

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

THIRD SECTION

CASE OF ĐORĐEVIĆ v. SERBIA

(Application no. 11212/23)

JUDGMENT

Art 8 • Private life • Home • Construction of a building in such close proximity to the flat of the applicant, an elderly person, that it lacked natural light, ventilation and direct sunlight • In case-circumstances even greater hardship imposed on the applicant's daily life than would ordinarily be expected • Domestic courts' failure to assess the effect of the new building's proximity on the quality of her daily life • Necessary level of severity reached • Art 8 applicable • Lack of due diligence and no proper consideration of all competing interests • Positive obligation not discharged
Art 1 P1 • Peaceful enjoyment of possessions • Domestic authorities' failure to react to irregularities in construction permits issued to building developer • Particular importance of the principle of good governance in this context • No compensation or redress for significant decrease in market value of the applicant's flat in contrast to prior practice of the Supreme Court in comparable cases • Fair balance between competing interests not ensured • Impugned interference disproportionate • Excessive individual burden on the applicant

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Đorđević v. Serbia,

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

Ioannis Ktistakis*, President*,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović,
Vasilka Sancin*, judges*,

and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 11212/23) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Ms Zorka Đorđević ("the applicant"), on 6 March 2023;

the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the applicant's right to respect for her home and her right to peaceful enjoyment of her possessions and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The case concerns, under Article 8 of the Convention and Article 1 of Protocol No. 1, the construction of a building in such close proximity to the applicant's flat that it lacks natural light, ventilation and direct sunlight. The construction of the new building also resulted in a significant decrease in the market value of the applicant's flat.

THE FACTS

2. The applicant was born in 1940 and lives in Belgrade. She was represented by Mr S.R. Gajić, a lawyer practising in Belgrade.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

5. In 2002 the applicant purchased a 22 sq. m studio flat in Belgrade, situated on the ground floor of a residential building at 43 Zahumska Street. The flat consisted of a main room and a bathroom, and all its windows faced the same direction.

6. On 30 June 2003 the applicant, acting on behalf of the residents' association of the building at 43 Zahumska Street, wrote to the Zvezdara Construction Inspectorate (*Građevinska inspekcija Odeljenje za urbanizam Skupštine opštine Zvezdara*), stating that she had learned that the company JINPROS AD ("the developer") had obtained a permit to construct a high-rise building in proximity to the building where she lived, and that such a building would obstruct airflow and access to natural light in many of its flats.

7. On 28 April 2004 the Belgrade Construction Inspectorate replied to the residents' association, stating that it was aware that the developer had obtained, or was in the process of obtaining, a permit to construct a building at 45 Zahumska Street in immediate proximity to the building at 43 Zahumska Street. It also stated that the construction of a new building at that location would deprive all flats in the building at 43 Zahumska Street facing the new building of access to natural light. This, in turn, would diminish both the value of those flats and the quality of life of residents. The Construction Inspectorate further stated that it had asked the relevant authorities to take those considerations into account when issuing the construction permit for the building at 45 Zahumska Street and to draw the attention of the developer and the architect (*projektant*) to these concerns.

8. On 17 September 2004 the Belgrade Secretariat for Urban Planning and Construction (*Sekretarijat za urbanizam i građevinske poslove grada Beograda* – hereinafter "the City of Belgrade") issued a construction permit to the developer for a six-storey building at 45 Zahumska Street.

9. On 9 November 2004 the residents' association submitted a request to the Urban Planning Inspectorate within the Ministry of Capital Investments (*Urbanistička inspekcija Ministarstva za kapitalne investicije* – "the Ministry's Inspectorate"), asking it to order the developer and the architect to alter the design as regards the part of the new building facing the building at 43 Zahumska Street. They stated that construction work had already begun and repeated their concerns as regards access to light and air in the flats (see paragraph 6 above).

10. On 16 November 2004 the applicant contacted the developer, warning it that the construction of the building at 45 Zahumska Street would obstruct access to natural light and airflow in her flat. She stressed that this was in contravention of various laws and would cause her both pecuniary and non-pecuniary damage. She asked the developer to provide her with a replacement flat.

11. On 25 November 2004 the residents' association contacted the chief city architect (*glavni gradski arhitekta Skupštine grada Beograda*), repeating their concerns about the new construction. They asked that the design be altered and that the new building be constructed at an appropriate distance from their building so as to allow natural light and air to enter their flats.

12. On 29 November 2004 the residents' association again contacted the Ministry's Inspectorate, requesting an inspection of the plans on the basis of

which the construction of the new building had been approved, and verification as to whether the construction was being carried out in accordance with those plans.

13. On 25 April 2005 the Ministry and the City of Belgrade informed the residents' association that the plans had been inspected, enclosing a report dated the same day.

The report, drawn up by the Ministry's urban planning inspector (*urbanistički inspektor*), found certain discrepancies between the construction project for the new building at 45 Zahumska Street and the urban plan. The inspector ordered the City of Belgrade to review the urban plan and the plans on the basis of which it had issued a construction permit to the developer for the six-storey building at 45 Zahumska Street (see paragraph 8 above), specifically as regards the distance between the new construction and the neighbouring buildings, requesting it to submit a report on the measures taken in that regard within fifteen days of receipt of the inspector's report.

14. Between 2004 and 2006, on the basis of a construction permit issued by the City of Belgrade, a six-storey building was erected in close proximity to the building at 43 Zahumska Street. All the windows of the applicant's flat faced the newly constructed building. The distance between the two buildings was less than two metres.

15. On 19 October 2005 the applicant brought a civil action in Belgrade Court of First Instance no. 1 (*Prvi opštinski sud u Beogradu* – "the first-instance court") against the City of Belgrade and the developer. She claimed damages on the grounds of a decrease in the flat's market value and the deterioration of her living conditions.

16. In the course of the civil proceedings, two expert reports were commissioned. They were submitted to the court on 8 January and 9 March 2009.

The experts found that the applicant's flat was located on the ground floor of a residential building. The distance between the two buildings was between 1.75 and 1.92 metres, which was less than the 2.22 metres specified in the plans and less than that required under the relevant planning regulations.

The applicant's flat had two windows – one in the bathroom and one in the main room – both facing the new building. One of the experts visited the applicant's flat at 1 p.m. in late autumn and established that the natural light was so insufficient that the interior appeared as dim as during twilight.

The experts agreed that, following the construction of the new building, the applicant's "quality of life" had diminished owing to a lack of natural light and ventilation in the flat. They further stated that, in terms of lighting, the flat had effectively been transformed into a basement, and that in such conditions, it was impossible to live normally or even read anything without artificial lighting. As regards the decrease in the market value of the flat, the two experts estimated this at 20% and 50% respectively. The 20% decrease in the flat's value was quantified at 825,440 Serbian dinars (RSD).

The experts also noted that the urban plan did not specify the required distance between the new building and the building at 43 Zahumska Street.

17. On 5 May 2010 the first-instance court upheld the applicant's claim and awarded her RSD 825,440 in damages, with statutory interest payable from 12 March 2009. However, that judgment was quashed by the Belgrade Court of Appeal on 10 July 2012 and the case was remitted to the first-instance court.

18. On 15 July 2016 the first-instance court dismissed the applicant's claim. Even though the court found that the market value of her flat had decreased by 20% because of the proximity of the new building, which obstructed access to natural light and ventilation, it held that the defendants could not be held liable for the damage claimed, since the developer had sold the flats in the building and, therefore, neither of the defendants were its owners.

19. On 6 April 2017, following an appeal by the applicant, the Belgrade Court of Appeal upheld the first-instance judgment in so far as it had dismissed her claim against the City of Belgrade, but reversed the part concerning the developer. The appellate court ordered the developer to pay the applicant RSD 825,440 in damages, with statutory interest payable from 12 March 2009. It held that, even though the developer had constructed the building on the basis of a permit issued by the City of Belgrade, it had nonetheless caused the damage claimed by the applicant and was therefore liable, irrespective of the fact that it had subsequently sold the flats in that building to third parties.

20. The developer paid the amount awarded to the applicant.

21. The developer lodged an appeal on points of law (*revizija*) with the Supreme Court of Cassation (*Vrhovni kasacioni sud* – "the Supreme Court"). On 21 June 2018 the Supreme Court upheld the lower courts' judgments in so far as they had dismissed the applicant's claim against the City of Belgrade, but reversed the part concerning the developer, dismissing that claim as well. It held that the new building had been constructed on the basis of a valid construction permit and that, in any event, the decrease in the market value of the applicant's property had not been significant, particularly in the context of urban living.

It further held that the applicant had not suffered any damage, since she had not sold the flat and there was no indication that the deficiencies (*nepravilnosti*) established in the expert reports were of such a nature as to make it unsellable.

22. On 5 March 2019 the applicant sold the flat. In her correspondence with the Court, she claimed that she had sold it to her close relative for a lower price and continued to live there. The Government, however, claimed that she had not lived there since she had sold it.

23. On 5 March 2019 the applicant lodged a constitutional complaint against the Supreme Court's judgment, alleging that her right to legal

certainty, right to equal protection before the courts and right to peaceful enjoyment of her property had been violated. She submitted that, as soon as she had learned that a new building was going to be erected in close proximity to the building in which her flat was situated, she had sent letters to both the developer and the Ministry's Inspectorate asking that the design be altered, since the new building would prevent natural light from reaching her flat, thereby significantly diminishing its value and her quality of life.

The applicant further submitted that the Ministry's Inspectorate had issued a report on 25 April 2005 establishing that the urban plan and the construction permit issued by the City of Belgrade to the developer for the building contained numerous errors and were not based in law. The Ministry's urban planning inspector had ordered the City of Belgrade to revise its urban plan and the construction permit it had issued in order to bring them into line with the law. However, that decision had been ignored. The applicant argued that the City of Belgrade had caused her damage because of the decrease in the market value of her flat, the deterioration of her living conditions and the lack of natural light, ventilation and direct sunlight.

The applicant then described the course of the civil proceedings she had instituted and the decisions adopted therein, arguing that the domestic courts had failed to take into account the experts' findings and wrongly concluded that she had no right to compensation for the damage caused to her by the new building erected next to her flat.

She also referred to several judgments in which the Supreme Court had adopted a view opposite to that expressed in her case (see paragraph 31 below).

24. On 11 October 2019, following the Supreme Court's judgment, the developer instituted enforcement proceedings against the applicant. On 15 January 2020 an enforcement order was issued against her for repayment of the sum paid to her by the developer (see paragraph 20 above).

25. On 28 December 2022 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded.

26. The Government submitted a letter to the Court from the Ministry of the Interior stating that the applicant was registered as living at 43 Zahumska Street between 30 July 2002 and 2 December 2005, and from that date at 48 Marshal Birjuzov Street. They also submitted a letter from a public utility company, dated 14 November 2024, stating that the applicant had been registered for the payment of utility bills at the flat at 43 Zahumska Street from 1 August 2002 to 31 March 2019.

27. The applicant submitted a statement dated 12 March 2025 by the building manager (*upravitelj zgrade*) of 43 Zahumska Street confirming that she had lived continuously in the flat and paid all her utility bills.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE PROPERTY ACT

28. The relevant part of the Property Act (*Zakon o osnovama svojinskopravnih odnosa*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia – OG SFRY – nos. 6/80 and 36/90, as well as in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 29/96 and the Official Gazette of the Republic of Serbia – OG RS – no. 115/05) reads as follows:

Article 4

"An owner shall exercise the right of ownership in accordance with the nature and purpose of the object of ownership.

It is forbidden to exercise the right of ownership contrary to the purpose for which it has been established or recognised by law."

Article 5

"An owner of immovable property shall, in using his or her property, refrain from activities and eliminate causes originating from his or her property which, in a manner exceeding the customary use of the immovable property, having regard to its nature and purpose, obstruct the use of other immovable property ([such as] the dispersion of smoke, unpleasant odours, heat, soot, vibrations, noise [or the] discharge of wastewater), or which cause significant damage.

..."

Article 42

"If a third party, without basis, disturbs the owner or presumed owner without depriving him or her of possession, the owner or presumed owner may request a court injunction ordering the termination of the disturbance.

Where the disturbance specified in paragraph 1 of this Article results in damage, the owner may claim damages under the general rules of tort liability.

..."

II. OBLIGATIONS ACT

29. The relevant parts of the Obligations Act (*Zakon o obligacionim odnosima*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia – OG SFRY – nos. 29/78, 39/85, 45/89, 57/89 and the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 31/93) read as follows:

Article 154

"Anyone who causes damage to another shall be liable to compensate for it, unless he or she proves that the damage occurred through no fault of his or her own.

For damage resulting from objects or activities which [by their nature] present a heightened risk of damage ... liability shall be imposed irrespective of fault.

Liability shall also be imposed irrespective of fault in other cases provided for by law."

Article 155

"Damage is the diminution of one's property ([in the form of] actual damage) or the prevention of its increase ([in the form of] lost profits), as well as physical or mental pain or fear caused to another person (non-pecuniary damage).

..."

Article 185

"The liable party shall make restitution for the damage caused.

If restitution does not entirely eliminate the damage, the liable party shall be obliged to pay monetary compensation for the remaining damage.

Where restitution is not possible, or the court deems it unnecessary, the court shall order the liable party to pay compensation to the injured party for the damage.

The court shall award the injured party monetary compensation upon request, unless the circumstances of the case justify restitution."

Article 186

"The obligation to compensate for damage arises at the moment the damage occurs."

III. BYLAWS

Ordinance on the general conditions for land subdivision and construction

30. Section 18(2) of the Ordinance on general conditions for land subdivision and construction, and on the content, conditions and procedure for issuing urban planning requirements for structures approved by municipal or city authorities (*Pravilnik o opštim uslovima o parcelaciji i izgradnji i sadržini, uslovima i postupku izdavanja akta o urbanističkim uslovima za objekte za koje odobrenje za izgradnju izdaje opštinska, odnosno gradska uprava*, Official Gazette of the Republic of Serbia – OG RS – no. 75/2003) provides that multi-storey buildings cannot obstruct access to direct sunlight for other buildings for more than half of the time during which direct sunlight is available.

IV. SUPREME COURT PRACTICE

31. Between 1998 and 2018 the domestic courts, including the Supreme Court, ruled repeatedly that in a situation such as that faced by the applicant in the present case, claimants could in fact be awarded compensation for

pecuniary damage even if the construction permit itself was valid, provided that the damage in question was "significant". A decrease in the market value of property by 20% was, on occasion, considered as such.

In its judgment no. Rev. 415/2010 of 15 June 2010, the Supreme Court held as follows:

> "Where the construction of a new building, its use or the exercise of neighbours' rights associated with that building causes significant damage to the owner of the neighbouring building, the latter has the right to compensation for the damage, even where the new building was constructed in accordance with the permit issued by the competent authority."

In its judgments nos. Rev. 6866/97 of 12 May 1998 and Rev. 1610/99 of 7 June 2001, the Supreme Court held as follows:

> "Where the construction of a new building, its use or the exercise of neighbours' rights associated with that building causes significant damage to the owner of the neighbouring building, the latter has the right to compensation for the damage, even where the new building was constructed in accordance with the permit issued by the competent authority. Significant material damage is presumed when the market value of a neighbouring flat has decreased by 20[%] on account of the deterioration of its functionality because of the construction and use of the neighbouring building." (...)

> "There is an obligation to compensate for the damage caused by the construction of a new building, its use or the exercise of neighbours' rights associated with that building even where the building was constructed in accordance with the permit issued by the competent authority, where neighbours' rights are exercised in a manner that exceeds customary use or the exercise of those rights causes significant damage."

THE LAW

I. PRELIMINARY REMARKS

32. The Government argued that the applicant had abused her right of application because she had falsely claimed to be the owner of the flat in her application, even though she had already sold it in 2019, before she had lodged her application with the Court.

33. The applicant explained that, following the Supreme Court's judgment of 21 June 2018, she had been obliged to repay the compensation previously awarded to her. However, she had already spent that money on medication and health-related bills. She had therefore sold the flat to a relative at a reduced price on the condition that she could continue to live there for the rest of her life. She added that the facts of the case and the damages she had claimed before the domestic courts also related to the period before she had sold the flat.

34. The relevant part of Article 35 § 3 of the Convention provides:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application;

..."

35. The Court reiterates that, under this provision, an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X, and *Zaytsev v. Russia*, no. 22644/02, § 16, 16 November 2006). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, and the cases cited therein).

36. Turning to the circumstances of the present case, the Court notes that, as the Government submitted, the applicant did sell the flat in 2019. As to whether she has continued to live there, the Court notes that, even though it appears that her permanent residence is not formally registered at that address, she has been paying all utility bills for the flat. Moreover, according to a statement given recently by the building manager, she has lived there continuously (see paragraph 27 above). Therefore, as regards the applicant's complaint under Article 8 of the Convention, the fact that she sold the flat is of no significance.

37. As regards the applicant's complaint under Article 1 of Protocol No. 1, the relevant facts she raised before the domestic courts – and which the Court has to assess – relate to the period before she sold her flat.

38. Furthermore, there is no indication that, by omitting to mention that she had sold the flat, the applicant intended to mislead the Court or knowingly presented any untrue facts relevant to her complaints.

39. Having regard to the applicant's submissions in the present case, the Court finds no indication of an abuse of the right of application. Accordingly, the Government's objection is dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. The applicant complained that her living conditions had deteriorated to the point of being incompatible with her right to respect for her home and private life, as guaranteed by Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. Admissibility

1. Applicability of Article 8 of the Convention

41. The mere fact that the construction work carried out by the applicant's neighbour may not have been lawful is not sufficient grounds for asserting that the applicant's rights under Article 8 have been interfered with. The Court must rather examine, on the basis of all the material in the case file, whether the alleged nuisance was sufficiently serious to adversely affect the applicant's enjoyment of the amenities of her home and the quality of her private life (see, for example, *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008; *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 91, 25 November 2010; and *Dzemyuk v. Ukraine*, no. 42488/02, § 77, 4 September 2014, with further references).

42. The Court notes that this issue is closely linked to the substance of the applicant's complaints under Article 8 and therefore considers that its assessment should be joined to the merits.

2. Exhaustion of domestic remedies

(a) The parties' arguments

43. The Government argued that the applicant had not properly exhausted domestic remedies because she had not complained, in her constitutional complaint, of a violation of her right to respect for her home, as guaranteed by Article 8. In that connection, they submitted that, even though the Serbian Constitution did not contain a provision guaranteeing the right to respect for the home, the Constitutional Court had nevertheless assessed that right by directly applying the Convention.

44. The applicant contested the Government's arguments, arguing that, as the Serbian Constitution did not guarantee the right to respect for the home, the "rights" she had relied on in her constitutional complaint also included that right.

(b) The Court's assessment

45. The general principles concerning the exhaustion of domestic remedies and the principle of subsidiarity have been summarised in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 205 and206, 22 December 2020) and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-44, 27 November 2023). The Court has held, in particular, that the obligation to exhaust domestic remedies

requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 139). Article 35 § 1 also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

46. In cases involving issues of exhaustion in substance, the Court has, along with the factual situation presented in the light of national law, placed emphasis on the Convention arguments relied upon at the national level (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 116, 20 March 2018, and the cases cited therein).

47. As to the present case, the Court notes that, in her constitutional complaint, the applicant complained about the domestic courts' findings, arguing that the construction of the new building had caused her damage because of the deterioration of her living conditions in her flat on account of the lack of natural light, ventilation and direct sunlight (see paragraph 23 above).

48. Before the Court, the applicant relied on the complaints and arguments she had raised in the civil proceedings and in her constitutional complaint.

49. Comparing the arguments raised before the Constitutional Court with the complaints raised before the Court, the Court considers that the applicant raised the substance of her complaints under Article 8 before the domestic courts, including in her constitutional complaint, even though she did not rely expressly on that provision (compare *Biba v. Albania*, no. 24228/18, § 49, 7 May 2024). She thus afforded the domestic courts the opportunity of preventing or putting right the alleged violations, the very purpose which the rule of exhaustion of domestic remedies is meant to serve (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII, and *Vučković and Others*, cited above, § 70).

50. It follows that the Government's objection as to the exhaustion of domestic remedies must be dismissed.

3. Conclusion as to the admissibility of the complaint under Article 8 of the Convention

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

B. Merits

1. The parties' arguments

52. The applicant submitted that she had sold another, larger flat and bought the flat in question, and that it had suited her needs at the time, since it had been sufficiently exposed to light and sun and had been airy.

53. She argued that despite her early complaints to the relevant authorities and the developer, the new building had been constructed at 45 Zahumska Street at such close proximity to her ground-floor flat that her living conditions had significantly deteriorated.

54. The applicant submitted that she had been living in the flat without natural light or ventilation since 2004 – that is, for more than twenty years – and that ever since the new building had been constructed, the conditions in her flat had been the same as in a basement. She had to use artificial lightning at all times. These conditions had negatively affected her physical and mental health. She further submitted that she had been a librarian by profession and that daylight and air were crucial for her, as she read a lot and also wrote books herself.

55. The Government argued that the Supreme Court's decision to dismiss the applicant's claim for damages had been based in law and sufficiently reasoned. In their observations, they endorsed the Supreme Court's reasoning. They further stressed that the lack of natural light in the applicant's flat had not affected its basic functionality, since it was habitable. In addition to artificial lighting, the applicant could have enhanced the light in the flat by using mirrors and reflective surfaces, as well as by rearranging her furniture. The decrease in natural light in the applicant's flat had been the result of dynamic urban development that was to be expected in a flat situated in the centre of a large city such as Belgrade. The construction of the building in question had complied with all rules and permits. The Government also maintained that local urban plans served the public interest and that the State enjoyed a wide margin of appreciation in that regard.

2. The Court's assessment

(a) General principles

56. The Court reiterates that Article 8 of the Convention protects an individual's right to respect for his or her private and family life, his or her home and his or her correspondence. A home will usually be a place, a physically defined area, where private and family life goes on. An individual has a right to respect for his or her home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or

other forms of interference. A serious breach may result in the breach of a person's right to respect for his or her home if it prevents him or her from enjoying the amenities of his or her home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII, and *Kapa and Others v. Poland*, nos. 75031/13 and 3 others, § 148, 14 October 2021).

57. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, this may involve those authorities adopting measures designed to secure respect for private life even in the sphere of relations between individuals (see, among other authorities, *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 62, *Reports of Judgments and Decisions* 1996-IV, and *Surugiu v. Romania*, no. 48995/99, § 59, 20 April 2004). Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8, or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance, the aims mentioned in the second paragraph may be of a certain relevance (see *Hatton and Others*, § 98, and *Kapa and Others*, § 150, both cited above).

58. The Court has held that the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (see *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 94, ECHR 2005-VII (extracts); *Lăcătuş and Others v. Romania*, no. 12694/04, § 83, 13 November 2012; and *Jansons v. Latvia*, no. 1434/14, § 75, 8 September 2022).

59. Where nuisances go beyond the ordinary difficulties of living with neighbours, they may affect the peaceful enjoyment of one's home, whether they be caused by private individuals, business activities or public agencies (see *Apanasewicz v. Poland*, no. 6854/07, § 98, 3 May 2011; *Mileva and Others*, § 97, cited above; *Udovičić v. Croatia*, no. 27310/09, § 148-49 and 159, 24 April 2014; and *Kapa and Others*, cited above, § 151).

60. Lastly, the Court reiterates that the Convention has a fundamentally subsidiary role, and that the national authorities are in principle better placed than an international court to evaluate local needs and conditions (see *Hatton and Others*, cited above, § 97). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the justification given by the State is relevant and sufficient remains subject to review by the Court (see *Fadeyeva v. Russia*, no. 55723/00, § 102, ECHR 2005-IV, with further references).

(b) Application of these principles to the present case

61. It is not disputed between the parties that at the time the new building was erected, the applicant was the owner of, and lived in, a 22 sq. m ground-floor studio flat in the neighbouring building, consisting of a bathroom and a main room serving both as her living room and bedroom.

62. The Court notes that, as soon as she learned of the plans to construct the new building, the applicant, together with other residents in the building at 43 Zahumska Street, contacted the developer, the City of Belgrade and the Belgrade Construction Inspectorate, requesting them to alter the design because, if constructed in accordance with the existing plans, it would significantly diminish the value of the flats in their building and the quality of life of residents because of the lack of natural light and air.

63. The Court also notes that all requests concerning the review of the distance between the new building and the building at 43 Zahumska Street were ignored.

64. As early as 28 April 2004, even before the City of Belgrade issued a construction permit for the new building, the Belgrade Construction Inspectorate indicated in a letter to the residents' association that it would ask the competent authorities to take into account the fact that the construction of the new building would deprive all flats in the building at 43 Zahumska Street facing the new building of access to natural light, which would, in turn, both diminish the value of those flats and residents' quality of life. However, the City of Belgrade nevertheless issued the permit, without any consideration of the distance between the two buildings (see paragraphs 7 and 8 above).

65. Further to this, the Ministry's urban planning inspector, noting discrepancies between the construction project for the new building and the urban plan, ordered the City of Belgrade to review the urban plan and the plans on the basis of which it had issued a construction permit for the new building, specifically as regards the distance between the new building and the neighbouring buildings, and requested it to submit a report on the measures taken in that regard (see paragraph 13 above). This was also ignored.

66. In the domestic proceedings, the experts found that the applicant's flat had windows facing only one side – the side facing the new building – and that the distance between the two buildings was less than two metres, that is, less than that required under the relevant planning regulations.

67. The experts further established that because the newly constructed building was in such close proximity to the applicant's flat and it was positioned on the ground floor, there was no access to direct sunlight and so little natural light and ventilation that the flat had effectively been transformed into a basement, and that in such conditions, it was impossible to live normally or even read anything without artificial lighting (see paragraph 16 above).

68. Domestic courts appear to have ignored the conclusions of the experts. They limited their findings to the ownership of the new building and to the assessment of whether the value of the applicant's flat significantly decreased. They did not assess the effect the proximity of the new building to the applicant's flat had on the quality of her daily life.

69. The Court further notes the applicant's vulnerability as an elderly person who spends a lot of time indoors, as well as her argument that, given her profession as a librarian, she reads a lot. In these circumstances, the lack of natural light and ventilation impose an even greater hardship on her daily life than would ordinarily be expected.

70. The Court finds that the proximity of the new building to the applicant's flat, preventing access to natural light and air, has had such adverse effect on her daily life and her well-being for more than twenty years, that it reached the necessary level of severity for Article 8 to be applicable in the circumstances of the present case (compare *Oluić v. Croatia*, no. 61260/08, § 65, 20 May 2010, and contrast *Kyrtatos v. Greece*, no. 41666/98, § 54, ECHR 2003-VI (extracts).

71. In view of the above considerations, in particular the findings of the experts in domestic proceedings that the applicant's flat had effectively been transformed into basement as regards the quality of daily life which were disregarded by domestic courts, and the applicant's specific personal circumstances, the Court finds that the respondent State has failed to approach the matter with due diligence and to give proper consideration to all competing interests, and thus to discharge its positive obligation to ensure the applicant's right to respect for her home and her private life (compare *Udovičić*, cited above, § 159).

72. Accordingly, there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

73. The applicant complained that her right to peaceful enjoyment of her possessions had been breached. She relied on Article 1 of Protocol No. 1 to the Convention, which reads 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. Admissibility

74. The Government argued that the applicant had not properly exhausted domestic remedies. Even though she had referred to her "right to possessions" in her constitutional complaint, she had not presented any arguments concerning that right. All her arguments in her constitutional complaint had concerned her right to a fair trial.

75. The applicant contested the Government's arguments. She submitted that she had relied on her right to peaceful enjoyment of her property before the Constitutional Court and argued that the construction of the new building had decreased the market value of her flat by at least 20%.

76. The Court notes that, in her constitutional complaint, the applicant complained that her right to peaceful enjoyment of her property had been violated, arguing that the construction of the new building had caused her damage owing to the decrease in the market value of her flat. It follows that she properly raised her complaints under Article 1 of Protocol No. 1 before the Constitutional Court. The Government's objection as to the exhaustion of domestic remedies must therefore be dismissed.

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

B. Merits

1. The parties' arguments

78. The applicant argued that the construction of the building by the developer had resulted in a 20% decrease in the market value of her flat because of the lack of natural light, ventilation and direct sunlight.

79. The Government referred to their arguments concerning Article 8 of the Convention (see paragraph 55 above). As to the decrease in the market value of the applicant's flat, they confirmed that the domestic courts had established this decrease to be 20%. However, the applicant had had no right to compensation in that regard because the flat had not yet been sold at the time the domestic courts had adopted their judgments, and she had therefore not suffered any damage. In any event, a 20% decrease in market value could not be seen as significant damage exceeding what was typical and to be expected in the centre of a large city, given the rapid urban development typical of such cites. The Government also stressed that the building in question had been constructed on the basis of a lawfully obtained construction permit.

2. The Court's assessment

(a) General principles

80. The essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, with further references), especially where there is a direct link between the measures applicants may legitimately expect from the authorities and their effective enjoyment of their possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII).

81. The boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition (see *Broniowski v. Poland* [GC], no. 31443/96, § 144, ECHR 2004-V).

82. Whether the case is analysed in terms of a positive duty of the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in Article 1 of Protocol No. 1 may be of some relevance in assessing whether a fair balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts, the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (ibid., § 144).

83. The Court has to determine – regardless of whether the conduct may be characterised as an interference or as a failure to act, or a combination of both – if the prejudice sustained by the applicant was justifiable in the light of the relevant principles. The assessment of proportionality requires an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective" (see *Beyeler v. Italy* [GC], no. 33202/96, § 114, ECHR 2000-I). Furthermore, in each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate burden (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII). That assessment also includes the nature of the interference, the conduct of the applicant and that of the State authorities (see *Perdigão v. Portugal* [GC],

no. 24768/06, § 68, 16 November 2010, and *Szkórits v. Hungary*, no. 58171/09, § 40, 16 September 2014).

84. Where an interference with the right to the peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure that under its domestic legal system property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his or her rights – including, where appropriate, by claiming damages in respect of any loss sustained (see *Kotov v. Russia* [GC], no. 54522/00, § 113, 3 April 2012, and *Blūmberga v. Latvia*, no. 70930/01, § 67, 14 October 2008).

(b) Application of these principles to the present case

85. The Court notes that the two expert reports, commissioned by the domestic courts, clearly established that the market value of the applicant's flat had decreased by at least 20%.

86. All these circumstances were established by the domestic courts, which neither denied or questioned the experts' findings and accepted that the market value of the applicant's flat had indeed decreased by at least 20%. The first-instance court dismissed the applicant's claim for damages on the grounds that the defendants, namely the developer and the City of Belgrade, were not the owners of the building in question, since the developer had already sold the flats to third parties. The appellate court, however, upheld the applicant's claim against the developer and dismissed it against the City of Belgrade.

87. The Court is of the view that the findings of fact made by the domestic courts indicate that the applicant could claim that she had suffered damage as a result of the construction of the new building, and that the existence of that damage was not contested by the domestic courts in their judgments (compare *Tarnawczyk v. Poland*, no. 27480/02, § 104, 7 December 2010).

88. The applicant has thus presented uncontested evidence that the construction of the new building had an adverse effect on the value of her property (contrast *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 83, 2 December 2010). Nonetheless, the Supreme Court ultimately dismissed her claim for damages, holding that the developer had acted in compliance with the permits issued and had therefore not acted unlawfully.

89. The Court notes that the first-instance court dismissed the applicant's claim, finding that the defendants, namely the City of Belgrade and the developer, were not the owners of the new building (see paragraph 18 above). However, the appeal court accepted the applicant's claim in respect of the developer, and upheld the first-instance judgment in respect of the City of Belgrade, dismissing the claim against it (see paragraph 19 above). It appears that the applicant did not lodge an appeal with the Supreme Court against the part of the appeal court's judgment dismissing her claim against the City of Belgrade. However, as the Government did not raise a non-exhaustion

objection in this regard, the Court cannot hold this omission against the applicant.

90. The domestic courts' decisions show that the applicant's claim against the City of Belgrade was dismissed because it was not the owner of the building in question, and her claim against the developer because it had not acted unlawfully since it had obtained a valid construction permit for the building. The Supreme Court also held that the decrease in the value of the applicant's flat was not substantial. The Court notes, firstly, that even assuming that the new building was constructed in compliance with the permits issued by the administrative authorities, it is undisputed that, because of its proximity, the market value of the applicant's flat decreased by at least 20%. In the Court's view, this constitutes a significant decrease.

91. Secondly, certain irregularities in the permits issued to the developer had already been established by the Belgrade Construction Inspectorate (see paragraph 7 above) in April 2004, as well as by experts in the course of the domestic proceedings (see paragraph 16 above). In that connection, the Court emphasises the particular importance of the principle of good governance. The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned. The principle requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as those involving property, the public authorities must act in good time and in an appropriate and above all consistent manner (see *Rysovskyy v. Ukraine*, no. 29979/04, §§ 70-71, 20 October 2011). In the present case, the domestic authorities did not at all react to the irregularities established by the Belgrade Construction Inspectorate, as regards the permits issued to the developer.

92. The Court further notes the practice of the Supreme Court that, where the use of a building causes significant damage to the owner of a neighbouring building, the latter has the right to compensation for the damage, even if the new building was constructed in accordance with permits issued by the authorities, and that significant material damage is presumed when the market value of the neighbouring flat has decreased by 20% (see paragraph 31 above). Such was precisely the situation of the applicant. Nevertheless, the Supreme Court did not follow its previous approach in her case.

93. Having regard to all the foregoing factors, in particular, the irregularities in the permits issued to the developer, allowing the construction of the new building which resulted in the significant decrease in the value of the applicant's flat, without her being offered any compensation or other redress, in contrast to other comparable cases in which the Supreme Court had adopted the stance opposite to that in the applicant's case, the Court finds that the domestic authorities have not ensured a fair balance between the demands of the general interest of the community and the requirements for the protection of the applicant's property rights. Therefore, the interference

complained of was disproportionate to the aim pursued. The foregoing considerations are sufficient for the Court to conclude that the applicant was made to suffer an excessive individual burden as regards her right to peaceful enjoyment of her possessions.

94. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed RSD 825,440 (which is equivalent of approximately EUR 7,000), with statutory interest from 12 March 2009, in respect of pecuniary damage, and 8,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government considered the amount claimed excessive and unfounded.

98. The Court notes that it is not disputed that the market value of the applicant's flat decreased by at least 20% because of its close proximity to the new building, as this was established in the domestic proceedings. In the course of those proceedings, the decrease in value was quantified at RSD 825,440. The Court therefore awards the applicant the amount claimed, plus statutory interest from 12 March 2009 until the date of payment (see, *mutatis mutandis*, *Grudić v. Serbia*, no. 31925/08, § 92, 17 April 2012; *Krstić v. Serbia*, no. 45394/06, § 94, 10 December 2013; and *De Luca v. Italy*, no. 43870/04, § 80, 24 September 2013).

99. Moreover, the Court considers that the applicant's sense of powerlessness and frustration arising from the violation of her rights under Article 8 of the Convention and Article 1 of Protocol No. 1 has caused her non-pecuniary damage that should be compensated for in an appropriate manner (see, *mutatis mutandis*, *Burdov v. Russia* (no. 2), no. 33509/04, §§ 151-157, ECHR 2009; *Epiphaniou and Others v. Turkey* (just satisfaction), no. 19900/92, § 45, 26 October 2010; and *Di Marco v. Italy* (just satisfaction), no. 32521/05, § 20, 10 January 2012). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court considers it reasonable and equitable to award the applicant EUR 6,000, plus any tax that may be chargeable.

B. Costs and expenses

100. The applicant also claimed RSD 666,250 (EUR 5,685) for the costs and expenses incurred before the domestic courts and the Court.

101. The Government contested that claim.

102. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,685 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT,

1. *Joins*, unanimously, to the merits the issue of the applicability of Article 8 of the Convention and holds that it is competent *ratione materiae* to examine the complaint under that provision;

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

3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

4. *Holds*, by five votes to two, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*, by five votes to two,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven thousand euros) together with statutory interest accrued from 12 March 2009, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 5,685 (five thousand six hundred and eighty-five 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;

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

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Ioannis Ktistakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Judge Ktistakis;
(b) partly dissenting opinion of Judge Ní Raifeartaigh.

PARTLY DISSENTING OPINION OF JUDGE KTISTAKIS

1. I voted against points 4 and 5 of the operative provisions. In particular, I cannot agree with the majority's conclusion that there has been a violation of Article 1 of Protocol No. 1 to the Convention, for the reasons set out below.

2. The domestic courts (the first-instance court, the Court of Appeal and the Supreme Court) unanimously determined that (a) the City of Belgrade had not acted unlawfully when issuing the construction permit, which had been granted in accordance with the relevant legislation, and (b) where a building had been erected on the basis of a valid permit, the liability of the investor towards neighbouring property owners could only arise if the damage was "significant" within the meaning of Article 5 of the Property Act.

3. The majority have accepted that, according to the conclusions of the domestic proceedings, the market value of the applicant's flat decreased by at least 20% because of its close proximity to the new building (see paragraph 98 of the judgment). It is also true that the Serbian Supreme Court has considered a reduction of 20% to constitute "significant" damage (see paragraph 31). Nevertheless, the applicant sold her flat six and a half years before our judgment, "for a lower price" (see paragraph 22).

4. In light of these elements, even assuming that the Court could properly act as a "fourth-instance court" in property disputes, how could the alleged "significant" decrease of 20% be reliably established at this stage, when the flat in question was sold at an unknown price in 2019 and the application was lodged in Strasbourg only in 2023?

5. Moreover, even if it were to be accepted that the flat in the centre of Belgrade was sold at a 20% loss, did the applicant really bear a disproportionate and excessive burden (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 108, ECHR 2014)? This is all the more doubtful since neither the applicant nor indeed any neighbour at all ever challenged the construction permit before the competent administrative courts.

6. The Court's case-law makes clear that in urban planning matters the States enjoy a wide margin of appreciation, even where planning measures lead to a diminution of property value. In *Mellacher and Others v. Austria* (19 December 1989, § 55, Series A no. 169) and *Chapman v. the United Kingdom* ([GC], no. 27238/95, § 104, ECHR 2001-I), the Court emphasised the latitude afforded to national authorities in balancing individual and general interests in housing and planning policies. Similarly, in *James and Others v. the United Kingdom* (21 February 1986, § 54, Series A no. 98), the Court underlined that Article 1 of Protocol No. 1 does not guarantee a right to a particular value for property and does not prevent legitimate social,

economic or urban development policies from having negative effects on individual owners.

7. Can we therefore convincingly argue that the positive obligations under Article 1 of Protocol No. 1 extend so far as to require compensation for a 20% loss in the value of a flat caused by lawful urban development in any city centre across the forty-six capitals of Europe, especially where the relevant permits were never contested before, let alone annulled by, the domestic administrative courts?

8. In my view, the answer must be in the negative. For these reasons, I respectfully disagree with the majority.

PARTLY DISSENTING OPINION OF JUDGE NÍ RAIFEARTAIGH

I share the concerns of my colleague Judge Ktistakis concerning points 4 and 5 of the operative provisions, in circumstances where (1) the actual financial loss of the applicant is unknown (as distinct from the estimated general market value loss provided by the experts during the domestic proceedings) because she did not indicate the actual sale price to the Court; and (2) the neighbouring development was constructed in accordance with a valid planning permit (despite the irregularities mentioned at paragraph 91 of the judgment). I therefore join him in his partly dissenting opinion for the reasons he sets out.