of demolition proceedings between 2005 and 2010 in relation to dwellings in the process of being built; but they had not clarified why they had increased the institution of proceedings mainly in 2005 and onwards, after decades of tolerance of the settlement. The applicants maintained that the instant case was similar to the case of *Raji and Others v. Spain* ((dec.), no. 3537/13, 16 December 2014), which had also concerned demolition proceedings in respect of a property in the Cañada Real Galiana. In their view, the principle of proportionality required that situations such as the present one be treated as being entirely different from routine cases of removal of an individual from unlawfully occupied property. The applicants also complained of the manner in which the eviction had been carried out (at night, without prior notice and with a significant police presence).

47. Concerning the safeguards in the domestic proceedings, the applicants stated that some of the administrative decisions had not been served on them personally, the demolition order of 2005 had served as the basis for the demolition of 2011, and some decisions had even expressly stated that they had not been subject to appeal. They stated in their application to the Court that the first applicant had not lodged an appeal against the demolition order – and had not attached any importance to it - because he had felt protected by the decades of inaction on the part of the authorities and because of general consensus among the neighbours of the settlement that nothing had ever happened there (see paragraphs 70 and 71 below).

48. In response to the Government's observations, the applicants submitted that the income reported in 2006 (EUR 11,409) had been insufficient for a family unit and that, in any event, at the time of their eviction in 2011 the first applicant had been unemployed for a long period. They also claimed that they were fully integrated in the area. As regards the social assistance offered by the municipal authorities, the applicants submitted that the SAMUR had been able to provide accommodation for seven to fifteen days. The Municipality had failed to provide any data,

report, study or concrete action taken in relation to the applicants in this connection, not even after the domestic court had authorised entry into their home with a view to enforcing the eviction. Also, it was public knowledge and a well-known fact that the authorities of Madrid did not have effective means to rehouse those affected by evictions and that there were no actual possibilities of access to public housing. Furthermore, the reasons provided by the Municipality for suspending the demolitions since 2013 had all been applicable from March 2011 – when the Cañada Real Galiana Act had entered into force. The applicants noted that negotiations to tackle the problems of the Cañada Real Galiana had already started in 2007. They claimed that in July 2011 they had been counted in the 2011 population census conducted in the Cañada Real Galiana and that the 2014 framework agreement to provide a solution for the settlement (see paragraph 43 above) had envisaged the regularisation of most of the dwellings of the families included in that census. In short, the balance between the interests at stake should lead to the conclusion that the applicants' eviction and the demolition of their home had not been necessary or urgent, and caused irreparable damage – particularly to the minor children – on the basis that the public authorities had not provided credible and permanent alternative housing.

(b) The Government

49. The Government acknowledged that the applicants' forced eviction and the subsequent demolition of their home may have constituted an "interference" with their rights under Article 8 of the Convention. They submitted that such interference had been in accordance with the law, particularly the Autonomous Region of Madrid Land Act (see paragraph 39 above), and pursued a legitimate aim, as it had been necessary to regain possession of the plot of land – property of public domain that had been illegally occupied – for the effective implementation of urban-planning regulations as well as for the protection of public order (owing to the presence of drug trafficking and robberies in the area).

50. As to the proportionality of the interference, the Government asserted that the national authorities had a wide margin of appreciation in cases such as the present one. They submitted that, at the material time, the authorities had already set the basis for the regularisation of illegal buildings in the Cañada Real Galiana for a long time (see paragraph 68 below) and consequently the procedures put in place by the Cañada Real Galiana Act had been applicable only to them – the suspensions of demolitions by the Municipality since 2013 had only been relevant to persons who had been illegally residing in the settlement for a long time and for whom the ongoing regularisation process was been negotiated. Accordingly, that regularisation process had not included the applicants. The first applicant had started building the dwelling in 2005, knowing full well the unlawfulness of his

actions, and soon thereafter, immediately after that had been noticed by police officers in the course of a regular inspection of the area, the authorities had taken action to prevent the construction work being finished. The Government maintained that the local authorities had conducted daily inspections in the area in order to prevent abuse from individuals trying to improperly benefit of the regularisation process by illegally occupying plots of land *ex novo*. The authorities had thus acted promptly when apprised of the illegality of the construction work being carried out by the applicants, and had not tolerated an illegal situation for a long time. In their view, the applicants' situation had been factually and legally different from the situation of those persons who had been illegally residing in the Cañada Real Galiana for a long period; the applicants had not had roots in the area since they had not been living there for a long time when the demolition of their house had taken place. The Government distinguished the instant case from *Raji and Others* ((dec.), cited above (see paragraph 46 above), where the house where the applicants lived was ceded to them by the people formerly living in it, the applicants not having been informed that an eviction and demolition order was pending on the house).

51. The Government also argued that, when the first applicant had started building the dwelling in 2005, he had been registered at another address and his income had been double the national minimum wage in Spain. Furthermore, he had not made use of the available procedures for obtaining social housing and had even refused social assistance offered by the authorities. The Government emphasised the numerous possibilities that the applicants would have at their disposal to request social housing and the public efforts made to offer assistance to the applicants.

52. The Government submitted that all the administrative decisions had been reasoned in accordance with the law and personally served on the applicants – despite the impediments posed by the first applicant – and had made express reference to the administrative and judicial remedies available to challenge those decisions. Notwithstanding this, the first applicant had failed to use any of the remedies and had refused to voluntarily comply with the administrative decisions. The Government maintained that he had even allowed violent attacks against the authorities trying to enforce the demolition order (with twenty-three police officers injured as a result) and, together with a group of neighbours, had organised surveillance and other actions with the purpose of monitoring the authorities' access to the area in order to prevent the demolition from taking place, including erecting barricades and setting up roadblocks to coercively impede the passage of vehicles. The Government lastly submitted that the first applicant had also had the possibility to submit observations within the framework of the judicial proceedings, and the ruling given at first instance had been reviewed by the High Court of Justice and the Constitutional Court. The domestic courts had examined the proportionality of the measure, to the

extent that they had even postponed the enforcement of the demolition order until the school year had finished.

2. The Court's assessment

53. The Court at the outset notes that the applicants submitted that their eviction and the demolition of their home constituted a violation of Article 8 of the Convention as a whole. Nonetheless, having particular regard to the arguments raised in their application to the Court and to the subject-matter of the domestic proceedings, it considers it appropriate to examine the complaint from the standpoint of the applicants' right to respect for their home. The Court reiterates that Article 8 does not recognise, as such, a right to be provided with a home (see, among other authorities, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I; *Yordanova and Others v. Bulgaria*, no. 25446/06, § 130, 24 April 2012; and *Winterstein and Others v. France*, no. 27013/07, § 159, 17 October 2013), and cannot be construed as conferring a right to live in a particular location (see *Garib v. the Netherlands* [GC], no. 43494/09, § 141, 6 November 2017, and further references therein).

54. The Government did not dispute that the dwelling which had been demolished had been the applicants' "home" for the purposes of Article 8 § 1 of the Convention. Nor did they dispute that the municipal authorities' decisions ordering the applicants' eviction and subsequent demolition of their home had constituted an "interference" with their right to respect for their home.

55. The Court finds it useful to reiterate that the concept of "home" within the meaning of Article 8 is not limited to those premises which are lawfully occupied or which have been lawfully established. "Home" is an autonomous concept which does not depend on classification under domestic law. Whether or not particular premises constitute a "home" which attracts the protection of Article 8 § 1 will depend on the factual circumstances, specifically the existence of sufficient and continuous links with a specific place (see, *inter alia*, *Brežec v. Croatia*, no. 7177/10, § 35, 18 July 2013; *Winterstein and Others*, cited above, § 141; *Hirtu and Others v. France*, no. 24720/13, § 65, 14 May 2020, and *Kaminskas v. Lithuania*, no. 44817/18, §§ 42-44, 4 August 2020). Thus, this classification is a matter of fact independent of the question of the lawfulness of the occupation under domestic law (see, among other authorities, *McCann v. the United Kingdom*, no. 19009/04, § 46, 13 May 2008, and *Yordanova and Others*, cited above, § 103). The Court notes in this connection that the applicants lived for a number of years in the house they had unlawfully built on public land. When the first demolition was enforced, the first and second applicants and one of their children had been living in the house for more than two years. They, together with the younger child, continued living there for approximately three years once the house was rebuilt, until the

second demolition took place. In these circumstances, the applicants' dwelling in the Cañada Real Galiana was their "home" (see, similarly, *Yordanova and Others*, cited above, § 103; *Winterstein and Others*, cited above, § 141; *Ivanova and Cherkezov v. Bulgaria*, no. 6577/15, § 49, 21 April 2016; and also contrast *Hirtu and Others*, cited above, § 65). The Court is of the view that the eviction of the applicants and the demolition of their house constituted an interference with their right to respect for their home within the meaning of Article 8 § 2 of the Convention (*Gladysheva v. Russia*, no. 7097/10, § 91, 6 December 2011, and *Aydarov and Others v. Bulgaria* (dec.), no. 33586/15, §§ 65 et seq., 2 October 2018).

56. It therefore remains to be examined whether the interference was justified under Article 8 § 2 of the Convention. Such interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society" in order to achieve them.

(a) Whether the interference was "in accordance with the law"

57. The Court observes that, contrary to what the first applicant argued in the domestic proceedings, the applicants did not dispute the lawfulness of the interference in their application to the Court. As noted above, the demolition of the applicants' home was on the basis of sections 194 and 195 of the Autonomous Region of Madrid Land Act (see paragraph 39 above), which was sufficiently clear and foreseeable; the municipal authorities issued a demolition order on 23 June 2005, which – as the domestic courts reiterated – constituted a sufficient legal basis for ordering the enforcement of the second demolition of the applicants' home in accordance with domestic law, the applicants having failed to voluntarily comply with it; and the applicants were in practice given the opportunity to challenge such decisions by means of both administrative and judicial review. Accordingly, the Court sees no reasons to hold otherwise.

58. It is therefore satisfied that, in the present case, the impugned measure was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

(b) Whether the interference pursued a "legitimate aim"

59. The Government submitted that the impugned measure was necessary to recover illegally occupied public land, for the effective implementation of urban-planning regulations, and for the protection of public order. The applicants only maintained that it had not pursued a legitimate aim, without providing further arguments.

60. The Court reiterates that it is legitimate for the authorities to seek to regain possession of land from individuals who do not have a right to

occupy it (see *Yordanova and Others*, cited above, § 111, and *McCann*, cited above, § 48). Furthermore, even if the interference's only purpose is to ensure the effective implementation of the regulatory requirement that no buildings can be constructed without planning permission, it may be regarded as pursuing a legitimate aim (see *Ivanova and Cherkezov*, cited above, § 49). The Court is thus satisfied that the impugned measure pursued the legitimate aims of protecting the rights and freedoms of others (as the right of public or private property of third legal owners), prevention of disorder, and promoting the economic well-being of the country.

61. It follows that the impugned measure pursued a legitimate aim under Article 8 § 2 of the Convention. The salient issue in the present case concerns "necessity in a democratic society" within the meaning of that provision and the Court's case-law.

(c) Whether the interference was proportionate to the legitimate aims

(i) General principles

62. An interference will be considered "necessary in a democratic society" for 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, *Winterstein and Others*, cited above, § 147; *Buckland v. the United Kingdom*, no. 40060/08, § 63, 18 September 2012; *Yordanova and Others*, cited above, § 111; *Kay and Others v. the United Kingdom*, no. 37341/06, § 65, 21 September 2010; and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 90, 18 January 2001).

63. In this regard, a margin of appreciation must be left to the national authorities. In the case of *Yordanova and Others* (cited above, § 118) the Court has set out the following principles (citations omitted):

> "... a margin of appreciation must be left to the national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions. The Court has noted the following relevant considerations in this respect:
>
> (i) In spheres involving the application of social or economic policies, including as regards housing, there is authority that the margin of appreciation is wide, as in the urban or rural 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' ...;

(ii) On the other hand, the margin of appreciation left to the authorities will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Since Article 8 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, 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 ...;

(iii) The procedural safeguards available to the individual will be especially material in determining whether the respondent State has 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 ... The 'necessary in a democratic society' requirement under Article 8 § 2 raises a question of procedure as well of substance ...;

(iv) Since the loss of one's home is a most extreme form of interference with the right under Article 8 to respect for one's home, any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8, notwithstanding that, under domestic law, he has no right of occupation ... This means, among other things, that where relevant arguments concerning the proportionality of the interference have been raised by the applicant in domestic judicial proceedings, the domestic courts should examine them in detail and provide adequate reasons ...;

(v) Where the national authorities, in their decisions ordering and upholding the applicant's eviction, have not given any explanation or put forward any arguments demonstrating that the applicant's eviction was necessary, the Court may draw the inference that the State's legitimate interest in being able to control its property should come second to the applicant's right to respect for his home ..."

64. When it comes to illegal construction, the factors likely to be of prominence when determining the proportionality of the measure are whether or not the home was established unlawfully, whether or not the persons concerned did so knowingly, what is the nature and degree of the illegality at issue, what is the precise nature of the interest sought to be protected by the demolition, whether suitable alternative accommodation is available to the persons affected by the demolition and whether there are less severe ways of dealing with the case; the list is not exhaustive (see *Ivanova and Cherkezov*, cited above, § 53; *Winterstein and Others*, cited above, § 148 (ε); and *Kaminskas*, cited above, §§ 54 and 57).

(ii) Application to the present case

65. The issue to be determined by the Court in the present case is not the acceptability or not of the general situation of the Cañada Real Galiana, but the narrower one of whether the particular circumstances of the case disclose a violation of the applicants' right to respect for their home under

Article 8 of the Convention (see the similar approach in *Chapman*, cited above, § 100).

66. It is undisputed that the construction of their house was unlawful. The Court also notes that the first applicant knowingly built the house on public land, without planning permission, in flagrant breach of the domestic urban-planning regulations. He was even ordered to stop building the house before the construction work finished (see paragraph 8 above); and having failed to comply with the order, a demolition order was promptly issued in respect of the building which was personally served on the first applicant (see paragraph 10 above). Moreover, the day following the first demolition of the applicants' home, the first applicant started rebuilding it in the same location, despite the warning issued by municipal authorities (see paragraph 18 above). He completely disregarded the authorities' decisions and continued rebuilding the house. There is no doubt that the authorities were in principle entitled to remove the applicants, who had unlawfully occupied and built a dwelling on public land which was used for the protection of livestock routes and which could not be developed. The applicants knowingly erected the building in a zone where construction was prohibited.

67. In this connection, the Court observes further that the unlawful occupation of public land in the Cañada Real Galiana had been *de facto* tolerated by the authorities for decades. However, it cannot be said the same as regards the applicants (see, conversely, *Winterstein and Others*, cited above, § 152; *Yordanova and Others*, cited above, § 121; and *Orlić v. Croatia*, no. 48833/07, § 70, 21 June 2011). The first applicant started building the dwelling in 2005, and soon thereafter – immediately after the unlawful construction was noticed by police officers in the course of a regular inspection of the area and, as noted above, even before the construction work was finished and the applicants started living there – the authorities had taken action to prevent the construction of the house. Similarly, the authorities had acted promptly when apprised of the rebuilding of the house by the applicants the day after the first demolition order had been enforced.

68. The Court also finds it important to note that the case at hand does not concern decisions ordering the eviction of a whole community, and the applicants have not contended that the impugned measure had repercussions on their lifestyle or affected their ability to maintain their identity (this also distinguishes the instant case from *Winterstein and Others*, cited above, §§ 142-43 and 149-50, and *Yordanova and Others*, cited above, §§ 105 and 121; or *Chapman*, cited above, § 73). In this regard, the Government maintained that the administrative proceedings initiated since 2005 against unlawful occupants of unauthorised buildings in the Cañada Real Galiana had not been directed against those persons who had been illegally residing in the settlement for a long time, and hence had been aimed at preventing

abuse from people trying to take undue advantage of the ongoing regularisation process, at the time being negotiated by the relevant authorities and later set in motion by the Cañada Real Galiana Act (see paragraphs 42 and 43 above). Although the Government failed to provide any documentation in support of that argument, the applicants submitted that 263 demolition proceedings had been initiated by the relevant authorities of the Municipality between 2005 and 2010 in relation to dwellings in the process of being built (as opposed to existing dwellings or the entire settlement). It has not been contended that the evictions or demolitions primarily affected people of certain national or ethnic origins.

69. The applicants argued that the instant case is similar to the case of *Raji and Others* ((dec.) cited above), also concerning the demolition of the appellants' house in the Cañada Real Galiana. The Government, for their part, stressed several differences, particularly the fact that the applicants in *Raji and Others* had occupied a pre-existing house in 2009 (as opposed to building a new one). Nonetheless, the Court observes that that case was struck out of its list of cases in accordance with Article 37 § 1 (b) of the Convention, and accordingly cannot speculate as to what the outcome of the proceedings would have been if the application had not been struck out.

70. In this connection, the Court further observes that the first applicant was given the opportunity to submit observations on the possible demolition of the dwelling before a final decision was taken by the municipal authorities (see paragraph 9 above). He was also expressly informed of the available administrative and judicial remedies against the demolition order of 23 June 2005 (see paragraph 10 above). However, despite the fact that those decisions were personally served on him, he failed to submit any observations or use any of the remedies available against the demolition order. The first applicant did not attempt to seek judicial review of the demolition order. This is particularly relevant having regard to the fact that it has not been disputed that such remedies allowed for a comprehensive examination of the impugned measure and enabled the applicants to obtain a proper review of the proportionality of the intended demolition of the house in which they lived in the light of their personal circumstances (contrast *Ivanova and Cherkezov*, cited above, §§ 56 and 61; *Buckland*, cited above, §§ 66 and 70; *Yordanova and Others*, cited above, §§ 122-23 and 144; and *Kay and Others*, cited above, § 74).

71. Once the demolition order had become final, the first applicant was invited to comply with it voluntarily. He failed to do so in good time, and the authorities initiated proceedings to enforce it. The first applicant was again given the opportunity to make observations in defence of his rights (see paragraph 12 above); but he failed to do so, and even continued the building work on the house, adding an extension and upgrades, including building a new floor (see paragraph 13 above). The municipal authorities therefore ordered the enforcement of the demolition order by a decision of

29 November 2006. The notification of that decision expressly listed the available administrative and judicial remedies against the decision (see paragraph 14 above). Again, the applicants failed to lodge an administrative appeal or application for judicial review of that decision, despite the fact that such remedies would have required the authorities, notably the courts, to have due regard to the various interests involved and to consider proportionality. The relevant provisions of domestic legislation concerning procedure in administrative matters (see paragraph 40 above) confirm that the applicants could have challenged the enforcement of the demolition order on the ground that it was disproportionate (contrast *Ivanova and Cherkezov*, cited above, § 58). The examination of the proportionality could in principle be carried out in proceedings for judicial review of enforcement (see *Ivanova and Cherkezov*, cited above, § 58), particularly when – as in the instant case – there is no doubt that those judicial-review proceedings were adversarial and it has not been disputed that they were not properly equipped with the procedural tools and safeguards to conduct the proportionality review (see *J.L. v. the United Kingdom* (dec.), no. 66387/10, §§ 44-46, 30 September 2014).

72. In light of the foregoing, the Court attaches particular importance to the fact that the applicants did not challenge the demolition order or the decision to enforce it. It notes that the applicants stated that they had not made use of any of the remedies against the demolition order because the relevant authorities had not taken any action in decades and there had been a general consensus among the neighbours of the settlement that nothing would ever happen there. They did not provide any specific argument related to their particular case as to why they had not contested the decision to enforce the demolition. The Court is not convinced by such justifications and finds that the applicants had an effective opportunity to challenge the proportionality of the demolition before it could be enforced (contrast, *mutatis mutandis*, *Hirtu and Others*, cited above, § 74). The applicants have failed to provide any adequate explanation of why this matter was not duly raised before the domestic authorities, notably the courts. They have not alleged the existence of any insurmountable obstacle that might have prevented them from using the remedies available and, as stated above, such remedies were capable of providing redress and allowed for consideration of the proportionality of the measure. Thus, the Court considers that the lack of an exhaustive and thorough examination of the proportionality of the demolition, particularly by the domestic courts, is to be attributed to the fact that the applicants did not make use of the existing legal remedies available to them, and was thus a consequence of their own conduct.

73. After obtaining judicial authorisation to enter the applicants' home – a decision which was also not appealed against by the applicants – the municipal authorities enforced the demolition on 18 October 2007. Nonetheless, the Court notes that the applicants, in complete disregard with

the municipal authorities' decisions, began rebuilding the house in the same location the day following its demolition. The authorities then restarted the proceedings to enforce the demolition order of 23 June 2005. They considered that the enforcement proceedings were a continuation of the previous ones (as opposed to proceedings initiated anew). As a consequence, the decision of 14 April 2008 requiring the applicants to vacate the dwelling stated that it was not subject to appeal on the grounds that it only reproduced the prior decision of 19 November 2006 (see paragraph 19 above). The Court observes that, within the framework of the domestic proceedings, the applicants alleged that a new demolition order was required on the basis that the one of 23 June 2005 had already been enforced on 18 October 2007. The dissenting judges of the Constitutional Court held that the municipal authorities might have issued a new demolition order. However, the domestic courts, including the majority of judges of the Constitutional Court, upheld the municipal authorities' reasoning that the demolition order of 23 June 2005 constituted sufficient legal basis for the second demolition of the applicant's home. At the domestic level it was also disputed whether the decision of 14 April 2008 was subject to administrative and judicial remedies. Yet, although the first applicant stated within the domestic proceedings that he intended to lodge an application for judicial review of the decision of 14 April 2008, no further information has been provided in that regard. Furthermore the first applicant did not lodge any appeal against the municipal authorities' decision to declare inadmissible his application for review their decisions in issue (see paragraph 29 above).

74. In this connection, it should be reiterated that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Save in the event of arbitrariness or manifest unreasonableness, it is not for the Court to question the interpretation of the domestic law by the national courts (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018). Given the circumstances of the case, and having particular regard to the applicants' conduct – namely his starting rebuilding the house in the same location the day following its demolition – the Court does not find that the above interpretation by the domestic authorities was arbitrary or manifestly unreasonable; although it notes that an interpretation providing stronger safeguards may have been possible in accordance with national law. It also finds striking the considerable time which elapsed between the date on which municipal police officers reported that the applicants had started rebuilding the house and the date when the second demolition was effectively enforced (nearly four years), despite the fact that the enforcement proceedings were considered by the authorities a continuation of the previous ones which had given rise to the first demolition of the applicants' home.

75. Notwithstanding this, the Spanish law provided for an additional set of safeguards – in addition to those described in paragraphs 70 and 71 above. In order to enforce the demolition – once the decision was final and enforceable – the municipal authorities, in the absence of the applicants' consent, were required to request judicial authorisation to enter the applicants' home with a view to carrying out their eviction and the demolition of the house. However, the Court observes that such proceedings were limited in scope. As noted by the domestic courts (see paragraphs 15, 27 and 34 above), their purpose was not to conduct an exhaustive review of the administrative decisions intended to be enforced – a remedy which was available by bringing an application for judicial review with the relevant administrative court as provided for by law – but to examine, on the one hand, the appearance of legality of the administrative decision intended to be enforced and, on the other, to consider the proportionality of the measure to the effect that the entry into a home was absolutely necessary to enforce the administrative decision. Those are the set of proceedings which gave rise to the current application to the Court.

76. Against this background, the Court notes that the applicants also had the opportunity to put forward their arguments concerning the proportionality of the measure in the judicial proceedings in relation to the authorisation to enter their house. They mainly argued against the lawfulness of the demolition, and claimed that the demolition would be disproportionate given that the Cañada Real Galiana Act had entered into force – which in their view offered alternatives to the demolition of their only home. They also complained that the enforcement of the demolition order would negatively affect the children's right to education and personal development (see paragraphs 25, 26 and 28 above). No further arguments concerning proportionality – such as, for instance, relating to a need for alternative housing, special needs, their financial situation or a possible situation of vulnerability – were raised by the applicants. In this connection, the Court reiterates that the proportionality and reasonableness of the interference with the right to home should be determined by an independent tribunal in the light of Article 8 of the Convention. However, if an applicant wishes to raise an Article 8 defence to prevent eviction or – as in the instant case – the demolition of his or her home, it is for him or her to do so and then for a court to uphold or dismiss the claim (see *Brežec v. Croatia*, no. 7177/10, § 46, 18 July 2013).

77. The domestic courts examined the arguments raised by the applicants. Albeit briefly, they found that the entry into force of the Cañada Real Galiana Act – on 30 March 2020 – had not changed the status of the applicants' house or the fact that it was an unlawful construction, and had not derogated or suspended the application of the urban-planning regulations in force at the time. The law had not granted the applicants the right to build or to remain in their house (see paragraphs 27 and 31 above).

Although it is not for this Court to take the place of the national courts in the interpretation of domestic law, the Court finds it relevant to note that the Cañada Real Galiana Act did not entail the legalisation of unlawful constructions (see paragraph 42 above). In addition, the domestic courts considered the impact of the eviction on the applicants' children. Hence they upheld the applicants' request to grant authorisation to enter their home only once the school year had finished; and they also found that such an authorisation, in the absence of the applicants' consent, was the only means to enforce the demolition order. Having regard to the limited scope and nature of the proceedings and the arguments raised by the applicants at the domestic level the Court finds that the domestic courts provided adequate reasons. Moreover, the Court notes that the applicants had previously been afforded the opportunity to contest the proportionality of the measure in both the proceedings against the demolition order and the enforcement proceedings (see paragraphs 70 and 71 above).

78. Furthermore, the Court reiterates that in cases such as the present one, concerning the eviction of occupiers from publicly owned land, in order to assess the proportionality of the interference, it is also appropriate to examine the existing possibilities of alternative housing (see, similarly, *Chapman*, cited above, § 103 and *Winterstein and Others*, cited above, § 159). This does not mean that the authorities have an obligation under the Convention to provide housing to the applicants (see *Yordanova and Others*, cited above, § 30). The municipal policies may have the objective of improving the area, with urban and social purposes and/or attention to vulnerable groups, but this does certainly not impose positive obligations on the authorities to donate free property or publicly owned land or to tolerate improper occupations of property without legal title to it.

79. In this connection, the Court observes that the applicants submitted that the domestic authorities had not had regard to minimum guarantees on forced evictions such as alternative housing. However, although they did argue in the domestic proceedings that the dwelling to be demolished was their only home, they did not state that they would be unable to secure another place to live. In fact, the applicants themselves had not been active in seeking a solution (see paragraphs 30, 36 and 37 above), particularly taking into consideration that the demolition proceedings had been initiated in 2005 – and continued until the second demolition of the applicants' home took place in September 2011 – and that they had been represented by a lawyer at least since December 2009 (see paragraph 22 above). Their applications for social housing (see paragraph 37 above) were incomplete and the first applicant failed to submit the additional documents requested. They have failed to provide any justification for it (contrast *Yordanova and Others*, cited above, § 131). Also, the applicants refused the emergency assistance with the argument that they received support and assistance from their social network and family, with whom they would stay because they

lived in the same area (see paragraph 30 above). They have not provided any information concerning their situation after the demolition in relation to their housing (contrast *Winterstein and Others*, cited above, §§ 163-64).

80. The foregoing considerations are sufficient to enable the Court to conclude that the impugned decision fell within the margin of appreciation afforded to the respondent State and was not disproportionate to the legitimate aims pursued. In order to arrive to this conclusion, the Court has taken into account the circumstances of the case, and has had particular regard to the fact that the applicants had an effective opportunity to challenge the proportionality of the demolition before it could be enforced. Furthermore, the applicants have not provided a satisfactory explanation as to why they did not do so. Consequently, the lack of an exhaustive and thorough examination of the proportionality of the demolition can be attributed to the fact that the applicants did not make use of the existing legal remedies available to them, and was thus a consequence of their own conduct. Other considerations which might have supported another outcome at national level cannot be used as the basis for a finding by the Court which would be tantamount to exempting the applicants from the implementation of the national planning laws (see, similarly, *Chapman*, cited above, § 115) and the obligation of respecting the right of property of others.

81. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 23 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Milan Blaško Registrar	Paul Lemmens President