

Ruling N° 67 16 January 2020 (19-10.375) Cour de cassation (*Court of cassation*) - Third civil Chamber ECLI:FR:CCASS:2020:C300067

Demolition of irregular constructions for violation of urban planning rules and right to privacy: proportionality test regarding the right to respect for private life and home (Article 8 ECHR).

Only the french version is authentic

ECHR – Urban Planning

Quanshing

Summary

A cour d’appel (*Court of Appeal*) may not order the demolition of structures built in breach of town planning rules and the eviction of their occupants in reaching its decision on the inoperative ground that the eviction order relates only to residential buildings and without specifically examining, as it was requested to do, whether these measures are proportionate with regard to the right to respect for private and family life and home.

Appellants: Ms A.. X... and Ors

Respondent: The City of Chelles, acting through its Mayor, and Ors

Facts and procedure

1. According to the ruling under appeal (Paris, 14 November 2018), handed down in interim proceedings, Mrs X... is the owner of a registered parcel of land [...] situated in Chelles. She received this parcel of land as a gift in April 2004.

2. This land is located in a conservation area designated by the local planning authority. Accordingly, the City of Chelles contested several modifications carried out on this land in addition to the construction of a wooden chalet where Mrs. X... resides with Mr. Y... and their common children. It served a summons on the Appellants for interim proceedings, requesting the demolition of the buildings and the eviction of the occupants.

Reviewing plea

Statement of plea

3. Mrs X... and Mr Y.. submit that by the ruling whereby the demolition application was granted, whereas:

“In the event of the violation of a urban planning regulations during the construction of a building, it is for the court to assess concretely whether a remedial measure resulting in the eviction of a family and the destruction of its home would disproportionately infringe the right of its members to respect for their private and family life and their home. By limiting itself to considering the purely theoretical consequences of the irregularity affecting the buildings of X... and Y... et al in relation to the town planning provisions, and to emphatically affirming that the right to respect for private and family life and the home does not preclude the protection of the environment as stipulated by mandatory town planning provisions designed to safeguard the public interest of the municipality and its inhabitants, without, as it was expressly invited to do, thoroughly examining whether the eviction measures and the destruction of the buildings in dispute, which it proposed to order, were such as to disproportionately infringe their right to respect for their private and family life and their home, bearing in mind that: the couple had lived with their three minor children on that land since the acquisition of the property in 2004; Mr Y... was registered at that address as a skilled worker with the Register of Trades; their daughter, Miss A... Y..., attended school in Chelles; the immediate surroundings of their parcel of land was also highly urbanised, with the presence of many suburban buildings on the opposite side of the street, and was located at the intersection of two roadways equipped with water, electricity and sewerage networks, the cour d’appel (Court of Appeal) deprived its decision of any legal ground in view of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, together with Article 809 of the Civil Procedure Code.”

Court’s response

In view of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

4. Pursuant to this text: *“(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 or public safety, for 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.”*

5. In granting the demolition application, the ruling ruled that the right to respect for private and family life and the home *does not preclude* the protection of the environment stipulated in mandatory town planning provisions intended to safeguard the public interest of the municipality and its inhabitants. It holds that the fundamental rights invoked by Mrs X... and Mr Y... cannot detract from the manifestly unlawful disturbance caused by their repeated and deliberate violation of the town planning regulations in force and that accordingly the demolition and eviction measures requested are proportionate to the right to respect for the private and family life and home of Mrs X... and Mr Y.... , it being specified that eviction is understood as referring to the residential buildings built on the plot [...] and not to the entire parcel, since Mrs X... is the owner.

6. In so reaching its conclusion, on an inoperable ground that the eviction order relates only to residential buildings and without specifically examining, as it was asked to do, whether these

measures are proportionate with regard to the right to respect for private and family life and home Mrs X... and Mr Y..., the cour d'appel (*Court of Appeal*) deprived its decision of any legal ground.

ON THESE GROUNDS, the Court

QUASHES AND SETS ASIDE in all its provisions the ruling handed down on 14 November 2018 between the parties by the cour d'appel of Paris (*Paris Court of Appeal*).

Restores the matter and the parties to the *status quo ante* that existed prior to this ruling and remands them to the cour d'appel of Paris (*Paris Court of Appeal*), otherwise composed.

President: Mr Chauvin

Reporting judge: Mr Jacques Advocate-General: Ms Vassallo, First Advocate-General

Lawyer(s): SCP Marlange et de La Burgade - SCP Ohl et Vexliard