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

FIFTH SECTION

CASE OF IVANOVA AND CHERKEZOV v. BULGARIA

(Application no. 46577/15)

L'ordine di demolizione di una residenza familiare abusiva contrasta con l'art. 8 della CEDU se cagiona un danno sproporzionato.

JUDGMENT

STRASBOURG

21 April 2016

FINAL

21/07/2016

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

In the case of Ivanova and Cherkezov v. Bulgaria,
The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Angelika Nußberger, *President*,
Khanlar Hajiyev,
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 22 March 2016,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 46577/15) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Bulgarian nationals, Ms Mavruda Dimitrova Ivanova and Mr Ivan Yankov Cherkezov ("the applicants"), on 15 September 2015.

2. The applicants were represented by Ms A. Kachaunova, a lawyer practising in Sofia and working with the Bulgarian Helsinki Committee ("the BHC"). The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicants alleged that the enforcement of an order for the demolition of the house in which they live would be in breach of their right to respect for their home, and that they did not have an effective domestic remedy in that respect. The first applicant in addition alleged that the demolition would disproportionately interfere with her possessions.

4. On 8 October 2015 the Court decided to give priority to the application and to give the Government notice of it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1959 and 1947 respectively and live in the village of Sinemorets, on the southern Black Sea coast.

6. The two of them have lived as a family since 1989. At that time, they resided in the town of Burgas, where the first applicant owned a flat, which in 2013 she donated to her daughter, who had lived in it with her family for a number of years.

7. The first applicant's father and mother owned a plot of 625 square metres in Sinemorets. Following the death of the first applicant's father in 1986 and ensuing division-of-property proceedings between his surviving wife and seven children, the first applicant's mother was allotted 250 out of the 625 shares in the plot. In 1999 she transferred those shares, together with the nine sixteenths of the plot to which she was otherwise entitled as a heir of her late husband, to the first applicant. Combining the shares that she obtained as a result of this transfer and the one sixteenth of the plot that she had inherited from her father, the first applicant became the owner of 484.43 shares, or 77.5%, of the plot. On the plot, there existed a dilapidated one-storey cabin.

8. In 2004 the second applicant, who had been employed as a driver, suffered a myocardial

8. In 2004 the second applicant, who had been employed as a driver, suffered a myocardial infraction and was no longer able to work. In 2005 he was recognised as a disabled person and has since then been in receipt of a disability pension. At about that time, the two applicants moved from Burgas to Sinemorets, allegedly because they were no longer able to afford living in Burgas. They submitted that they put all their savings into the reconstruction of the cabin, converting it into a solid one-storey brick house. They did not apply for a building permit. The reconstruction took place in 2004-05. Since that time, the two applicants have lived in that house. In 2006 two of the other co-owners of the plot formally notified the first applicant that they did not agree with the reconstruction. According to the Government, there was evidence that the construction had not been finalised before 2009.

9. In 2006 the other ten heirs of the first applicant's father and mother brought a claim against the first applicant, seeking a judicial declaration that they were the owners of 140.57 of the 625 shares of the plot and of the house built on it. The Tsarevo District Court dismissed the claim. On an appeal by the claimants, on 7 June 2009 the Burgas Regional Court quashed that judgment and made a declaration in the terms sought by the claimants, finding that they were the owners of 140.57 out of the total of 625 shares of the plot and the house built in the place of the old cabin. It also held that the first applicant was the owner of the remaining 484.43 shares of the plot and the house. The first applicant attempted to appeal on points of law, but in a decision of 22 June 2009 (опр. № 566 от 22.06.2009 г. по гр. д. № 1974/2009 г., ВКС, I г. о.), the Supreme Court of Cassation refused to admit the appeal for examination. In so doing, it held, *inter alia*, that by including the house in the declaration, the lower court had not erred because it was settled case-law that illegal buildings could be the objects of the right to property.

10. For most of the year, the first applicant is unemployed. Her only source of income comes from servicing vacation houses in Sinemorets during the late spring and summer. The second applicant inherited shares of several plots of land in another village, which he sold for a total of 1,200 Bulgarian levs (614 euros) in 2012-14. The applicants used the money to buy a second-hand car.

11. In September 2011, prompted by some of the other co-owners of the plot, municipal officers inspected the house and found that it had been constructed illegally. They notified their findings to the first applicant in October 2011. In July 2012 the municipality brought the matter to the attention of the regional office of the National Building Control Directorate. In October 2012 that office advised the first applicant that it had opened proceedings for the demolition of the house. In November 2012 officers of the Directorate inspected it and likewise found that it was illegal as it had been constructed without a building permit.

12. On 30 September 2013 the head of the regional office of the Directorate noted that the house had been constructed in 2004-05 without a building permit, in breach of section 148(1) of the Territorial Organisation Act 2001, and was as such subject to demolition under section 225(2)(2) of that Act (see paragraphs 25 and 26 below). The first applicant had not put forward any arguments or evidence to show otherwise. The house was therefore to be demolished. Once the decision had become final, the first applicant was to be invited to comply with it voluntarily. If she failed to do so in good time, the authorities would enforce it at her expense.

13. The first applicant sought judicial review of that decision.

14. On 10 December 2014 the Burgas Administrative Court dismissed the claim. It held that the decision was lawful. The evidence clearly showed that the applicants had constructed the house in 2004-05 without obtaining a building permit, which under section 225(2)(2) of the 2001 Act (see paragraph 26 below) was grounds for its demolition. The house could not be exempted from demolition under paragraph 16 of the transitional provisions of the 2001 Act or paragraph 127 of the transitional and concluding provisions of a 2012 Act for the amendment of the 2001 Act (see paragraphs 28 and 29 below).

15. The first applicant appealed. She submitted, *inter alia*, that the house was her only home and that its demolition would cause her considerable difficulties as she would be unable to secure another place to live.

16. In a final judgment of 17 March 2015 (реш. № 2900 от 17.03.2015 г. по адм. д. № 1381/2015 г., ВАС, II о.), the Supreme Administrative Court upheld the lower court's judgment. It agreed that the house was illegal as it had been constructed without a building permit, that it was as such subject to demolition, and that, having been constructed in 2004-05, it could not be legalised under the transitional amnesty provisions of the 2001 Act or the 2012 Act.

17. On 15 April 2015 the regional office of the National Building Control Directorate invited the first applicant to comply with the demolition order within fourteen days of receiving notice to do so, and advised her that failure to do so would prompt it to enforce the order at her expense.

18. As the first applicant did not do so, on 6 August 2015 that office made a call for tenders from private companies willing to carry out the demolition; the deadline for submitting such offers was 15 September 2015.

19. On 18 August 2015 the Burgas Municipal Ombudsman urged the Minister of Regional Development to halt the demolition on the basis that, although formally lawful, it would have a disproportionate impact on the applicants. In response, on 25 September 2015 the Directorate's regional office reiterated its intention to proceed with the demolition.

20. After the Government were given notice of the application (see paragraph 4 above), on 15 October 2015 the Directorate's regional office asked the municipal authorities to explore whether, if necessary, they could provide alternative accommodation for the first applicant. Until 27 October 2015, date of the latest information from the parties on that point, the municipal authorities had not replied to that query, and the Directorate's regional office had for that reason not proceeded with the demolition.

21. On an unspecified date in the second half of October 2015, again after notice of the application had been given to the Government, a social worker interviewed the first applicant and explained to her the possibilities to request social services. The first applicant stated that she was not interested in that because she preferred to remain in the house.

22. According to a register available on the website of the National Building Control Directorate (link), on 10 March 2016 the demolition had not yet been carried out.

II. RELEVANT DOMESTIC LAW

A. Building permits for plots of land which have several co-owners

23. By sections 148(5) and 183(1) of the Territorial Organisation Act 2001, to obtain a permit to build on a plot of land which is co-owned by two or more persons, the co-owner who intends to do so must obtain the assent of the other co-owners. The administrative courts have upheld refusals to issue a building permit where such assent is lacking (see реш. № 5170 от 21.04.2010 г. по адм. д. № 211/2010 г., ВАС, II о.), as well as decisions of the building control authorities to annul building permits because such assent had not been obtained (see реш. № 13436 от 11.11.2009 г. по адм. д. № 13811/2008 г., ВАС, II о.; реш. № 3266 от 12.03.2010 г. по адм. д. № 13952/2009 г., ВАС, II о.; and реш. № 1783 от 18.03.2015 г. по адм. д. № 5017/2014 г., АС-София-град).

24. The only exception to the co-owner assent requirement is in relation to plots earmarked under the zoning regulations for low-rise or holiday housing. By section 183(4) of the 2001 Act, added in March 2009, which is similar to a rule previously set out in section 58(1) of the Territorial and Urban Planning Act 1973, in force until 2001, a co-owner may build in such a plot without having obtained the assent of the other co-owners, but only if these co-owners have themselves

having obtained the assent of the other co-owners, but only if these co-owners have themselves constructed or started to construct, or have the right to construct, their own separate buildings in the same plot.

B. Demolition of buildings constructed without a permit

25. Section 148(1) of the Territorial Organisation Act 2001 provides that buildings may only be constructed if they have been duly authorised in accordance with the Act.

26. By section 225(2)(2) of the Act, a building or a part of a building constructed without a building permit is illegal and subject to demolition. Unless falling under the amnesty provisions set out in the Act's transitional provisions (see paragraphs 28 and 29 below), it cannot subsequently be legalised. The Supreme Administrative Court has held that this legislative solution demonstrates the heightened public interest in controlling the security, hygiene and aesthetics of construction; that the exact manner in which a building fails to conform to the building regulations is irrelevant, since all buildings put up without a permit are subject to demolition; and that this does not run counter to Article 1 of Protocol No. 1 (see реш. № 9768 от 04.07.2012 г. по адм. д. № 6382/2012 г., ВАС, II о.). On that basis, the administrative courts have held that even if a building is not in breach of the local zoning plan or other legal requirements, it must be demolished if it has been constructed without a permit (see реш. № 4726 от 9.04.2009 г. по адм. д. № 14546/2008 г., ВАС, II о.; реш. № 1772 от 30.10.2014 г. по адм. д. № 544/2014 г., АС-Бургас, upheld by реш. № 1930 от 23.02.2015 г. по адм. д. № 75/2015 г., ВАС, II о.; and реш. № 505 от 12.12.2015 г. по адм. д. № 496/2015 г., АС-Велико Търново).

27. The Supreme Administrative Court has also held that the building control authorities do not have discretion in relation to the removal of illegally constructed buildings, and that the only course of action lawfully open to them in such cases is to order their demolition (see реш. № 13030 от 04.11.2009 г. по адм. д. № 7857/2009 г., ВАС, II о.; реш. № 3032 от 01.03.2011 г. по адм. д. № 15764/2010 г., ВАС, II о.; and реш. № 942 от 27.01.2015 г. по адм. д. № 7908/2014 г., ВАС, II о.); that in such cases those authorities are not bound by the general requirement of proportionality laid down in Article 6 of the Code of Administrative Procedure 2006, because it only applies to situations in which they enjoy discretion (see реш. № 4035 от 22.03.2013 г. по адм. д. № 632/2013 г., ВАС, II о.; реш. № 15733 от 27.11.2013 г. по адм. д. № 9665/2013 г., ВАС, II о.; and реш. № 1876 от 11.02.2014 г. по адм. д. № 12967/2013 г., ВАС, II о.); and that under the Territorial Organisation Act 2001 it is irrelevant whether the demolition of an illegally constructed building would cause harm to those concerned (see реш. № 13426 от 10.11.2014 г. по адм. д. № 10090/ 2014 г., ВАС, II о.). Lastly, it has held that persons who are not addressees of a demolition order are not entitled to challenge it by way of judicial review (see реш. № 9768 от 04.07.2012 г. по адм. д. № 6382/2012 г., ВАС, II о., and опр. № 9877 от 01.07.2013 г. по адм. д. № 7387/2013 г., ВАС, II о.).

28. By paragraph 16(1) of the transitional provisions of the 2001 Act, buildings constructed before 7 April 1987 without the requisite papers but otherwise in line with the building and zoning regulations applicable at the time of their construction are not subject to demolition. By paragraph 16(2), buildings constructed between 8 April 1987 and 30 June 1998 but not legalised before the Act's entry into force on 31 March 2001 are likewise not subject to demolition if they were in line with the building and zoning regulations applicable at the time of their construction and were declared by their owners before the end of 1998. Paragraph 16(3) provides the same with respect to buildings whose construction has started after 30 June 1998, but only if their owners have declared them before the competent authorities within six months after the Act's entry into force.

29. By paragraph 127(1) of the transitional and concluding provisions of a 2012 Act for the amendment of the 2001 Act, buildings constructed before 31 March 2001 without the requisite

papers but tolerable under the building regulations applicable at the time of their construction or under the current building regulations are not subject to demolition either.

30. In a judgment of 1 June 2015 (реш. № 6293 от 01.06.2015 г. по адм. д. № 6855/2014 г., ВАС, III о.), the Supreme Administrative Court dealt with a claim for damages brought against the building control authorities by a person whose house had been demolished on their orders. The claim concerned the alleged unlawfulness of the enforcement of the demolition order, and the claimant relied on, *inter alia*, Article 8 of the Convention. In upholding the lower court's decision to dismiss the claim, the Supreme Administrative Court analysed the demolition in terms of that Article, finding that it had amounted to an interference with the claimant's right to respect for her home. It said that the enforcement authority should have taken into account that the house had been the claimant's only home. It however went on to conclude that that interference had been proportionate because (a) the claimant had not attempted to legalise the house under the amnesty provisions of the 2001 Act (see paragraphs 28 and 29 above) as she could have, since the house fell under them; (b) the claimant had not attempted to seek judicial review of the enforcement under Article 294 of the Code of Administrative Procedure 2006 (see paragraph 35 below) or to obtain a declaratory judgment under Article 292 of that Code (see paragraph 33 below) on the basis that after the demolition order she had procured a certificate attesting that the house had been built in 1984 and could be tolerated; and (c) the claimant had been able to rent a dwelling after her eviction from the house, which showed that she had means to afford alternative accommodation.

C. Relevant provisions of the Code of Administrative Procedure 2006

1. Postponement of the enforcement of demolition orders

31. By Article 278 § 1 of the Code of Administrative Procedure 2006, the enforcement of a final administrative decision may be fully or partly postponed by the competent administrative enforcement authority if it cannot be enforced immediately by reason of the financial situation of the person against whom it is directed or another objective impediment. By Article 278 § 2, enforcement may be postponed fully for fourteen days, and partly for a maximum of two months. By Article 278 § 3, the decision to postpone the enforcement or refuse to do so is not subject to legal challenge.

32. With one exception (see реш. № 98 от 05.06.2012 г. по адм. д. № 147/2012 г., АС-Стара Загора, upheld by реш. № 15346 от 04.12.2012 г. по адм. д. № 9645/2012 г., ВАС, II о.), the administrative courts have consistently refused to examine such challenges in relation to proceedings for the enforcement of demolition orders (see опр. № 2989 от 06.03.2009 г. по адм. д. № 2480/2009 г., ВАС, II о.; опр. № 3298 от 11.03.2009 г. по адм. д. № 2921/2009 г., ВАС, II о.; опр. № 3768 от 20.03.2009 г. по адм. д. № 2481/2009 г., ВАС, II о.; опр. № 12660 от 15.10.2012 г. по адм. д. № 10151/2012 г., ВАС, II о.; опр. № 13269 от 06.11.2014 г. по адм. д. № 13375/2014 г., ВАС, II о.; опр. № 14149 от 26.11.2014 г. по адм. д. № 14120/2014 г., ВАС, II о.; опр. № 149 от 08.01.2015 г. по адм. д. № 15083/2014 г., ВАС, II о.; and опр. № 965 от 27.01.2015 г. по адм. д. № 12327/2014 г., ВАС, II о.).

2. Contesting the enforcement of demolition orders by way of a claim for declaratory judgment

33. By Article 292 of the Code, it is possible to contest the enforcement by way a claim for a judicial declaration on the basis of new facts which have emerged after the decision which is due to be enforced.

34. Under the Supreme Administrative Court' case-law, to be regarded as new, the facts must

have occurred after the close of the proceedings for judicial review of the demolition order (see реш. № 1317 от 02.02.2010 г. по адм. д. № 11193/2009 г., ВАС, II о.; реш. № 669 от 15.01.2013 г. по адм. д. № 11464/2012 г., ВАС, II о.; and реш. № 3285 от 10.03.2014 г. по адм. д. № 14922/2013 г., ВАС, II о.) or, if the order has not been contested in such proceedings, the close of the administrative proceedings leading to its issuing (see реш. № 6059 от 08.05.2014 г. по адм. д. № 248/2014 г., ВАС, II о.). That court has held that the lapse of the limitation period for enforcement is a new fact (see реш. № 9071 от 30.06.2010 г. по адм. д. № 5508/2010 г., ВАС, II о.; реш. № 2536 от 21.02.2012 г. по адм. д. № 13701/2011 г., ВАС, II о.; реш. № 3039 от 4.03.2013 г. по адм. д. № 14984/2012 г., ВАС, II о.; реш. № 8567 от 14.06.2013 г. по адм. д. № 5906/2013 г., ВАС, II о.; реш. № 3288 от 10.03.2014 г. по адм. д. № 15163/2013 г., ВАС, II о.; реш. № 6291 от 12.05.2014 г. по адм. д. № 507/2014 г., ВАС, II о.; реш. № 6973 от 26.05.2014 г. по адм. д. № 859/2014 г., ВАС, II о.; реш. № 7224 от 28.05.2014 г. по адм. д. № 342/2014 г., ВАС, II о.; реш. № 15428 от 17.12.2014 г. по адм. д. № 11539/2014 г., ВАС, II о.; and реш. № 11888 от 10.11.2015 г. по адм. д. № 6136/2015 г., ВАС, II о.), as is the legalisation of a building by the competent authorities (see реш. № 944 от 27.01.2015 г. по адм. д. № 8411/2014 г., ВАС, II о.), but that the issuing of a certificate that a building can be tolerated under the amnesty provisions of the 2001 Act (see paragraphs 28 and 29 above) is not (see реш. № 6023 от 26.05.2015 г. по адм. д. № 11540/2014 г., ВАС, II о.).

3. Judicial review of the enforcement of demolition orders

35. By Articles 294 *et seq.* of the Code, the decisions, actions or omissions of an administrative enforcement authority are subject to judicial review by the competent first-instance administrative court at the instance of the parties to the enforcement proceedings or any third parties whose rights, freedoms or lawful interests have been affected by them. By Article 298 § 4, the court's judgment is not subject to appeal.

36. The Supreme Administrative Court has held that persons who are not addressees of a demolition order and whose property rights would not be affected by its enforcement are not entitled to challenge its enforcement under those provisions (see опр. № 7946 от 16.06.2009 г. по адм. д. № 3935/2009 г., ВАС, II о.). However, in a more recent case the Lovech Administrative Court found, in a final judgment, that persons claiming that the enforcement of a demolition order would affect their right to respect for their home within the meaning of Article 8 § 1 of the Convention are entitled to challenge that enforcement under Article 294 *et seq.* of the Code (see реш. № 7 от 13.01.2016 г. по адм. д. № 156/2015 г., АС-Ловеч).

37. In three final judgments given in March and July 2013 and February 2014 (реш. № 749 от 22.03.2013 г. по адм. д. № 911/2013 г., АС-Варна; реш. 1782 от 04.07.2013 г. по адм. д. № 1650/2013 г., АС-Варна; and реш. № 929 от 17.04.2014 г. по адм. д. № № 911/2013 г., АС-Варна), the Varna Administrative Court dismissed claims under Article 294 of the Code in relation to the demolition of a building which was the claimants' only home. It examined the matter by reference to the principle of proportionality, as enshrined in Article 6 of the Code (see paragraph 27 above) and Article 8 of the Convention, but held that even though the building was the claimants' only home, it was still subject to demolition because it was illegal and because there were no alternative means of combatting illegal construction, especially considering that the claimants had knowingly erected the building in a zone where construction was prohibited. Any arguments relating to their poor health or lack of means were irrelevant. The balance between the competing interests had been resolved at the legislative level. Holding otherwise would mean that illegal buildings inhabited by persons in poor health or persons who had no other place to live could not be demolished, which would render building regulations nugatory. The claimants then managed, on the basis of the same arguments, to obtain the discontinuance by the building

control authorities of the proceedings for the enforcement of the demolition order. However, in a final judgment of 22 June 2015 (реш. № 1399 от 22.06.2015 г. по адм. д. № 1230/2015 г., АС-Варна), the Varna Administrative Court, acting pursuant to a claim brought by the Sofia City Prosecutor's Office, declared that discontinuance null and void on the basis that it had impermissibly been based on arguments already examined and rejected in a final judgment.

38. In a final judgment of 6 March 2015 (реш. № 6 от 06.03.2015 г. по адм. д. № 47/2015 г., АС-Хасково), the Haskovo Administrative Court dismissed a claim under Article 294 of the Code in relation to the demolition of a building which was the claimants' only home. It held that it could not discuss the claimants' arguments relating to the proportionality of the demolition because they did not concern the lawfulness of the enforcement but the lawfulness of the demolition order, which had already been upheld in prior judicial review proceedings.

39. In two final judgments given in January 2016 (реш. № 5 от 06.01.2016 г. по адм. д. № 112/2015 г., АС-Ловеч, and реш. № 7 от 13.01.2016 г. по адм. д. № 156/2015 г., АС-Ловеч), the Lovech Administrative Court dismissed claims under Article 294 of the Code in relation to the demolition of buildings which were the claimants' only home. Like the Varna Administrative Court and unlike the Haskovo Administrative Court, it examined the matter by reference to the principle of proportionality, as enshrined in Article 6 of the Code (see paragraph 27 above) and Article 8 of the Convention, but held that even though the buildings were the claimants' only home, they were still subject to demolition because they were illegal and because there were no alternative means of combatting illegal construction.

40. In four final decisions of 15 September 2015 (опр. № 995 от 15.09.2015 г. по адм. д. № 705/2015 г., АС-Пазарджик; опр. № 996 от 15.09.2015 г. по адм. д. № 707/2015 г., АС-Пазарджик; опр. № 997 от 15.09.2015 г. по адм. д. № 708/2015 г., АС-Пазарджик; опр. № 1002 от 15.09.2015 г. по адм. д. № 706/2015 г., АС-Пазарджик), the Pazardzhik Administrative Court imposed interim measures in proceedings under Article 294 of the Code relating to houses inhabited by a number of Roma families on the basis that the immediate enforcement of the orders for their demolition would render those families homeless. However, when it later examined the legal challenges under Article 294 of the Code on their merits, the court declared the steps taken to enforce the demolition orders null and void on the basis that they had not been taken by a competent authority (see реш. № 599 от 13.10.2015 г. по адм. д. № 708/2015 г., АС-Пазарджик; реш. № 617 от 22.10.2015 г. по адм. д. № 705/2015 г., АС-Пазарджик; реш. № 624 от 23.10.2015 г. по адм. д. № 707/2015 г.; and реш. № 728 от 10.12.2015 г. по адм. д. № 706/2015 г., АС-Пазарджик).

D. Views expressed by the Ombudsman of the Republic

41. In his report for 2012 (link), the Ombudsman of the Republic said, at p. 98, that it was important for the building control authorities to exercise preventive control of illegal construction, and that demolition was an extreme measure that could fall foul of the principle of proportionality enshrined in Article 6 of the Code of Administrative Procedure 2006. This was especially important when it came to the demolition of a building which was a person's only home.

42. In his report for 2013 (link), the Ombudsman said, at pp. 92-93, that the building control authorities did not exercise sufficient preventive control of illegal construction and thus often had to resort to the harshest measure: demolition. In his view, there were not enough guarantees that when such measures would affect the only home of the person concerned, his or her rights under Article 8 of the Convention would be respected.

43. In his report for 2014 (link), the Ombudsman said, at p. 80, that the aim of the law was more generally to deter illegal construction rather than just liquidate already existing illegal buildings. He

reiterated the need to carry out preventive control and to adhere to the principle of proportionality under Article 6 of the Code of Administrative Procedure 2006 when measures of building control affected a person's only home.

E. Contingency fee agreements between lawyers and clients

44. By section 36(4) of the Bar Act 2004, lawyers' fees may be stipulated as a percentage of the pecuniary interest at issue in the proceedings depending on their outcome, except in criminal cases and cases in which the dispute does not concern pecuniary interests. Although finding that unpaid sums due under such agreements are not recoverable as costs, the Supreme Court of Cassation held that such agreements are permitted between lawyers and clients (see тълк. реш. № 6 от 06.11.2013 г. по тълк. д. № 6/2012 г., ВКС, ОСГТК). The courts have allowed claims by lawyers against clients for such contingency fees (see, for example, реш. № 222 от 24.06.2014 г. по гр. д. № 152/2014 г., ОС-Добрич, and реш. от 14.04.2015 г. по гр. д. № 70677/2014 г., РС-Монтана, both final).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicants complained that the demolition of the house in which they live would be in breach of their right to respect for their home. They relied on Article 8 of the Convention, which provides, in so far as relevant:

> "1. Everyone has the right to respect for ... his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

46. The Government submitted that the decision ordering the demolition of the house in which the applicants lived was lawful. It had been judicially reviewed and upheld. It was also necessary for the protection of public safety. The national authorities had a wide margin of appreciation to tackle the problem of illegal construction. The impossibility to legalise unlawful buildings had been put in place in view of the strong public interest to ensure the safety, hygiene and aesthetics of construction. The demolition of a building because it had been erected without a permit was a proportionate measure required in all cases and not capable of being eschewed at the discretion of the building control authorities. Those authorities had acted straight away when apprised of the illegality of the house inhabited by the applicants, and had not tolerated an illegal situation for a long time: the applicants had started inhabiting the house at the earliest in 2009 and the demolition procedure had started in 2011. The applicants had constructed the house knowing full well that they had not obtained the required permit. All such buildings, unless falling under the transitional amnesty provisions of the 2001 Act, were subject to demolition; the courts had inquired into that point in the applicants' case. The authorities had allowed the first applicant to comment on the intended demolition, and had invited her to comply with the demolition order of her own accord. In

intended demolition, and had invited her to comply with the demolition order of her own accord. In as much as she argued that she had no other place to live, it had to be noted that in June 2013, after the beginning of the demolition proceedings, she had donated a flat that she owned in Burgas and that, although the authorities did not have an obligation to provide the applicants, who did not belong to a particularly vulnerable group, with alternative accommodation, they had explored the possibility of settling them in a municipal flat. The second applicant was in receipt of a sufficiently high pension and the first applicant was able to work. They could thus afford to pay market rent in Sinemorets, and their personal circumstances were not as dire as they sought to paint them. The authorities had endeavoured to take all these matters into account when sending a social worker to interview the first applicant. It was equally possible to have the proportionality of the demolition reviewed in proceedings under Article 278 of the Code of Administrative Procedure 2006. The interference with the applicants' right to respect for their home was therefore proportionate. Article 8 of the Convention could not be construed as precluding the enforcement of the building regulations in respect of those who sought to flout them, or as requiring the authorities to provide persons in the applicants' situation with a place to live.

47. The applicants submitted that they had lived in the house undisturbed for nearly seven years, even though the local authorities were fully aware that it had been constructed without a permit, as the applicants had paid taxes in respect of the house and had their address registration there, and as Sinemorets was a small village. It was moreover widely known that many buildings in villages and small towns in Bulgaria had been constructed without a permit. The Ombudsman of the Republic had commented on that, saying that the authorities did not systematically combat illegal construction and had to do so pre-emptively rather than *ex post facto*. In spite of that recommendation, the only way of dealing with illegal buildings envisaged by the law was their demolition. The applicants were particularly vulnerable because the second applicant was handicapped and had a small pension, and the first applicant had been unemployed since 2003. The only illegality affecting the house was that it had been constructed without a permit; it otherwise fully complied with the applicable regulations. The public interest did not require its demolition, which would result in rendering two elderly persons with health problems homeless. The rules governing the demolition of buildings constructed without a permit, as interpreted by the Supreme Administrative Court, did not envisage any proportionality assessment or a procedure affording proper guarantees in that respect, and did not leave any discretion to the competent authorities, which were required to enforce them regardless of individual circumstances.

B. The Court's assessment

1. Admissibility

48. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. It must therefore be declared admissible.

2. Merits

49. Although only the first applicant has legal rights to the house, both applicants have in fact lived in it for a number of years (see paragraphs 8 and 11 above). It is therefore "home" for both of them (see, among other authorities, *Buckley v. the United Kingdom*, 25 September 1996, § 54, *Reports of Judgments and Decisions* 1996-IV; *Prokopovich v. Russia*, no. 58255/00, §§ 36-39, ECHR 2004-XI (extracts); *McCann v. the United Kingdom*, no. 19009/04, § 46, ECHR 2008; *Yordanova and Others v. Bulgaria*, no. 25446/06, §§ 102-03, 24 April 2012; and *Winterstein and Others v. France*, no. 27013/07, § 141, 17 October 2013), and the order for its demolition amounts to an interference with their right to respect for that home (see, *mutatis mutandis*, *Ćosić v. Croatia*,

no. 28261/06, § 18, 15 January 2009; *Yordanova and Others*, cited above, § 104; and *Winterstein and Others*, cited above, § 143).

50. The interference was lawful. The demolition order had a clear legal basis in section 225(2)(2) of the Territorial Organisation Act 2001 (see paragraphs 12 and 26 above). It was upheld, following fully adversarial proceedings, by two levels of court (see paragraphs 14 and 16 above), and there is nothing to suggest that it was not otherwise "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

51. The Court is satisfied that the demolition would pursue a legitimate aim. Even if its only purpose is to ensure the effective implementation of the regulatory requirement that no buildings can be constructed without permit, it may be regarded as seeking to re-establish the rule of law (see, *mutatis mutandis*, *Saliba v. Malta*, no. 4251/02, § 44, 8 November 2005), which, in the context under examination, may be regarded as falling under "prevention of disorder" and as promoting the "economic well-being of the country". This is particularly relevant for Bulgaria, where the problem of illegal construction appears to be rife (see paragraphs 41-43 above).

52. Thus, the salient issue is whether the demolition would be "necessary in a democratic society". On this point, the case bears considerable resemblance with cases concerning the eviction of tenants from public housing (see *McCann*, cited above; *Ćosić*, cited above; *Paulić v. Croatia*, no. 3572/06, 22 October 2009; *Kay and Others v. the United Kingdom*, no. 37341/06, 21 September 2010; *Kryvitska and Kryvitskyy v. Ukraine*, no. 30856/03, 2 December 2010; *Igor Vasilchenko v. Russia*, no. 6571/04, 3 February 2011; and *Bjedov v. Croatia*, no. 42150/09, 29 May 2012), and cases concerning the eviction of occupiers from publicly owned land (see *Chapman v. the United Kingdom* [GC], no. 27238/95, ECHR 2001-I; *Connors v. the United Kingdom*, no. 66746/01, 27 May 2004; *Yordanova and Others*, cited above; *Buckland v. the United Kingdom*, no. 40060/08, 18 September 2012; and *Winterstein and Others v. France*, no. 27013/07, 17 October 2013). An analogy may also be drawn with cases concerning evictions from properties previously owned by the applicants but lost by them as a result of civil proceedings brought by a private person, civil proceedings brought by a public body, or tax enforcement proceedings (see, respectively, *Zehentner v. Austria*, no. 20082/02, 16 July 2009 (proceedings brought by a creditor); *Brežec v. Croatia*, no. 7177/10, 18 July 2013 (proceedings brought by the true owner of the premises); *Gladysheva v. Russia*, no. 7097/10, 6 December 2011 (proceedings brought by a municipal body); and *Rousk v. Sweden*, no. 27183/04, 25 July 2013 (tax enforcement proceedings)).

53. Under the Court's well-established case-law, as expounded in those judgments, the assessment of the necessity of the interference in cases concerning the loss of one's home for the promotion of a public interest involves not only issues of substance but also a question of procedure: whether the decision-making process was such as to afford due respect to the interests protected under Article 8 of the Convention (see *Connors*, § 83; *McCann*, § 49; *Kay and Others*, § 67; *Kryvitska and Kryvitskyy*, § 44; and *Yordanova and Others*, § 118 (iii), all cited above). Since the loss of one's home is a most extreme form of interference with the right to respect for the home, any person risking this – whether or not belonging to a vulnerable group – should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under that Article (see, among other authorities, *McCann*, § 50; *Ćosić*, § 22; *Zehentner*, § 59; *Kay and Others*, § 68; *Buckland*, § 65; and *Rousk*, § 137, all cited above). The factors likely to be of prominence in this regard, when it comes to illegal construction, 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, and whether suitable alternative accommodation is available to the persons affected by the demolition (see *Chapman*,

cited above, §§ 102-04). Another factor could be whether there are less severe ways of dealing with the case; the list is not exhaustive. Therefore, if the person concerned contests the proportionality of the interference on the basis of such arguments, the courts must examine them carefully and give adequate reasons in relation to them (see *Yordanova and Others*, § 118 (iv) *in fine*, and *Winterstein and Others*, § 148 (δ) *in fine*, both cited above); the interference cannot normally be regarded as justified simply because the case falls under a rule formulated in general and absolute terms. The mere possibility of obtaining judicial review of the administrative decision causing the loss of the home is thus not enough; the person concerned must be able to challenge that decision on the ground that it is disproportionate in view of his or her personal circumstances (see *McCann*, §§ 51-55; *Ćosić*, §§ 21-23; and *Kay and Others*, § 69-74, all cited above). Naturally, if in such proceedings the national courts have regard to all relevant factors and weigh the competing interests in line with the above principles – in other words, where there is no reason to doubt the procedure followed in a given case – the margin of appreciation allowed to those courts will be a wide one, in recognition of the fact that they are better placed than an international court to evaluate local needs and conditions, and the Court will be reluctant to gainsay their assessment (see *Pinnock and Walker v. the United Kingdom* (dec.), no. 31673/11, §§ 28-34, 24 September 2013).

54. The Court cannot agree with the position, expressed by some Bulgarian administrative courts, that the balance between the rights of those who stand to lose their homes and the public interest to ensure the effective implementation of the building regulations can as a rule properly be struck by way of an absolute rule permitting of no exceptions (see paragraphs 26 and 37 above). Such an approach could be sustained under Article 1 of Protocol No. 1, which gives the national authorities considerable latitude in dealing with illegal construction (see paragraphs 73-76 below), or in other contexts (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 106-09, ECHR 2013 (extracts), with further references). But given that the right to respect for one's home under Article 8 of the Convention touches upon issues of central importance to the individual's physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, the balancing exercise under that provision in cases where the interference consists in the loss of a person's only home is of a different order, with particular significance attaching to the extent of the intrusion into the personal sphere of those concerned (see *Connors*, cited above, § 82). This can normally only be examined case by case. Moreover, there is no evidence that the Bulgarian legislature has given active consideration to this balance, or that in opting for a wholesale rather than a more narrowly tailored solution it has taken into account the interests protected under Article 8 of the Convention (see, *mutatis mutandis*, *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 89, ECHR 2013 (extracts), and contrast, *mutatis mutandis*, *Animal Defenders International*, cited above, §§ 114-16). On the contrary, the Ombudsman of the Republic has repeatedly expressed concern in that regard (see paragraphs 41-43 above).

55. Nor can the Court accept the suggestion that the possibility for those concerned to challenge the demolition of their homes by reference to Article 8 of the Convention would seriously undermine the system of building control in Bulgaria (see paragraph 37 above). It is true that the relaxation of an absolute rule may entail risks of abuse, uncertainty or arbitrariness in the application of the law, expense, and delay. But it can surely be expected that the competent administrative authorities and the administrative courts, which routinely deal with various claims relating to the demolition of illegal buildings (see paragraphs 26, 27, 34 and 37-39 above), and have recently showed that they can examine such claims in the light of Article 8 of the Convention (see paragraph 30 above), will be able to tackle those risks, especially if they are assisted in this task by appropriate parameters or guidelines. Moreover, it would only be in exceptional cases that

those concerned would succeed in raising an arguable claim that demolition would be disproportionate in their particular circumstances (see, *mutatis mutandis*, *McCann*, § 54; *Paulić*, § 43; and *Bjedov*, § 67, all cited above).

56. The proceedings conducted in this case did not meet the above-mentioned procedural requirements, as set out in paragraph 53. The entire focus of those proceedings, in which the first applicant sought judicial review of the demolition order – the second applicant, not having any property rights over the house and not being an addressee of the order, would not have even had standing to take part in them (see paragraph 26 *in fine* above) – was whether the house had been built without a permit and whether it was nevertheless exempt from demolition because it fell within the transitional amnesty provisions of the relevant statute (see paragraphs 14 and 16 above). In her appeal, the first applicant raised, albeit briefly, the points that the applicants now put before the Court: that the house was her only home and that she would be severely affected by its demolition (see paragraph 15 above). The Supreme Administrative Court did not even mention, let alone substantively engage with this point (see, *mutatis mutandis*, *Brežec*, cited above, § 49). This is hardly surprising, as under Bulgarian law it is not relevant for the demolition order's lawfulness. Under the applicable statutory provisions, as construed by the Supreme Administrative Court, any building constructed without a permit is subject to demolition, unless it falls under the transitional amnesty provisions of the 2001 Act, and it is not open to the administrative authorities to refrain from demolishing it on the basis that this would cause disproportionate harm to those affected by that measure (see paragraphs 25-27 above).

57. The possibility, adverted to by the Government (see paragraphs 46 above and 78 below), to seek postponement of the enforcement of the demolition order under Article 278 of the Code of Administrative Procedure 2006 (see paragraph 31 above) could not have remedied that (see, *mutatis mutandis*, *Paulić*, § 44, and *Bjedov*, § 71, both cited above). All the applicants could have obtained in proceedings under that provision – which are conducted solely before the administrative enforcement authority rather than an independent tribunal, with no possibility for judicial review of the decisions taken in their course – would have been a temporary reprieve from the effects of the demolition order rather than a comprehensive examination of its proportionality (see paragraph 32 above).

58. Nor does it appear that, as suggested by the Supreme Administrative Court in its judgment of 1 June 2015 in a similar case (see paragraph 30 above), it would have been possible, as matters stand, to obtain a proper examination of the proportionality of the demolition by seeking judicial review of the enforcement of the demolition order under Article 294 *et seq.* of the 2006 Code (see paragraph 35 above). Such examination could in principle be carried out in proceedings for judicial review of enforcement (see *J.L. v. the United Kingdom* (dec.), no. 66387/10, §§ 44-46, 30 September 2014). But the case-law under these provisions shows that the Bulgarian administrative courts generally decline to examine arguments relating to the individual situation of the persons concerned by the demolition. They do so either on the basis that the proper balance between their rights under Article 8 of the Convention and the countervailing public interest to combat illegal construction has been resolved at the legislative level and that demolition is the only means of tackling illegal construction, or that such points can only be examined in proceedings for judicial review of the demolition order itself (see paragraphs 37-39 above). The only court that appears to have shown some willingness to entertain such arguments in proceedings under Article 294 *et seq.* of the Code is the Pazardzhik Administrative Court, which however did so when imposing interim measures in such proceedings rather than when dealing with the merits of the cases (see paragraph 40 above). It is also unclear whether persons in the position of the second applicant, who is not the addressee of the demolition order and has no property rights over the house, would have standing to bring such a challenge (see paragraph 36 above).

59. The applicants could not have obtained a proper examination of the proportionality of the

59. The applicants could not have obtained a proper examination of the proportionality of the demolition by bringing a claim for declaratory judgment under Article 292 of the 2006 Code either (see paragraph 33 above). The case-law under that provision, which is only intended to prevent the enforcement of administrative decisions where newly emerged facts militate against it, shows that in such proceedings the Bulgarian administrative courts just check whether facts which have come to pass after the issuing or the demolition order or its upholding by the courts – such as a lapse of the limitation period for enforcement or an intervening legalisation of the building – could preclude enforcement (see paragraph 34 above). There appears to be no case in which the courts have allowed such a claim, and thus blocked the enforcement of a demolition order, on the basis of arguments relating to the personal circumstances of those concerned. Moreover, in the applicants' case the enforcement proceedings started less than one month after the demolition order was upheld by the courts (see paragraphs 16 and 17 above).

60. The involvement of the social services, which only occurred after notice of the application had been given to the Government (see paragraph 21 above), could not make good the lack of a proper proportionality assessment. It did not take place within the framework of a procedure capable of resulting in a comprehensive review of the proportionality of the demolition (see, *mutatis mutandis*, *Yordanova and Others*, cited above, §§ 136-37). In any event, even though the first applicant stated that she was not interested in social services, the Government emphasised that the authorities had no obligation to provide the applicants with alternative accommodation and did not clearly explain in what way those services would have provided the applicants with a satisfactory solution.

61. In sum, the applicants did not have at their disposal a procedure enabling them to obtain a proper review of the proportionality of the intended demolition of the house in which they live in the light of their personal circumstances.

62. The Court therefore finds that there would be a breach of Article 8 of the Convention if the order for the demolition of the house in which the applicants live were to be enforced without such review.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

63. The first applicant further complained that the demolition of the house, part of which belonged to her, would be a disproportionate interference with the peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

64. The Government submitted that the complaint was incompatible *ratione personae* with the provisions of Protocol No. 1 in so far as the second applicant was concerned, because only the first applicant had title to the house. Moreover, in as much as the house had been illegally constructed without being tolerated by the authorities for a long time, it could not be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1. In the alternative, the Government

submitted that the interference with the first applicant's possessions was justified. The demolition, which was a measure of control of property, was lawful and would not impose an excessive burden on the applicants as their financial situation, as evident from the property disposal transactions carried out by them, was not so dire, and as they had wilfully acted in defiance of the law. Moreover, the house did not exclusively belong to the first applicant; the other co-owners of the plot were entitled to a share of it, and some of them had objected to its construction. The legitimate aim sought to be achieved by the demolition was to enforce the building regulations, which required a permit for each newly constructed building. In constructing the house without a permit, the applicants had knowingly acted in breach of the law and had disregarded the other co-owners' interests.

65. The applicants submitted that the complaint had only been raised by the first applicant, who had legal rights over the house even though it had been illegally constructed. It was therefore a "possession". Nothing would be achieved by demolishing it. It would not benefit the other co-owners of the plot, who had displayed no wish to take care of the property and whose interests would be better served if they were allotted a share of the house. Nor would it advance the public interest, which could be vindicated by less invasive measures, such as a financial penalty. The applicants had built the house to have a place to live when they grew old. In 2005 the first applicant had approached one of the other co-owners to obtain his assent to the construction, but he had tried to wring a disproportionate amount of money out of her in exchange for that. That was why the applicants had proceeded with the construction without obtaining a permit.

B. The Court's assessment

1. Scope of the complaint ratione personae

66. It should be noted at the outset that this complaint was only raised by the first applicant. It is therefore not necessary to rule on the Government's objection in relation to the second applicant.

2. Admissibility

67. The parties have diverging views on whether the first applicant has a "possession" within the meaning of Article 1 of Protocol No.1 and whether that provision is thus applicable. But in this case it is more appropriate to examine this question on the merits (see, *mutatis mutandis*, *Depalle v. France* (dec.), no. 34044/02, 29 April 2008, and *Yordanova and Others v. Bulgaria* (dec.), no. 25446/06, 14 September 2010). The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. It must therefore be declared admissible.

3. Merits

68. Since in Bulgaria it is settled law that illegal buildings can be the objects of the right to property, and since the Burgas Regional Court held that the first applicant is the owner of 484.43 out of the 625 shares of both the plot and the house built on it (see paragraph 9 above), there can be no doubt that she has a "possession" and that Article 1 of Protocol No. 1 is applicable.

69. The intended demolition of the house will in turn amount to an interference with the first applicant's possessions (see *Allard v. Sweden*, no. 35179/97, § 50, ECHR 2003-VII, and *Hamer v. Belgium*, no. 21861/03, § 77, ECHR 2007-V (extracts)). Being meant to ensure compliance with the general rules concerning the prohibitions on construction, this interference amounts to a "control [of] the use of property" (see *Hamer*, cited above, § 77, and *Saliba*, cited above, § 35). It therefore falls to be examined under the second paragraph of Article 1 of Protocol No. 1.

70. The demolition order had a clear legal basis in section 225(2)(2) of the Territorial Organisation Act 2001 (see paragraphs 12 and 26 above). It was upheld, following fully adversarial proceedings, by two levels of court (see paragraphs 14 and 16 above). The interference is therefore lawful for the purposes of Article 1 of Protocol No. 1.

71. It can also be accepted that the interference, which seeks to ensure compliance with the building regulations, is "in accordance with the general interest" (see *Saliba*, cited above, § 44). At the same time, it should be noted that the demolition order, although the product of a denunciation by the first applicant's co-owners (see paragraph 11 above), was not premised on the first applicant's failure to obtain their assent for the construction of the house. It cannot therefore be regarded as intended to protect their interests (contrast *Allard*, cited above, § 52). It follows that the weight of those interests is not a pertinent consideration in this case (contrast *Allard*, cited above, § 60).

72. The salient issue is whether the interference would strike a fair balance between the first applicant's interest to keep her possessions intact and the general interest to ensure effective implementation of the prohibition against building without a permit.

73. According to the Court's settled case-law, the second paragraph of Article 1 of Protocol No. 1 must be read in the light of the principle set out in the first sentence of the first paragraph: that an interference needs to strike a fair balance between the general interest of the community and the individual's rights. This means that a measure must be both appropriate for achieving its aim and not disproportionate to that aim (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98). However, the High Contracting Parties enjoy a margin of appreciation in this respect, in particular in choosing the means of enforcement and in ascertaining whether the consequences of enforcement would be justified (see, as a recent authority, *Depalle v. France* [GC], no. 34044/02, § 83, ECHR 2010). When it comes to the implementation of their spatial planning and property development policies, this margin is wide (see *Saliba*, cited above, § 45, with further references).

74. For that reason, unlike Article 8 of the Convention, Article 1 of Protocol No. 1 does not in such cases presuppose the availability of a procedure requiring an individualised assessment of the necessity of each measure of implementation of the relevant planning rules. It is not contrary to the latter for the legislature to lay down broad and general categories rather than provide for a scheme whereby the proportionality of a measure of implementation is to be examined in each individual case (see *James and Others*, cited above, § 68, and *Allen and Others v. the United Kingdom* (dec.), no. 5591/07, § 66, 6 October 2009). There is no incongruity in this, as the intensity of the interests protected under those two Articles, and the resultant margin of appreciation enjoyed by the national authorities under each of them, are not necessarily co-extensive (see *Connors*, cited above, § 82). Thus, although the Court has in some cases assessed the proportionality of a measure under Article 1 of Protocol No. 1 in the light of largely the same factors as those that it has taken into account under Article 8 of the Convention (see *Zehentner*, §§ 52-65 and 70-79; *Gladysheva*, §§ 64-83 and 90-97; and *Rousk*, §§ 108-27 and 134-42, all cited above, as well as *Demades v. Turkey*, no. 16219/90, §§ 36-37 and 44–46, 31 July 2003), this assessment is not inevitably identical in all circumstances.

75. In the first applicant's case, the house was knowingly built without a permit (contrast *N.A. and Others v. Turkey*, no. 37451/97, § 39 *in fine*, ECHR 2005-X, and *Depalle*, cited above, § 85), and therefore in flagrant breach of the domestic building regulations. In this case, regardless of the explanations that the first applicant gave for this failure, this can be regarded as a crucial consideration under Article 1 of Protocol No. 1. The order that the house be demolished, which was issued a reasonable time after its construction (contrast *Hamer*, cited above, § 83), simply seeks to put things back in the position in which they would have been if the first applicant had not disregarded the requirements of the law. The order and its enforcement will also serve to deter

disregarded the requirements of the law. The order and its enforcement will also serve to deter other potential lawbreakers (see *Saliba*, cited above, § 46), which must not be discounted in view of the apparent pervasiveness of the problem of illegal construction in Bulgaria (see paragraphs 41-43 above). In view of the wide margin of appreciation that the Bulgarian authorities enjoy under Article 1 of Protocol No. 1 in choosing both the means of enforcement and in ascertaining whether the consequences of enforcement would be justified, none of the above considerations can be outweighed by the first applicant's proprietary interest in the house.

76. The implementation of the demolition order would therefore not be in breach of the first applicant's rights under Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

77. The applicants complained that they did not have an effective domestic remedy in respect of their complaint under Article 8 of the Convention. They relied on Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

78. The Government submitted that the applicants could have sought postponement of the enforcement of the demolition order under Article 278 of the Code of Administrative Procedure 2006 on the basis of arguments relating to their financial situation and the impossibility to obtain alternative accommodation. That did not of course mean that the authorities had an unconditional obligation to provide them such accommodation. That said, there was no evidence that the applicants had taken steps to be settled in a municipal flat.

79. The applicants submitted that a request under Article 278 of the 2006 Code was not an effective remedy. All it could achieve was a short postponement of the enforcement. The law did not envisage any way of dealing with unlawful construction other than its demolition, regardless of the degree or nature of the illegality, or the effects of the measure on the personal situation of those affected by it.

B. The Court's assessment

80. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. It must therefore be declared admissible.

81. However, in as much as the finding of a breach of Article 8 of the Convention was premised on the absence of a procedure in which the applicants could challenge the demolition of the house on proportionality grounds (see paragraphs 56-61 above), no separate issue arises under Article 13 of the Convention (see, *mutatis mutandis*, *Stanková v. Slovakia*, no. 7205/02, § 67, 9 October 2007, and *Yordanova and Others*, cited above, § 152).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law

of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

83. The applicants jointly claimed 2,000 euros (EUR) in respect of the distress experienced by them as a result of the alleged breaches of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1.

84. The Government submitted that the claim was exorbitant.

85. In this case, the award of compensation can only be based on the breach of Article 8 of the Convention. However, that breach will only take place if the decision ordering the demolition of the house in which the applicants live were to be enforced, which has for the time being not happened (see paragraph 22 above). The finding of a violation is therefore sufficient just satisfaction for any non-pecuniary damage suffered by the applicants (see *Yordanova and Others*, cited above, § 171).

B. Costs and expenses

86. The applicants claimed EUR 3,280 in respect of forty-one hours of work by their legal representative on the proceedings before the Court, billed at EUR 80 per hour, plus EUR 13.73 for postage. They requested than any award made under this head be made payable to the BHC, with which their legal representative worked (see paragraph 2 above). In support of this claim, the applicants submitted two agreements between them, their legal representative and the BHC in which it was stipulated that the applicants did not have to pay any remuneration to their representative up-front but that the representative would claim her fees, plus any related expenses, in the event of a successful outcome of the case; that, in the event of a successful outcome, the fees would in fact be paid by the BHC; and that the representative agreed that any award in respect of costs and expenses could be made payable to the BHC. The applicants also submitted a time-sheet and postal receipts.

87. The Government disputed the number of hours spent by the applicants' legal representative on the case, saying that they were excessive in view of its low complexity and the length of the submissions that she had made on the applicants' behalf. The sum claimed in that respect was many times higher than those envisaged for similar work in domestic proceedings and out of tune with economic realities in the country. The Government also pointed out that there was no evidence, such as an invoice or a payment document, showing that the BHC had actually paid any remuneration to the applicants' representative.

88. According to the Court's settled case-law, costs and expenses are recoverable under Article 41 of the Convention if it is established that they were actually and necessarily incurred and are reasonable as to quantum.

89. The first point in dispute was whether the costs claimed by the applicants were actually incurred. The applicants made an agreement with their representative and the BHC that is comparable to a contingency fee agreement whereby a client agrees to remunerate his lawyer only in the event of a successful outcome of the case. If legally enforceable, such agreements may show that the sums claimed are payable and therefore actually incurred (see *Kamasinski v. Austria*, 19 December 1989, § 115, Series A no. 168). This being the case in Bulgaria (see paragraph 44 above, and compare *Saghatelyan v. Armenia*, no. 7984/06, § 62, 20 October 2015, and contrast *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 22, Series A no. 59, and *Pshenichnyy v. Russia*, no. 30422/03, § 38, 14 February 2008), the Court accepts that the

costs claimed were actually incurred by the applicants, even if for the time being no payments have taken place.

90. The second disputed point was whether the costs were reasonable as to quantum. The Court is not bound by domestic scales or standards in that assessment (see *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 190, 1 July 2014, with further references). It simply notes that the hourly rate charged by the applicants' representative is comparable to that charged in a recent case against Bulgaria involving similar issues (see *Yordanova and Others*, cited above, § 172). It can thus be regarded as reasonable. However, having regard to the submissions made on behalf of the applicants, the Court finds that the number of hours claimed is excessive.

91. Taking into account all these points and the materials in its possession, the Court awards the applicants a total of EUR 2,013.73, plus any tax that may be chargeable to them.

92. As requested by the applicants, this sum is to be paid directly to the BHC, with which their representative works. The Court's practice has been to accede to such requests (see *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, § 309, 27 January 2015, with further references).

C. Default interest

93. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there would be a violation of Article 8 of the Convention if the order for the demolition of the house in which the applicants live were to be enforced without a proper review of its proportionality in the light of the applicants' personal circumstances;

3. *Holds*, unanimously, that there would be no violation of Article 1 of Protocol No. 1 if the order for the demolition of the house were to be enforced;

4. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,013.73 (two thousand thirteen euros and seventy-three cents), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid to the Bulgarian Helsinki Committee;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Angelika Nußberger
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Vehabović is annexed to this judgment.

A.N.
C.W.

PARTLY DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been a violation of Article 8 in this case.

In short, I cannot accept the approach taken by the majority that the applicants can obtain protection under Article 8 of the Convention when it appears from the facts that one of the applicants had an apartment, which was donated to her daughter only in 2013, and that the land on which the applicants had reconstructed a cabin and converted it into a solid one-storey brick house without any permission from the authorities was the subject of a property dispute between one of the applicants and other members of her family.

I disagree with the majority that the State is obliged in all circumstances to carry out a detailed review of the proportionality of each and every demolition order, even in circumstances such as these in which it is clear that the second applicant cannot prove any of his allegations and nor can he prove that either he or he and the first applicant had established a long−lasting and strong connection with the premises in issue to be regarded as their home within the scope of Article 8 of the Convention. Furthermore, they could not prove that they had acted *bona fide*.

This area is *par excellence* an area in which the State enforces laws to control the use of property in the public interest (see *Depalle v. France* [GC], no. 34044/02, § 87, ECHR 2010) and in which a wide margin of appreciation applies (ibid., § 84).

It is hard to imagine the implications for the enforcement of planning regulations in other States if this judgment is to be understood as requiring a detailed proportionality review in each individual case. In this connection the Court, in the recent case of *Garib v. the Netherlands* (no. 43494/09, §§ 125-26, 23 February 2016, not yet final), found that the respondent party was, in principle, entitled to adopt the relevant inner-city housing legislation and policy. In finding thus, the Court appeared to cite with approval the existence of (and demonstrated reliance upon) a hardship clause.

This judgment does not sufficiently distinguish the facts of the present case from earlier cases concerning the enforcement of demolition orders for planning offences, which were examined under Article 1 of Protocol No. 1 and in which no violation was found, notably *Hamer v. Belgium* (no. 21861/03, ECHR 2007-V (extracts)), which concerned a building in existence for twenty-seven years before the planning offence was recorded and for a further ten years before it was demolished, and the more recent (Grand Chamber) case of *Depalle* (cited above), which concerned a family home near a public beach that had been in existence since 1969 on the basis

concerned a family home near a public beach that had been in existence since 1960 on the basis of authorisations limited in time and which ceased with the enactment of specific coastal planning laws following which an order to demolish was made (no separate issue under Article 8).