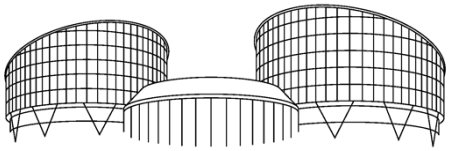

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CRUZ GARCIA v. SPAIN

(Application no. 43604/18)

JUDGMENT

STRASBOURG

14 June 2022

This judgment is final but it may be subject to editorial revision.

In the case of Cruz Garcia v. Spain,

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

Andreas Zünd, *President,*
María Elósegui,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 43604/18) 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") on 8 September 2018 by a Spanish national, Ms Maria Isabel Cruz Garcia, born in 1969 and living in A Coruña ("the applicant") who was represented by Mr R. Aran Vecino, a lawyer practising in Carballo;

the decision to give notice of the application to the Spanish Government ("the Government"), represented by their Agent, Mr. A. Brezmes Martínez de Villareal, Agent of Spain before the European Court of Human Rights;

the parties' observations;

Having deliberated in private on 24 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The limited liability company V.S.L. built a residential development. On 22 April 2004 the regional administration brought proceedings against the company on the ground that part of the development had been built in a zone which was protected on account of its proximity to public coastal land.

2. On 6 February 2006 the applicant bought a house in the development. V.S.L. did not inform the applicant about the ongoing proceedings. On 8 March 2006 the applicant registered her property with the Land Registry.

3. On 22 June 2006 the regional administration fined V.S.L. 207,365 euros (EUR) and ordered it to partially demolish some of the houses. The applicant, whose house was included in the partial demolition order, was not notified of those administrative proceedings.

4. V.S.L. appealed to the administrative courts against the fine and the demolition order. By a judgment of 15 January 2009, the High Court of Galicia dismissed the company's appeal and upheld the administrative decision. That judgment became final on 8 March 2010. The applicant was not notified of those judicial proceedings.

5. On 8 April 2014 a note was included in the applicant's property file in the Land Registry stating that the land would be returned to the public domain.

6. On 16 February 2016 the applicant was notified of an administrative decision dated 10 February 2016 imposing a coercive fine on her because she

had not complied with the demolition and restitution order despite having previously been warned twice in that regard. The decision stated that on 12 February 2014 she had been served with the decision of 22 June 2006 and that she had been given a three-month deadline in order to proceed with the demolition of the house. It also stated that she had been served with a second warning on 26 November 2015.

7. There is no evidence that those orders were actually served on her. The first acknowledgment of receipt in the administrative file concerns the above-mentioned decision of 10 February 2016.

8. A second coercive fine was imposed on the applicant by a decision of 30 May 2016, served on her on 3 June 2016.

9. On 20 June 2016 the applicant requested and received a copy of the judgment of 15 January 2009 (see paragraph 4 above) from the regional administration. On 4 April 2017 the applicant requested the High Court of Galicia to notify her again of the judgment of 15 January 2009; the court did so on 26 April 2017.

10. The applicant applied to have the judgment declared void, complaining that she had not been a party to the proceedings in which the judgment had been delivered. By a decision of 11 September 2017, the High Court of Galicia dismissed her plea of nullity. Firstly, the court reiterated that the time-limit for pleas of nullity was twenty days from the date when an interested party had learned of a ground on which he or she intended to base a complaint and, in any event, five years after the party concerned had been notified of the decision in question, in compliance with the time-limits prescribed by section 241 of the Organic Law on the Judiciary. It did not dismiss the plea on the grounds of missing the above time-limits. Secondly, it held that the fine had been imposed on the limited liability company and not on the applicant, and that the demolition and restitution of property was merely an incidental consequence of that fine and as such, under the applicable law, did not confer standing on the applicant in those proceedings. Furthermore, the High Court observed that, since 2014, the applicant's property file had contained a note concerning the administrative proceedings, and that the applicant had at her disposal legal remedies for establishing the company's liability.

11. According to the information in the file, the partial demolition of the applicant's house, as upheld by the High Court of Galicia, has not taken place at the time of submission of the parties' observations. No further information has been provided by the parties in this respect.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

12. The Government submitted that the applicant lacked victim status since the administrative proceedings against V.S.L. had related to the imposition of a fine on that company and not on the applicant, being the demolition order a mere incidental consequence of that fine. Accordingly, she lacked standing to appear before the administrative courts. They also alleged that V.S.L., both in the administrative and court proceedings, had submitted exhaustive arguments so that the applicant could hardly have added anything, had she been party to those proceedings. Consequently, they claimed that she had not suffered a significant disadvantage. Finally, they alleged the applicant could have brough civil proceedings against V.S.L. or, alternatively, an action to establish pecuniary liability on the part of the administration. Accordingly, the applicant had had other effective remedies at her disposal.

13. The Court notes that the proceedings in the High Court of Galicia for judicial review of the administrative decision of 22 June 2006 had a direct impact on the applicant's right to freely enjoy her property (see *Kakamoukas and Others v. Greece* [GC], no. 38311/02, § 32, 15 February 2008), having been the result of those proceedings directly decisive for the applicant's right to the peaceful enjoyment of her property (see, *a contrario*, *Alminovich v. Russia* (dec.), no. 24192/05, § 32, 22 October 2019). Accordingly, the Government's objections on grounds of lack of victim status and no significant disadvantage must be dismissed.

14. As for the Government's allegation that the applicant has not exhausted domestic remedies, the Court has previously dismissed the remedies relied on by the Government as ineffective (see *Aparicio Navarro Reverter and García San Miguel y Orueta v. Spain*, no. 39433/11, § 43, 10 January 2017).

15. In the light of above, the application must be declared admissible.

B. Merits

16. The Court firstly notes that the subject of the present dispute is the lack of participation of the applicant in the legal proceedings which led to an order for the partial demolition of her house and the imposition of a fine on her for the failure to comply with that order (see *Aparicio Navarro Reverter and García San Miguel y Orueta*, cited above, § 36). It is not in dispute that V.S.L. had fulfilled the relevant administrative requirements in order to build the residential development. It was not until it had already been built that it was discovered that some houses partly encroached on public coastal land.

While it is true that the applicant bought her house after the administrative proceedings against V.S.L. had already been initiated, there is no evidence that she was informed of those proceedings. The ownership was registered in the State Land Register in 2006. Accordingly, and contrary to the Government's allegations, there appears to have been no reason for the applicant to make further enquiries in order to verify whether V.S.L. had indeed complied with all the administrative conditions. Consequently, the Court does not consider that the applicant behaved negligently or contributed to the situation otherwise when she bought the house (compare *Gashi v. Croatia*, no. 32457/05, § 37, 13 December 2007; *Ponyayeva and Others v. Russia*, no. 63508/11, § 53, 17 November 2016; and *Čakarević v. Croatia*, no. 48921/13, §§ 82 and 83, 26 April 2018).

17. The Court further notes that the applicant was not notified of the proceedings brought by V.S.L. for judicial review of the administrative decision issued on 22 June 2006 when she was already the owner of the house (see paragraph 2 above). It further notes that V.S.L. did not inform either the administration or the High Court of Galicia that it had already sold a house to the applicant, and therefore no such information was contained in the administrative file (contrast *Aparicio Navarro Reverter and García San Miguel y Orueta*, cited above, §§ 39-40, and *Cañete de Goñi v. Spain*, no. 55782/00, §§ 38-39, ECHR 2002-VIII). However, this relevant information could have been obtained by the administration or the High Court from the Land Registry since March 2006. As a result, the High Court was unaware of the applicant's identity and of the fact that she owned a house which was also the subject of the proceedings against V.S.L., and this precluded the possibility of its inviting her to participate in the proceedings. Furthermore, the note about the return of the land to public domain was only included in the Land Registry in April 2014, although the administrative decision against V.S.L. was taken in June 2006 (see paragraphs 3 and 5 above).

18. That being so, the Court reiterates that the parties must be able to avail themselves of the right to bring an action or to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests (see *Cañete de Goñi*, cited above, § 40). The applicants are expected to act diligently to be able to take part in the proceedings (*ibid*.).

19. Turning to the present case, the Court first notes that the applicant was informed of the partial demolition order issued in respect of V.S.L and that a coercive fine has been imposed on her, simultaneously, in 2016 (see paragraphs 6 and 8 above). At variance with the Government´s allegations, the Court considers that the fact that the demolition order was registered with the Land Registry on 8 April 2014, without any further notification of the applicant, is not sufficient to consider that she had been duly notified and thus could have complied with it to avoid imposition of the coercive fines. Even

if the Land Registry is public, it is not intended to serve as a means of notification of administrative or judicial decisions, unlike the Official Gazette. Since the applicant had already had her property registered with the Land Registry, she could rightfully expect that no proceedings would be conducted in respect of the property without her being duly informed of such proceedings. Thus, there is no evidence that the applicant has obtained extra-judicial knowledge of the proceedings in question (compare with *Díaz Ochoa v. Spain*, no. 423/03, § 47, 22 June 2006) or that she has lacked diligence in her actions (see information summarised in paragraph 16 above). The Court notes, most importantly, that the High Court did not dismiss her claim solely on the basis that her plea of nullity had been filed beyond the twenty-one days time-limit, and had not conclusively established the date on which the applicant had been duly notified of the judgment affecting her rights.

20. The Court notes that the High Court dismissed the applicant's plea, holding that, on the one hand, she lacked standing to appear as a party to those proceedings and, on the other hand, that the judgment had become final.

21. Concerning the first ground, the procedure challenged by the applicant has resulted in the demolition order of a part of her house and the imposition of coercive fines on her for the failure to comply with that order. The Court reiterates therefore its above considerations regarding the applicant's victim status (see paragraphs 12 and 13 above).

22. The Court further notes that, pursuant to section 241 of the Organic Law on the Judiciary, proceedings may not be reopened more than five years after the notification of the final decision. However, the Court also notes that even though the High Court's decision became final on 8 March 2010, the administration did not take any action until 8 April 2014, when the demolition order was registered with the Land Registry (see paragraphs 4 and 5 above). Despite the fact that the applicant had been the owner of the house since 2006, the first notification concerning the enforcement of the demolition order was served on her on 16 February 2016. Accordingly, the Court reiterates, following the criteria set out in the *Díaz Ochoa* judgment (cited above, §§ 49-50), that even if the domestic courts have correctly applied the relevant domestic law, the particular combination of the facts in the present case have had the effect of depriving the applicant of effective access to a court in order to challenge proceedings which had a direct impact on her property.

23. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed (i) 74,649.75 euros (EUR) in respect of pecuniary damage; (ii) EUR 20,000 in respect of non-pecuniary damage; and

(iii) EUR 11,408.28 in respect of costs and expenses incurred before the domestic courts and the Court.

25. The Government opposed to the applicant's claims.

26. The Court notes that the most appropriate redress for a violation of Article 6 § 1 is to ensure that the applicant is put as far as possible in the position in which he or she would have been had that provision not been breached (see, among other authorities, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003 and *Atutxa Mendiola and Others v. Spain*, no. 41427/14, § 51, 13 June 2017). It notes that domestic law (section 102(2) of Law no. 29/1998 regulating judicial proceedings in administrative matters) provides for the possibility of reviewing final decisions that have been declared contrary to the rights secured in the Convention by a judgment of the Court. Consequently, the applicant could seek the procedure before the High Court of Galicia reopened.

27. On the other hand, the Court finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 1,000 under that head (see *Aparicio Navarro Reverter and García San Miguel y Orueta*, cited above, § 52).

28. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 9,196 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 9,196 (nine thousand one hundred and ninety-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Andreas Zünd President