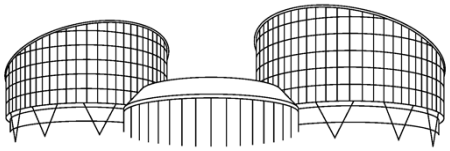

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DAHMAN BENDHIMAN v. SPAIN

(Application no. 48512/20)

JUDGMENT

Art 6 § 1 (civil) • Domestic law requirement for tenant to pay rent debt as ordered in first-instance summary proceedings prior to lodging an appeal, not impairing very essence of right of access to court • No restriction on applicant's ability to bring additional ordinary civil proceedings concerning tenancy issues • Fair balance struck between interests at stake • Limitation within State's margin of appreciation

STRASBOURG

15 November 2022

FINAL

03/04/2023

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

In the case of Dahman Bendhiman v. Spain,

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

Georges Ravarani*, President*,
Georgios A. Serghides,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma,
Frédéric Krenc*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 48512/20) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr Zouhair Dahman Bendhiman ("the applicant"), on 29 October 2020;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Article 6 § 1 and Article 14 of the Convention;

the parties' observations;

Having deliberated in private on 30 August and 18 October 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The applicant complained that he had been evicted from a flat he occupied as a tenant because he had not paid overdue rent following a judgement delivered by a first-instance court in the framework of summary proceedings which had not duly answered all his submissions. He also complained that he had subsequently lodged an appeal with the Court of Appeal which had not been admitted on the grounds that he had failed to pay the rent he owed to the landlord prior to lodging the appeal, as required by domestic law and despite having been granted legal aid. The main issue at stake is whether the applicant's right of access to a court under Article 6 § 1 of the Convention has been respected.

THE FACTS

2. The applicant was born in 1975 and lives in Navalcarnero (Madrid). He was granted legal aid and was represented before the Court by Mr C. Pinto Cañón, a lawyer practising in Madrid.

3. The Government were represented by their Agent, Ms H.E. Nicolás Martín, State Attorney.

I. ALLOCATION OF A PUBLIC HOUSING FLAT TO THE APPLICANT

4. The applicant is married and has two children who were born in 2010 and in November 2012. The applicant and his wife have been unemployed for several years. The family income, which derives exclusively from social welfare benefits, amounted to 662.89 euros (EUR) per month from May 2011 to May 2020, when it was increased to EUR 876.85 per month.

5. On 29 March 2011 the Madrid Housing Authority (*Instituto de la Vivienda de Madrid* – hereinafter "IVIMA") granted the applicant, who had been evicted from the house where he had previously lived with his family, public housing in a block of flats in Navalcarnero (Madrid).

6. On 30 Mars 2011 the applicant and IVIMA signed a subsidised tenancy agreement for a period of seven years. The rent was set at EUR 393.21 per month, which was to be increased yearly by a percentage equal to the percentage change in the consumer price index. The agreement also obliged the tenant to pay the communal owners' expenses as well as the property tax. It stipulated that if the tenant failed to make any payments that were due, the landlord had the right to terminate the tenancy agreement. After the expiry of the seven-year term, the applicant would have the right to purchase the flat in question at a reduced price. However, IVIMA never asked the applicant to pay either the communal owners' expenses or the property tax.

7. On 16 November 2011 IVIMA granted the applicant a rent reduction of 75% for two years. Subsequently, on 10 September 2013, he was granted a rent reduction of 90% for another two years; accordingly, the monthly rent amounted to EUR 49.10.

8. On 25 October 2013 IVIMA sold thirty-two blocks of public housing flats, including the one which housed the applicant's family, to a private company (A.G.), which afterwards transferred it to a subsidiary, E.C. Subsequently, the latter, having taken over the property, became the applicant's new landlord. E.C. informed the applicant that the terms of the tenancy agreement would be maintained.

9. From November 2013 onwards, the applicant was required to pay the full rent specified in the contract (EUR 393.21 per month), since E.C. considered that it was not bound by the two-year 90% rent reduction granted by IVIMA to the applicant. Additionally, unlike IVIMA, E.C. required the applicant to pay the communal owners' expenses and the property tax in accordance with the terms of the contract. It also proceeded to apply the consumer price index adjustment clause.

10. During the period between November 2013 and October 2017, the applicant paid rent for eleven months (out of nearly four years) in the amount of EUR 49.10, that is, the old reduced rent, which represented 10% of the full amount of the rent as reflected in the terms of the tenancy agreement, and only on certain limited months over the entire period.

II. CIVIL PROCEEDINGS BROUGHT AGAINST THE APPLICANT BY E.C.

11. E.C. brought civil verbal proceedings against the applicant before a first-instance court (*Juzgado de Primera Instancia no. 6 de Navalcarnero*) in November 2017 . Within the framework of these summary proceedings aimed exclusively at obtaining the due rent or the possession of the dwelling, it complained that the applicant owed it EUR 14,420.72, comprising overdue rent payments (calculated on the grounds of the reduced rent of 90% until 10 September 2015 and the full rent thereinafter), communal owners' expenses and property taxes. Additionally, it requested that the applicant and his family be evicted from the dwelling.

12. On 23 June 2018 the applicant, who had been granted legal aid, opposed E.C.'s claim. Relying on a decision delivered on 24 May 2018 by a first-instance administrative court (see paragraph 23 below), which was not yet final at that time, he alleged that the claimant lacked standing, since the sale of the blocks of public housing including his had been declared null and void. He alleged that E.C. could therefore not be considered his landlord and, accordingly, had no standing to bring a claim against him. He also requested the first-instance civil court to rule on whether the sale of public housing flats had been valid. He alleged that, even if the administrative courts had jurisdiction to rule on such questions, the first-instance civil court could adopt an interim decision in that regard with limited effects on the civil proceedings concerned. He also called into question the law applicable to the case and the amount of money claimed by E.C., which he alleged was higher than what had been stipulated in his contract. He did not contest that he had only paid for the reduced amount of the rent of certain months each year between 2013 and 2017. Even if the rent reduction of 90% had still been valid, he recognised to still owe to the "legitimate owner" of the apartment a total of EUR 8,637.72. He also alleged that, given that he had never paid the relevant taxes to the first landlord, the new one should also not be claiming those amounts. Nonetheless, the applicant submitted proof that he had paid some of the monthly rents to E.C. (not the previous owner) after the sale had taken place.

13. The applicant also held that the verbal proceedings of eviction were, by their summary nature, inadequate to discuss the complex matters at hand. According to the information available, he did not start any other ordinary proceedings in order to raise those matters.

14. A hearing was scheduled for 23 October 2018. The applicant requested that the verbal proceedings of eviction be suspended in the light of the administrative judgment of 21 May 2018 which had declared the sale of the apartment blocks in which he lived null and void (see paragraphs 23–27 below). On 3 December 2018 the first-instance civil court, at the applicant's request, stayed the proceedings and the eviction order pending a final decision

by the administrative courts concerning the validity of the sale contract. The eviction, which was fixed for 10 December 2018, was also suspended.

15. E.C. appealed and on 14 May 2019 the Madrid *Audiencia Provincial* overruled the first-instance decision and ordered that the proceedings be resumed. It noted that the law did not allow for a stay of proceedings, save in cases where both parties agreed that the proceedings should be stayed or when there were pending criminal proceedings which could influence the outcome of the civil proceedings. It also pointed out that the applicant, in any event, was not a party to the administrative proceedings and that it was dubious whether the administrative court's decision, even if it became final, would have an impact on the applicant's civil summary proceedings. In particular, the *Audiencia Provincial* considered that, although the sale of the social housing blocks by IVIMA to A.G. had been void, neither E.C. (who had been a third purchaser) or the applicant were parties to those administrative proceedings. It underlined that the administrative proceedings had concluded on the irregularities of the administrative proceedings which had led to the sale, but considered that should those shortcomings be amended in new administrative proceedings, the final result of a new sale to E.C. could still be enforceable. For the *Audiencia Provincial*, the administrative court's judgment would hardly be enforceable such that E.C. would be obliged to return the properties to IVIMA.

16. The verbal proceedings of eviction were therefore resumed. The applicant alleged that E.C. was not the legitimate owner of the apartment and that the rents were therefore not due to that company. The first-instance court exclusively relied on the contract between the previous owner and E.C., according to which the property was transmitted. The applicant also claimed that the actual amount of the annual rent was EUR 3,753.21. The civil court held that the contract established that the annual amount was EUR 3,753.21 for the apartment and EUR 965,23 for the garage. As for the rental reduction based on the applicant's special necessity, the court observed that such reduction had only been granted until September 2015, and in any event, the claimant (E.C.) had proven the existence of a lease and the fact that the rents had not been paid by the tenant. The first-instance civil court delivered a decision on 10 July 2019 in which, given that the applicant had not proven the payment of the rents due, it ordered him to vacate the dwelling and to pay EUR 14,420.72 to E.C.

17. The applicant lodged an appeal, which was declared inadmissible by the first-instance civil court on 7 October 2019 on the ground that he had not satisfied the obligation to pay or secure the debt which he had been ordered to pay by the first-instance judgment, as was required by law as a precondition for lodging an appeal under section 449 of the Civil Procedure Act (see paragraph 33 below). It also stated that the eviction was fixed for 4 November 2019.

18. The applicant lodged another appeal (*recurso de queja*) against that decision of 7 October 2019, arguing that, since he had been granted legal aid, he should have been exempted from that requirement to deposit the unpaid rents in order to lodge the appeal. He argued that he was in a particularly vulnerable situation and that the payment was a discriminatory treatment. He also insisted on the impact that the judgment of the administrative court, which was not yet final, in the ongoing administrative proceedings could have in his situation.

19. The appeal was dismissed on 9 January 2020. The *Audiencia Provincial* of Madrid based its decision on the requirement imposed by section 449 of the Civil Procedure Act, clearly providing that an appeal cannot be admissible if the unpaid rents are not paid or deposited. The *Audiencia Provincial* therefore did not analyse the merits of the case. This decision was served on the applicant on 20 January 2020.

20. In the meantime, the first instance court had contacted the social services in order to provide a report concerning the applicant's situation in the light of his and his family's potential eviction. On 13 July 2019, the social services of the municipality concerned informed the first instance court that the family only had a monthly income of EUR 876.86. They were aware that the family had requested a special needs social residence. In the light of their vulnerability, they considered that the eviction, set for 15 September 2019, should be suspended until the family obtained a new social residence, a social rent, or until they could face the prices of free market rental. Since the eviction had only been postponed, on 21 October 2019 the social services addressed again the first instance court to communicate that they attended to the family for the first time in 2010, due to their scarce economic resources. They confirmed that both parents were unemployed, that they all had social security coverage, that their children attended school and were taken care of, and that from 2011 they had lived in the social residence which was concerned by the judicial proceedings. They also noted that they had requested a special needs social residence and that they had displayed effort to that effect. The social services concluded once again that the eviction, planned for 4 November 2019, should be suspended until the family obtained a new social residence, a social rent, or could afford to rent their housing.

21. The social services of the municipality concerned issued another report at the request of the first instance court on 17 January 2020. They confirmed that the applicant's family was still in the same situation as indicated in their previous report, and claimed that their eviction, planned for the 24 January 2020, should be suspended. On 20 October 2020, another report reiterated that the situation had only slightly improved from the economic perspective om that the family was receiving a monthly benefit of EUR 876.86 instead of EUR 662,89. The social services were of the opinion that the eviction, then planned for 8 March 2021, should again be suspended until the family obtained an alternative housing solution.

22. The applicant subsequently lodged an *amparo* appeal with the Constitutional Court, alleging that his right of access to a court had been breached since his appeal had been declared inadmissible on the ground that he had failed to satisfy the condition prescribed by law, namely paying or securing the debt he had been ordered to pay in the first-instance judgment against which he was appealing. He also alleged that that breach amounted to discrimination since the actual reason why he had been denied access to a second-instance court was the fact that he had lacked the economic means to pay or secure the debt; he had therefore been discriminated against on the ground of his social origin. The applicant requested that the Constitutional Court quash the decisions delivered on 7 October 2019 and 9 January 2020 so that the appeal court could analyse the merits of his appeal. The *amparo* appeal was declared inadmissible on 8 July 2020 on the ground that the applicant had failed to satisfy the obligation to demonstrate that his appeal was of "special constitutional importance". The decision was served on 22 July 2020.

III. ADMINISTRATIVE PROCEEDINGS FOR DECLARING THE SALE OF THE PUBLIC HOUSING FLATS NULL AND VOID

23. In parallel to the above-mentioned civil proceedings, one of the tenants affected by the sale of the thirty-two blocks of public housing flats brought proceedings for judicial review of the administrative decision authorising the sale. The applicant was not a party to the proceedings before the administrative courts. On 21 May 2018 a first-instance administrative court (*Juzgado de lo Contencioso-Administrativo no. 29 de Madrid*) declared the sale null and void. The administrative court considered that the public authorities (IVIMA) had not taken into account the interest of the tenants in the sale procedure. Despite the fact that the sale would affect their situation, the tenants had not been heard or even notified of the different steps taken. They were only informed when the sale had already been closed. The administrative court further considered that the public interest of the operation had not been sufficiently justified. IVIMA's fundamental aim was to provide access to dignified housing to those in need. However, it had not explained why the sale of these social blocks would enable it to pursue the said fundamental aim. Moreover, the sale was of such scale that it implied a substantive modification of IVIMA's program of action, which would have required an approval by the Board of Directors, and no such approval had been given. On the basis of those irregularities in the administrative proceedings, the sale was declared null and void.

24. On 14 May 2019 that decision was upheld by the Administrative Chamber of the Madrid High Court of Justice (*Sala de lo Contencioso Administrativo del Tribunal Superior de Justicia de Madrid*).

25. On 29 November 2019 the Supreme Court did not accept an appeal on points of law lodged by the defendant companies, and on 3 March 2020 it did not accept their plea of nullity. Therefore, the first-instance decision declaring the sale null and void became final.

26. At the time the application was lodged with the Court, the enforcement proceedings were still pending. The first-instance administrative court, in the enforcement proceedings, delivered a decision on 21 February 2021 by which it dismissed a request that E.C. be ordered to stop evicting tenants who had not paid the rent due. It stated that the effects of the nullity of the sale for each specific contract signed with each of the tenants of all the affected blocks had to be determined by the civil jurisdiction. It clarified that the sale was null and void not only for the person who had initiated administrative proceedings, but for all the 3,215 dwellings that were part of the 32 blocks affected by that sale from the Madrid Housing Authority to private hands.

27. Following the administrative judgment, the applicant requested IVIMA to subrogate in the position of E.C. in the eviction proceedings. The public administration replied that civil proceedings concerning the ownership and the contracts between each of the tenants and the landlords were still pending, and that, only by way of the administrative judgment, his eviction proceedings could not be transmitted back to IVIMA.

28. According to the information available to the Court, the modalities of enforcement of the administrative court's judgment including the effects of the declaration of the sale as null and void on the situation of each of the tenants who did not participate in the administrative proceedings (such as the applicant) is still to be determined by the domestic civil courts. It is undisputed that the judgment of 21 May 2018 declared the entirety of the sale by IVIMA to A.G. and then E.C. null and void.

IV. FURTHER DEVELOPMENTS

29. The applicant has not been evicted yet, as his eviction was adjourned on several occasions owing to the fact that the administrative proceedings were still pending and on account of the COVID-19 health crisis. On 21 July 2021 the eviction was adjourned by the first-instance civil court *sine die*.

30. While the civil proceedings were pending, the applicant brought administrative proceedings requesting the public authorities to pay the overdue rent on his behalf or provide him with alternative accommodation. His request was dismissed. On 25 November 2019 the applicant requested to be allocated a different public housing unit. That request expired on 9 January 2021; the applicant has not submitted a new one.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGAL FRAMEWORK CONCERNING CIVIL PROCEEDINGS

31. The Spanish civil proceedings are regulated, mainly, in the Law 1/2000 of 7 January 2000 - the Civil Procedure Act (*Ley de Enjuiciamiento Civil*). Under that law (section 248), there are two types of civil declarative proceedings: ordinary proceedings and verbal proceedings. The nature of claims that are decided in the respective proceedings depend on the subject- matter and on the value of the claim.

32. The Act differentiates civil actions that relate to matters concerning leases and can potentially lead to eviction of the tenants. On the one hand, the law has established that actions concerning non-payment of rent and sums owed by tenants aimed at obtaining the payment or the recovery of the possession by the owners should be brought in the framework of verbal proceedings (i.e. summary proceedings). On the other hand, all other actions relating to urban or rural leases of real estate (except the claims for rent or amounts owed by the lessee or eviction for non-payment as mentioned above) should be brought within the framework of ordinary proceedings.

33. The relevant provisions of the Civil Procedure Act read as follows:

Section 42. Non-criminal pre-judicial matters

"1. For preliminary purposes only, the civil courts may examine matters assigned to the administrative and labour courts.

2. The decisions of the civil courts on the above-mentioned matters shall have no effect outside of the proceedings in which they were delivered.

3. The provisions of the preceding paragraphs notwithstanding, if required by law or requested by the parties in mutual agreement or by one of the parties with the consent of the other, the court clerk shall suspend the conduct of the proceedings until the pre- udicial matter has been resolved [...] as appropriate. In this case, the civil court shall be bound by the decision of the said bodies in relation to the pre-judicial matter."

Section 43. Civil pre-judicial matters

"When, in order to rule on the subject-matter of the dispute, it is necessary to decide on a matter which, in turn, constitutes the main subject-matter of another proceedings pending before the same or a different civil court, if it is not possible to join the proceedings, the court, at the request of both parties or of one of them, having heard the other, may order the suspension of the course of the proceedings, at the stage they are at, until the end of the proceeding which has the subject-matter of the pre-judicial question."

Section 249. Scope of ordinary proceedings

"1. The following civil complaints, whatever their amount, shall be decided in ordinary proceedings: (...)

6.º Those dealing with any matters relating to urban or rural leases of real estate, except in the case of claims for rent or amounts owed by the lessee or eviction for non- ayment or termination of the term of the leasing relationship, or unless it is possible to assess the amount of the object of the proceedings, in which case the proceedings shall be carried out in accordance with the general rules of this Law."

Section 250. Scope of verbal proceedings

"1. The following civil complaints, whatever their amount, will be decided in verbal proceedings:

1.º Claims for amounts for non-payment of rent and sums owed and those which, also based on the non-payment of rent or sums owed by the tenant, or on the expiry of the contractually or legally established term, seek to recover possession of the owner, usufructuary or any other person with the right to possess a rural or urban property given under an ordinary or financial lease or in sharecropping, of said property."

Section 441. Special cases in the initial stage of verbal proceedings (as in force since 6 March 2019)

"5. In those cases referred to in section 250 § 1(1) [eviction proceedings] the defendant shall be informed of the possibility of contacting the social services and, where appropriate, authorising the transfer of his or her data to them, so that they can assess whether he or she is in a vulnerable situation. To the same effect, the court shall, of its own motion, inform the social services of the existence of the proceedings. In the event that the social services confirm that the household concerned is in a situation of social and/or economic vulnerability, the judicial body shall be notified immediately. Once this notification has been received, the court's registrar shall suspend the proceedings until the measures that the social services deem appropriate are adopted, for a maximum period of one month from the receipt of the notification from the social services to the judicial body, or three months if the claimant is a legal person. Once the measures have been adopted or the time-limit has expired, the suspension shall be lifted and the proceedings shall continue..."

Section 444. Special rules on the content of the oral hearing

"1. When verbal proceedings are aimed at the recovery of a rural or urban property, given in lease, due to non-payment of the rent ... the defendant shall only be allowed to allege and prove the payment or the circumstances relating to the appropriateness of the impairment of the eviction."

Section 447. Lack of res judicata in special cases

" 2. Judgments delivered in special cases of verbal proceedings brought in order to evict a tenant ... on grounds of lack of payment of the rent or expiry of the term of the contract ... shall not have *res judicata* effect."

Section 448. Right to appeal

"1. The parties may lodge appeals provided for by law against the decisions and judgments of the courts and court clerks that adversely affect them."

Section 449. Right to appeal in special proceedings

"1. In proceedings involving eviction, the defendant shall not be allowed to lodge an appeal ... should he or she fail to state and to produce written evidence that he or she has paid the rent due and that which he or she is required to pay in advance under the contract at the time of lodging the appeal.

2. The appeal ... shall be declared inadmissible... if, during its substantiation, the defendant fails to pay the rent on the dates when it is due ...

...

5. The deposit required in the previous paragraphs may also be made by means of a solidary guarantee of indefinite duration and payable on first demand issued by a credit institution or reciprocal guarantee company, or by any other means which, in the opinion of the court, guarantees the immediate availability, where appropriate, of the deposited amount."

34. Section 3 of the fifteenth additional provision of Basic Law no. 6/1985 on the Judiciary provides:

"Anyone who intends to lodge an appeal against a judgment ... shall deposit:

...

(b) EUR 50 in the case of an appeal to an appellate court."

35. The relevant parts of section 6(5) of Law no. 1/1996 on Legal Aid provide:

"The right to free legal aid includes the following benefits:

...

exemption from the payment of court fees, as well as from the payment of deposits required for appeals."

II. RELEVANT CASE-LAW

36. In decision no. 344/1993, delivered on 22 November 1993, the Spanish Constitutional Court held:

"... in relation to the requirement to pay or secure rent ... this court has established the following interpretative guidelines (see Constitutional Court decisions nos. 59/1984, 104/1984, 90/1986, 46/1989, 49/1989, 62/1989, 121/1990, 31/1992, 51/1992, 87/1992, 115/1992, 130/1993 and 214/1993):

1. The payment or securing of overdue rent prior to lodging an appeal ... does not constitute a mere formal requirement, but an essential prerequisite for access to the substantiation of the appeal. Its purpose is to ensure the interests of the lessor who has obtained a favourable ruling and to prevent the lessee from using the appeal to stop paying the rent while the appeal is ongoing – that is to say, to prevent him or her from using the appeal as a delaying tactic.

2. That requirement should not be so rigorously construed as to lead to the conclusion that the payment or securing of rent is inseparable from the requirement of its certification. Accordingly, it must be interpreted in a purpose-based or teleological

manner, so that it does not turn the involuntary and non-malicious failure to fulfil a formal requirement into an insurmountable obstacle.

3. ... it is necessary to distinguish between the fact of the payment or the securing of rent, which ensures that the interests of the lessor are safeguarded, and the certification of that payment or security, which constitutes a simple requirement whose possible defects can be remedied.

4. The lack of proof or certification of the payment or the security may only justify a decision declaring an appeal inadmissible if the appellant has been given a time-limit for remedying the lack of proof and, in spite of this, has not fulfilled that requirement. This is required by the principle of interpretation of procedural rules in the most favourable manner for the effectiveness of the right to access to a court..."

37. In a decision (*Auto*) issued on 15 February 2020, the Spanish Supreme Court in case no. 5026/2021 held:

"... in accordance with the case-law of this court, failure to comply with the requirement referred to in section 449(1) of the Civil Procedure Act cannot be remedied. The fact that the appellant ... is a beneficiary of legal aid in no way precludes the obligation to comply with the requirement of the above-mentioned provision. Indeed, it should be reiterated that the requirement to pay or secure the amounts due prior to appealing is not merely a formality, but is substantive or essential, its purpose being to ensure the interests of the party that has obtained a favourable decision. This requirement must be construed in a purpose-based or teleological manner, taking into account both the aim pursued by the legislature in imposing it, namely to ensure that the appeal system is not used for dilatory purposes (see Constitutional Court decisions nos. 46/89 and 31/92), and the principle that procedural rules are to be interpreted in the most favourable manner for the effectiveness of the right to access to a court ... (see Constitutional Court decisions nos. 12/92, 115/92, 130/93, 214/93, 249/94 and 26/96). Accordingly, the Constitutional Court's case-law has shown that the payment or the security of the amounts owed constitutes an essential requirement for access to an appeal and cannot be considered disproportionate, given the purposes for which it is ordered (see, *inter alia*, Constitutional Court decisions nos. 104/84, 90/86, 87/92, 214/93, 344/93, 346/93, 249/94, 100/95 and 26/96)."

38. In a recent decision of 17 May 2022, concerning a request by a tenant to suspend the verbal proceedings initiated by the owner of a dwelling to obtain unpaid rents until ordinary proceedings initiated by the tenant had determined on whether the *rebus sic stantibus* clause was applicable, and therefore, the rents were actually not due, Section 1 of the Civil Chamber of the Supreme Court stated as follows:

"According to section 43 of the Civil Procedure Act, the suspension for the reason of civil pre-judicial proceedings requires that 'in order to rule on the subject-matter of the dispute, it is necessary to decide on a matter which, in turn, constitutes the main subject- atter of another proceedings pending before the same or a different civil court'.

According to that provision, a matter is pre-judicial when, in the face of two proceedings which are in some way connected, a prior decision on the main subject- matter of one pending proceeding is necessary in order to rule on the main subject-matter of the other proceeding, and joinder of proceedings is not possible.

In the case under examination, the requirements of section 43 of the Civil Procedure Act are met, since the matter of the verbal eviction and rent claim proceedings from

which the present appeal arises refers to the alleged failure by the defendant tenant to pay the rent due for the months of April, May and June 2020, by virtue of the rental contracts entered into between the litigants in both proceedings; and the matter of the ordinary proceedings 657/2022, followed in the Court of First Instance no.º2 of Alcobendas, is, mainly, to declare that the rent corresponding to the said months is actually not due by the tenant.

The eviction action for non-payment of the rents accrued during the months of April, May and June 2020 and the action to claim said rents, as well as the consequences deriving from said non-payment, have as their logical premise that said rents are due, and this is precisely what is being debated in the ordinary proceedings.

In view of the foregoing, it is appropriate to suspend the present appeal due to the existence of a civil pre-judicial matter, until a final decision is handed down in the ordinary proceedings 657/2022, held in the Court of First Instance no.º2 of Alcobendas."

In the said case, the owner had claimed that the tenant had deposited the rent due in order to lodge his appeal in the verbal proceedings extemporaneously, and that, as a result, his request for suspension pending the ordinary proceedings and any of his other claims on appeal should not even be examined. The Supreme Court did not make any specific point on that matter, but it did agree to suspend the verbal proceedings pending the result of the ordinary proceedings given that the outcome of the latter would have a fundamental impact on the subject-matter of the former.

39. Another relevant judicial example on suspension of verbal proceedings pending ordinary proceedings between the same parties is the following decision by Section 35 of the First Instance Court of Barcelona of 9 February 2021:

"Section 43 of the Civil Procedure Act establishes that 'when, in order to rule on the subject-matter of the dispute, it is necessary to decide on a matter which, in turn, constitutes the main subject-matter of another proceeding pending before the same or a different civil court, if it is not possible to join the proceedings, the court, at the request of both parties or of one of them, having heard the other, may order the suspension of the proceedings, at the stage they are at, until the end of the proceeding which has the subject-matter of the pre-judicial question.'

The following are legal requirements for the suspension:

1) *when, in order to rule on the subject-matter of the dispute, it is necessary to decide on a matter which, in turn, constitutes the main subject-matter of another proceedings pending before the same or a different civil court,*

As far as the relationship between the proceedings is concerned, a pre-judicial matter in civil jurisdiction does not require that there be a total coincidence in the subject- matter of both proceedings or that it extend to all the issues raised in them. As the Supreme Court judgment of 13 October 2010 highlights, a pre-judicial matter occurs when there is a connection between the subject-matter of the two proceedings, in such a way that what is decided in one of them is a logical premise to the resolution of the other, even when not all the identities required by Article 1252 of the Civil Code are present.

It is clear that a claim for contractual rebalancing that affects the determination of the tenancy rent lodged with another court is an issue ('main subject-matter of another proceeding pending before (...) a different civil court') that decisively affects and conditions the decision ('to resolve on the subject-matter of the dispute') of the present verbal proceedings of eviction.

More specifically, the claim in the ordinary proceedings expressly requests a declaration of the non-existence of breach of contract by the tenant; this pending decision will necessarily determine the viability of the eviction proceedings. Thus, if the suspension is not granted, there is an objective risk of contradictory judgments being handed down, especially when in the verbal proceedings, of a summary nature with limited grounds for opposition and evidence for the defendant, the defendant could find himself to be defenceless.

2) *if it is not possible to join the proceedings*,

This is another requirement that is met in the present case, as it is not possible to join to this verbal proceedings of eviction, of a summary nature, ordinary proceedings such as the one brought by the defendant (...).

3) Judicial power as *'the court, at the request of both parties or of one of them, having heard the other party, may (...)'*.

Despite the legal requirements being met, it must be borne in mind that this is a judicial discretionary power ('*the court, at the request of both parties or of one of them, having heard the other, may...*') and it is from this perspective that the unification of criteria Agreement of the Judges of 1st instance of Barcelona is interpreted, when they establish that the mere presentation of a civil claim requesting the revision of the rents of the contract on the basis of the *rebus sic stantibus* doctrine will not be sufficient reason on its own to agree the suspension of verbal proceedings of eviction for non-payment. What we are trying to avoid is the automatic nature of a suspension due to the self-interested, perhaps fraudulent, filing of a *rebus* claim by the tenants with the sole purpose of suspending verbal proceedings of eviction. This would be the case of a lease contract which has expired due to expiry of the term, or in respect of which rents have not been paid prior to the occurrence of an extraordinary situation such as the one caused by the COVID-19 pandemic [...] to give a few examples.

In this context, the plaintiff emphasises that the *rebus* claim brought by the defendant constitutes an abuse of proceedings by the lessee that must be avoided at all costs [...]

It goes without saying that, in this case, this Court does not agree that the filing of the claim for review or contractual rebalancing constitutes an abuse, a devious manoeuvre by the tenant, to avoid eviction in a fraudulent, self-interested, abusive or unreasonable manner.

[...]

To conclude, it should be added to all the above that the verbal proceedings of eviction are of a summary nature, with limited grounds for opposition and evidence, so that if the suspension is not agreed and the eviction proceeds, an irreversible situation would arise or one that would be difficult to restore in the event of a judgement upholding the tenant's claims [...]

In short, there is no doubt of the decisive influence that the proceedings before Court no. 42 of Barcelona have on the decision regarding the eviction and claim for rent in this verbal proceedings, which is why it is appropriate to agree to the suspension by virtue of section 43 of the Civil Procedure Act."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. Relying on Article 6 § 1 and Article 14 of the Convention, the applicant complained that he had not had access to an appeal court because in order to lodge an appeal, he had been required to pay the debt (the unpaid rent) as ordered by the first-instance court, but he had been unable to do so owing to his poor economic situation. This had also amounted to discrimination on the basis of his social origin. He further complained that the first-instance court had not answered all the relevant issues he had raised.

41. Having regard to its case-law and the nature of the applicant's complaints, the Court, being master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *Kurt v. Austria* [GC], no. 62903/15, § 104, 15 June 2021), finds that the essence of the applicant's grievance is related to his right of access to a court under Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. As regards the first-instance proceedings

Admissibility

(a) The parties' arguments

42. The Government alleged that the applicant had failed to exhaust domestic remedies because, when he had lodged the *amparo* appeal with the Constitutional Court, he had only complained about the fact that his appeal to the *Audiencia Provincial* had not been accepted for examination despite his having been granted legal aid. Accordingly, the applicant's complaint before the Constitutional Court had only been based on the alleged breach of the right of access to court on the ground of discrimination, but not on the allegation that the first-instance court had ruled *infra petita*.

43. The applicant contended that the lack of answers by the first-instance court to some of his submissions had constituted one of the complaints in his appeal before the *Audiencia Provincial* which had not been declared admissible. Accordingly, since that appeal had not been accepted for examination, he could not have complained to the Constitutional Court of such a breach because he had not been able, in view of the appeal court's decision, to have that issue first determined by the ordinary courts. Relying on *Portu Juanenea and Sarasola Yarzabal v. Spain* (no. 1653/13, §§ 62-63, 13 February 2018), the applicant also argued that, in any event, there was a close link between his complaint before the Constitutional Court concerning

the alleged breach of the right of access to a second-instance court and the fact that, despite the first-instance court having ruled *infra petita*, he could not have had the omission redressed by the court of appeal precisely because he had been denied access to that court.

(b) The Court's assessment

44. The Court does not have to address in detail the parties' arguments as regards the exhaustion of domestic remedies because, both if the applicant had to or did not have to raise the complaint at issue in his *amparo* appeal, it is in any event inadmissible.

45. The Court notes that it is true, as the Government claimed, that the applicant had not in his *amparo* appeal alleged that the first-instance court had ruled *infra petita*, thus not giving an adequate answer to all his submissions. Assuming that it was possible for the applicant to raise that issue in his *amparo* appeal, as the Government claimed, then he has not properly exhausted all available domestic remedies and his complaint is inadmissible on that ground.

46. Assuming, on the other hand, that the applicant, once his appeal was declared inadmissible because he had not firstly paid the overdue rent, could in further remedies only complain about the issues related to the inadmissibility of his appeal, as the applicant claimed, then the last opportunity for the applicant to complain about the fact that the first-instance court had not addressed all his arguments was in the appeal against the first- instance judgment. Therefore, the final decision about the applicant's complaint that the first instance-court had not addressed all his arguments was adopted by the appeal court on 9 January 2020 and that decision was served on the applicant on 20 January 2020. The application was lodged with the Court on 29 October 2020, that is to say out of the time-limit of six months laid down in Article 35 § 1 of the Convention.

47. Accordingly, in any event, this complaint is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. As regards appeal proceedings

1. Admissibility

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

2. Merits

(a) The parties' submissions

(i) The applicant

49. The applicant, relying on *García Manibardo v. Spain* (no. 38695/97, ECHR 2000-II), submitted that the above-mentioned requirement to comply with the first-instance judgment ordering him to pay the debt in order to be able to lodge an appeal had been an excessive burden, in particular given that he had lacked economic means and had been granted legal aid.

50. Additionally, the applicant alleged that the requirement in question had been applied by the domestic courts with excessive formalism, without giving any consideration as to whether the appeal was well-founded, reasonable and properly substantiated. He also asserted that the domestic courts had applied that condition automatically, assuming that his intention had been to delay the proceedings. In that regard, he alleged that the legislation should have been aimed at speeding up the proceedings before the second-instance courts instead of restricting his access to a court by imposing such a burden.

51. The applicant also contended that, whereas he had been prevented from accessing the appeal court, his opponent would have benefited from that right in the event that the first-instance court had ruled against it, since the requirement to pay or secure overdue rent was imposed only on the tenant.

(ii) The Government

52. The Government submitted that the requirement at issue had been prescribed by law long ago and was aimed at securing the interests of landlords who had obtained first-instance judgments in their favour, by impeding tenants from delaying the proceedings through appealing. They maintained that the domestic case-law in that regard was sound and well- established and, therefore, foreseeable. They also noted that the domestic Law on Legal Aid had not included an exemption from that requirement, since it did not merely concern a court fee, but was an essential requirement for lodging an appeal.

53. The Government also asserted that the positions of the parties to the proceedings had been distinct. Had the first-instance court ruled in favour of the landlord, he or she would not have been ordered to pay any amount of money to the tenant for overdue rent, and accordingly, since the parties were in different positions, it made no sense to impose a similar requirement on the landlord.

(b) The Court's assessment

(i) General principles

54. Article 6 of the Convention does not compel the Contracting States to set up courts of appeal. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations (see, for example, *Andrejeva v. Latvia* [GC], no. 55707/00, § 97, ECHR 2009).

55. The manner in which Article 6 § 1 applies to courts of appeal depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appeal court therein (see *Shamoyan v. Armenia*, no. 18499/08, § 29, 7 July 2015).

56. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. The limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, 29 November 2016, with further references).

57. A restriction imposed on access to court should not involve "excessive formalism" (see *Zubac v. Croatia* [GC], no. 40160/12, § 97, 5 April 2018) which can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. This usually occurs in cases of a particularly strict construction of a procedural rule, preventing an applicant's action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (see *Běleš and Others v. the Czech Republic*, no. 47273/99, §§ 50-51 and 69, 12 November 2002, and *Walchli v. France*, no. 35787/03, § 29, 26 July 2007).

(ii) Application of the general principles to the present case

(α) Whether there was a restriction on the applicant's right of access to an appeal court

58. The Court notes that, in accordance with the relevant domestic provisions, in order to lodge an appeal in civil proceedings with a court of appeal, the appellant is required to pay a deposit of EUR 50 (*depósito para recurrir*). In the event that the appellant fails to pay the deposit, the appeal

will not be accepted for examination. However, in certain types of proceedings, including proceedings where the landlord claims payment of overdue rent and/or requests that the tenant be evicted, the appellant is required, in addition to the EUR 50 deposit, to pay or to secure the debt which he or she has been ordered to pay by a first-instance judgment. The appellant is therefore required to abide by the first-instance decision prior to appealing, otherwise the appeal will not be accepted for examination. In the Court's view, this requirement is clearly a restriction on the applicant's right of access to a court.

(β) Whether the restriction pursued a legitimate aim

59. The Court has found that the aims pursued by the obligation imposed on an appellant to comply with a court's decision prior to appealing may be considered legitimate, notably for the purposes of ensuring protection for creditors, avoiding dilatory appeals or reinforcing the authority of the lower courts (see *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, § 50, ECHR 2000-XI). It also reiterates that the requirement to pay or secure overdue rent prior to appealing prevents the appeal court's list of cases being overloaded, which is a legitimate aim (see *García Manibardo*, cited above, § 38). Additionally, the Court has found that the requirement to secure debts in order to appeal can be considered legitimate when its purpose is to protect the counterparty from being faced with an irrecoverable bill for legal costs (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 64, Series A no. 316-B).

60. In the light of the above, the Court firstly notes that tenancy proceedings are summary proceedings which can be brought by the landlord when a tenant stops paying rent. While the proceedings are ongoing, the landlord is neither receiving the rent, nor is he or she able to make use of his or her property. Consequently, the longer the proceedings last, the greater the prejudice for the landlord. In this regard, even if the proceedings before the second-instance court were conducted expeditiously, it would only be the landlord who suffered the consequences in the event that the first-instance decision were ultimately upheld. Accordingly, the requirement established by domestic law which is limited to eviction proceedings where the only matter to be determined is whether the rent has been paid by the tenant or not can be considered to pursue a legitimate aim.

(γ) Whether the restriction was proportionate

61. Having found that the requirement to pay or secure the debt established by a first-instance judgment prior to having the right to lodge an appeal in summary eviction proceedings pursues a legitimate aim, the Court must next answer the question whether that requirement can be considered proportionate.

62. The first issue to be addressed is whether the procedure to be followed for an appeal could be regarded as foreseeable from the point of view of a litigant and whether, accordingly, the consequences he bore for failing to follow that procedure did not infringe the proportionality principle (see *Berger v. France*, no. 48221/99, § 32, ECHR 2002-X (extracts), with further references). In that connection the Court notes that the applicant's appeal to the *Audiencia Provincial* was not accepted for examination in accordance with section 449(1) of the Spanish Civil Procedure Act. Additionally, both the Constitutional Court and the Supreme Court have held that the requirement to pay or secure the debt which a tenant had been ordered to pay by a first-instance judgment in respect of unpaid rent in order for an appeal to be accepted for examination had to be fulfilled irrespective of the economic situation of the appellant, since that requirement was aimed at avoiding dilatory appeals. Such amount is considered to correspond to the rent which the tenant had consented to pay when agreeing to the terms of the tenancy contract. That being so, the obligation for a tenant to satisfy his or her debt prior to bringing appeal proceedings against a first-instance judgment is foreseeable (compare *Berger*, cited above, § 33, *Zubac*, cited above, §§ 110-13, and also *Čolić v. Croatia*, no. 49083/18, § 36, 18 November 2021).

63. Secondly, in the light of the applicable domestic legal framework provided by the parties, the Court is satisfied that, if the applicant had wanted to argue the amount of the rent due or the legitimate owner of the dwelling, and not merely the undisputed fact whether or not he had paid the rent, he could have lodged an ordinary civil claim. The Court observes that the applicant himself recognised that the verbal proceedings of eviction were, by their summary nature, inadequate to discuss the complex matters at hand (see paragraph 13 above) which included considering whether the landlord was the legitimate owner of the apartment or the amount of the rent due, among other issues. Those matters were to be addressed in the context of ordinary civil proceedings, which could have been initiated by the applicant from the moment he found out about the annulment of the sale, or when the first rent without reduction was claimed by E.C. What is more, he could have also lodged them immediately after the verbal proceedings were initiated by E.C. against him.

64. Under the Spanish civil legislation as has been brought to the Court's attention, there is no obligation for the plaintiff to make any deposit for the rent due in order to bring ordinary civil proceedings, even if they concern matters relating to a tenancy contract. The initiation of those proceedings would have had no cost for the applicant, since claimants who are granted legal aid are exempted from the obligation to pay the judicial fees. Even if a judgment in the verbal proceedings had already been handed down, since those judgments do not have *res judicata* effect, if the applicant had afterwards instituted ordinary civil proceedings and had been successful in

his claims, he could have been exempted from paying the rents that he had been found liable to pay in the verbal proceedings. Moreover, according to the existing case-law, those ordinary proceedings could have entailed the suspension of the verbal proceedings if lodged when the verbal proceedings were still ongoing (see paragraphs 38-39 above). Therefore, the applicant's right of access to court was not entirely restricted to the verbal proceedings.

65. Lastly, the Court notes that under section 441(5) of the Spanish Civil Procedure Act, domestic courts dealing with eviction claims are required to inform the social services so that the latter can assess whether the tenants are socially and/or economically vulnerable, in which case the eviction has to be provisionally suspended while the social services take the appropriate protective measures. In the case at hand, the social services were contacted by the first-instance court and issued at least three reports concerning the applicant and his family (see paragraphs 20-21 above). Each time the eviction was suspended to ensure that they did not end up homeless. The eviction was adjourned by the first-instance civil court *sine die* over a year ago. Consequently, the Court finds that the relevant interests at stake in the present case were fairly balanced in domestic law and practice.

66. In the light of above, the Court considers that the limitations applied have not reduced the applicant's right of access to a court to such an extent that the very essence of the right is impaired and they therefore fall within the State's margin of appreciation (see *Zubac*, cited above, § 78).

67. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint about the lack of access to the appeal court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 15 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Georges Ravarani President