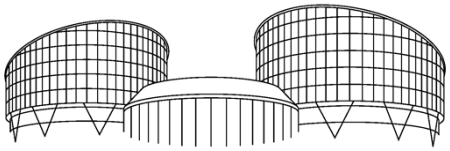

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KARESVAARA AND NJIE v. SPAIN

(Application no. 60750/15)

JUDGMENT

STRASBOURG

15 December 2020

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

In the case of Karesvaara and Njie v. Spain,

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

Georgios A. Serghides, *President,*
Georges Ravarani,
María Elósegui, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 60750/15) 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 Finnish national, Ms Katarina Kirsi Kristiina Karesvaara, and a Gambian national, Mr Sulayman Njie, ("the applicants"), on 3 December 2015;

the decision to give notice to the Spanish Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 24 November 2020,

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

INTRODUCTION

1. The present case concerns the applicants' right of access to a court in the framework of eviction proceedings in the context of a private civil dispute, where the summons had not been personally served on them.

THE FACTS

2. The applicants were born in 1976 and 1972 respectively and live in Torremuelle (Málaga). Both of them hold a legal residence permit in Spain. The applicants were represented by Mr F. Verdún Pérez, a lawyer practising in Fuengirola.

3. The Government were represented by their Agent, Mr R.A. León Cavero, State Attorney.

4. The Finnish Government, who had been invited to submit written observations on the case, did not express any wish to exercise that right (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court).

5. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND OF THE CASE

6. Caja de Ahorros del Mediterraneo, a bank (hereinafter "the bank"), was the owner of two apartments in Fuengirola (Málaga). One of the

apartments was located on Calle Salvador Postigo and the other one on Avenida de Mijas.

7. On 1 July 2010 the applicants, jointly, entered into two lease-purchase agreements with the bank to rent the two apartments. Pursuant to clause 13 of both of the contracts they agreed that for any future communication regarding the agreement the address for service of the tenants would be the address of the relevant apartment and that any communication sent to that address would be considered validly served. Pursuant to clause 4 of both of the contracts the parties agreed that the apartments would only be used as the habitual and permanent residence of the tenants. On the header of the contracts another address of the applicants – Calle Las Viñas, Fuengirola – was mentioned.

8. On 3 January 2012 the insurance company of the bank sent a certified fax (*burofax*) to the apartment on Avenida de Mijas (hereinafter "the Avenida de Mijas apartment"), demanding payment of arrears on the part of the applicants from May 2011 amounting to 3,950.80 euros (EUR). In their absence, a missed-delivery slip was left in the letterbox indicating that the applicants had post waiting for them in the post office. There is evidence that the applicants did not collect that post from the post office and that it was no longer accessible a month later.

II. EVICTION PROCEEDINGS

9. On 11 April 2012 the bank initiated eviction proceedings against the applicants in respect of the Avenida de Mijas apartment. In those proceedings the bank requested the eviction of the applicants from the Avenida de Mijas apartment and claimed EUR 6,215.44 in respect of arrears. The proceedings were brought before the Fuengirola Court of First Instance no. 2 (*Juzgado de Primera Instancia nº 2 de Fuengirola* – hereinafter "the first-instance court"). The bank designated the address of the rented apartment as the address for service of documents on the applicants.

10. On 15 October 2012 the court officer went to the Avenida de Mijas apartment to serve the summons. He found nobody there, so he left an official notice in the letterbox with a deadline for the applicants to pick up the summons at the court-house. On the court document the court officer wrote that he had attempted to summon the applicants for the second time and that he had noted that the names of individuals other than the applicants had appeared on the letterbox corresponding to the rented apartment. On expiry of the deadline, the applicants had not collected the summons.

11. On an undetermined date between October and December 2012 the first-instance court ordered that notice be served by means of a public announcement, by attaching the summons to the bulletin board at the court-

house. When the period for service expired, the applicants had not appeared and had not opposed the claim of the bank.

12. On 9 January 2013, based on the lack of response, the first-instance court allowed the claims of the bank, specifically to proceed with the eviction of the applicants and to hold them liable for the arrears owed to the bank. The eviction date was set for 5 March 2013. This decision became final five working days later because none of the parties appealed.

13. On 4 March 2013 the bank, for unknown reasons, applied for the suspension of the eviction. The first-instance court allowed the application.

III. ENFORCEMENT PROCEEDINGS

14. On 12 September 2013 the bank instituted enforcement proceedings against the applicants, aimed at executing the final decision of 9 January 2013. In those new proceedings, the bank claimed EUR 15,840.16 in respect of arrears, plus EUR 5,000 in respect of costs and expenses. The bank again designated the address of the Avenida de Mijas apartment as the address for service of documents on the applicants.

15. On 16 October 2013 the first-instance court issued an enforcement order, giving the applicants ten days to contest the enforcement. In a separate decision, the same day, the first-instance court ordered the seizure of the applicants' assets. To give effect to the seizure order, the first-instance court carried out a search of the public registries through an internal information system of the Spanish courts to find out what assets the applicants held. The search gave as a result that they were the owners of an apartment on Calle Las Viñas, Fuengirola, as well as other real estate and movable goods. The search also showed that they had been registered as sole traders since 2003 and 2006 respectively, and that they had designated the address on Calle Las Viñas, Fuengirola as their fiscal address. On their driving-licence registration they had equally designated that same address as their residence. Lastly, the search revealed a bank account in Mr Njie's name with a balance of EUR 864.76.

16. On 15 November 2013 Mr Njie learned that his bank account had been frozen by order of the first-instance court. The EUR 864.76 balance had been transferred from his bank account to the court's account. On the same day he went to the court-house, where the two decisions of 16 October 2013 were served on him for the first time, which meant that the ten days for contesting the enforcement started to run on that day. He provided an address in Mijas (Málaga) as his address for future correspondence (hereinafter "the current address").

IV. APPLICATION FOR ANNULMENT OF THE EVICTION PROCEEDINGS

17. On 3 December 2013 the applicants applied for access to the case file of the previous eviction proceedings and the first-instance court granted access. At that moment, they learned for the first time of the eviction proceedings and, in particular, of the final decision of 9 January 2013, by which the first-instance court allowed the eviction application of the bank and held the applicants liable for paying the rent arrears.

18. On 17 December 2013 the applicants lodged an action for the annulment of proceedings in respect of the eviction proceedings. In it they argued that they had delivered the keys of the Avenida de Mijas apartment to the bank long before the eviction proceedings had started; the bank was thus well aware that they did not live in that apartment. They complained that the summons had not been served on them at any time. They pointed out that they had got notice of the proceedings only on 15 November 2013, and that the lack of notice had meant that they had not been able to oppose the claim of the bank. In support of their arguments, they provided copies of their tax returns for the years 2010, 2011 and 2012, showing the address on Calle Las Viñas, Fuengirola, as their home address. They also submitted a copy of the residence-permit card of Mr. Njie, which had the same address. Lastly, they submitted their census certificate, which indicated that since 5 October 2011 they had been registered with their two children at the current address in Mijas.

19. On 7 February 2014 the first-instance court dismissed the applicants' appeal. It stated that they could have used the term for contesting the enforcement in order to request the annulment of the proceedings, instead of lodging a separate action. It furthermore stated that the attempts to summon the applicants had been made in accordance with the relevant procedural law and at the address for service that the parties had agreed in the contract. Accordingly, it concluded that those attempts had been carried out in accordance with the law and had been effective.

20. On 2 April 2014 the applicants lodged an *amparo* appeal with the Constitutional Court. In it the applicants relied on Article 24 of the Spanish Constitution (right to a fair trial).

21. On 2 February 2015 the Constitutional Court declared the *amparo* appeal inadmissible owing to the lack of special constitutional significance.

22. On 4 March 2015 the public prosecutor attached to the Constitutional Court lodged a *súplica* appeal, stating that the *amparo* appeal of the applicants had indeed a special constitutional significance and that it shouldn't have been declared inadmissible for that reason.

23. On 1 June 2015 the Constitutional Court dismissed the *súplica* appeal, reiterating its decision that the *amparo* appeal lacked special constitutional significance. In particular, the Constitutional Court stated that

the particular perspective of the right of access to court on which the applicants had focused, challenging the findings of the decision of 7 February 2014 of first-instance court, did not fall within any of the areas that according to the case-law of the Constitutional Court would have special constitutional significance.

V. SUBSEQUENT EVENTS IN THE EVICTION PROCEEDINGS

24. On 9 September 2016, in the framework of the eviction proceedings, the bank applied to the first-instance court to resume the eviction.

25. On 16 December 2016 the first-instance court allowed the bank's application and set the eviction date for 3 April 2017.

26. On 3 April 2017 the first-instance court suspended the eviction, given that the defendants had not been informed of the eviction decision.

27. On 25 April 2017 a third party subrogated to the position of the bank in the eviction proceedings.

28. On 19 September 2017, in reply to an application on the part of the third party to resume the eviction, the first-instance court dismissed the application, stating that the eviction proceedings had been finalised by the decision of 9 January 2013 without prejudice to the third party's right to initiate enforcement proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

29. Under Spanish legislation, the summons procedure is regulated in Chapter V, on court notices, of Law 1/2000 of 7 January 2000 on civil procedure (*Ley de Enjuiciamiento Civil* – hereinafter "the LEC"). For the relevant sections of the LEC concerning the summons procedure, see *Immoterra International Denia S.L. v. Spain* ((dec.) [Committee], no. 60484/16, § 18, 26 May 2020).

30. The Spanish Constitutional Court, in its judgments no. 30/2014, of 24 February 2014, no. 181/2015, of 7 September 2015, and no. 137/2017, 27 November 2017, interpreted the content of the above-mentioned sections of the LEC, to clarify their meaning in the light of the amendments introduced by Law 19/2009, of 23 November 2009. In them, the Constitutional Court concluded that the fact that section 155(3) of the LEC established the address of the rented home as the default address for service of documents on the defendant in eviction proceeding does not release the courts from their obligation to inform the defendant of the proceedings in accordance with sections 155 and 156 of the LEC.

31. Concerning the reasons for contesting the enforcement of a court decision, they are equally regulated in the above-mentioned LEC. The relevant sections read as follows:

Section 556

Contesting the enforcement of court rulings, arbitration awards or mediation agreements.

"1. If the enforcement title is a court or arbitration ruling or a mediation agreement, the enforcement debtor shall have ten days in which to lodge an objection in writing, counted from the date of service of the enforcement order, alleging payment or fulfilment of the instructions contained in the judgment, which shall be proven by means of documents.

The expiry of the enforcement action and the agreements and settlements reached in order to avoid enforcement may also be alleged, provided that such agreements and settlements are recorded in public instruments.

..."

Section 559

Substantiating objections on the grounds of procedural defects and decisions on them.

"1. The enforcement debtor may also object to the enforcement by alleging the following defects:

(i) The enforcement debtor lacks the status or the representation in which the claim is lodged against him or her.

(ii) Lack of capacity or representation of the enforcement creditor or failing to prove the status or representation in which the claim is lodged.

(iii) Absolute nullity of the enforcement order due to the judgment or arbitration award not containing any statement of sentence, or because the award or mediation agreement does not meet the legal requirements for enforcement, or owing to a breach of the provisions of section 520 when ordering enforcement.

(iv) If the enforcement title is an arbitration award not officially recorded with a notary public, the lack of authenticity of such a title.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicants complained that their right to a fair hearing under Article 6 § 1 of the Convention had been breached on account of the domestic courts' failure to ensure that the applicants had been informed of the eviction proceedings against them. The relevant part of Article 6 § 1 reads as follows:

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

A. Admissibility

1. Objection on grounds of "non-exhaustion"

33. The Government submitted that the applicants had failed to exhaust the available domestic remedies, because once they had learned of the enforcement proceedings against them, they had not contested the enforcement within ten days. Instead, they had lodged an action for the annulment of proceedings after the ten-day period for contesting had expired.

34. The applicants contested the Government's arguments. They argued that the Constitutional Court had declared their *amparo* appeal inadmissible owing to the lack of special constitutional significance and it saw no reason for inadmissibility with respect to the exhaustion of previous remedies. They furthermore stated that the period given to contest the enforcement had been independent from the eviction proceedings in which the alleged violation of their rights had taken place.

35. The Court notes that the ten-day period for contesting was given to the applicants within the framework of the enforcement proceedings. Within the ten-day period, the applicants had the opportunity to challenge the enforcement, but only on the grounds provided for in section 556 of the LEC, in respect of the substance, and in section 559, in respect of the procedure. None of these sections provided for a possibility for the applicants to challenge the enforcement title itself, specifically the decision of the first-instance court of 9 January 2013, which had become final, nor any other aspect of the initial eviction proceedings. The two proceedings – the eviction proceedings and the enforcement proceedings –, although connected, were formally separate proceedings. Therefore, the fact that the applicants had the chance to contest the enforcement for the reasons restrictively listed in sections 556 and 559 of the LEC did not mean that they could challenge any of the decisions that had been adopted in previous separate proceedings.

36. In these circumstances, it is reasonable to conclude, as the applicants did, that contesting the enforcement did not constitute an effective remedy to complain of a violation of the right to a fair trial that had allegedly occurred in the framework of the eviction proceedings. The applicants lodged an action for the annulment of the eviction proceedings, followed by an *amparo* appeal, and can therefore be considered to have exhausted the domestic remedies.

37. Besides, the Court accepts the applicants' argument that the fact that the Constitutional Court declared the *amparo* appeal inadmissible owing to reasons related to the merits implies that the formal requirements, such as the exhaustion of previous remedies, had been validated by the Constitutional Court. Indeed, special constitutional significance is a requirement that is both related to the form and to the merits, and it forms

part of the criteria that the Constitutional Court employs to examine the admissibility of the *amparo* appeals lodged before it. In its formal aspect, appellants are required to argue that there is the special constitutional significance in their *amparo* appeal; on its substantive aspect, the *amparo* appeal must be of such special constitutional significance in order to be examined on the merits by the Constitutional Court.

38. In the present case, in its decision of 1 June 2015 the Constitutional Court deliberated on whether the *amparo* appeal of the applicants was or was not of special constitutional significance, which relates to the substantive aspect of such criterion. The Constitutional Court only examines the substantive aspects after having checked that the formal requirements have been complied with. Therefore, it can be concluded that in the domestic system, too, the question of whether the applicants have exhausted available remedies has been answered in the affirmative.

39. Consequently, the Government's objection must be dismissed.

2. Objection on grounds of lack of "victim status"

40. The Government also alleged that the applicants lacked victim status because the first-instance court had attempted to serve the summons at the address the applicants had expressly designated in the lease-purchase agreement.

41. The applicants considered that there was no doubt of their victim status and that the Government's arguments were not related to that status.

42. In the present case, the applicants were the unsuccessful party in the civil proceedings before the national courts. For that reason, they are entitled to claim to be victims of an alleged violation of Article 6 § 1 and the Government's objection regarding their lack of victim status must therefore be rejected (see, as an example of similar reasoning, *Immoterra International Denia S.L. v. Spain* (dec.) [Committee], no. 60484/16, § 22, 26 May 2020).

3. Objection on grounds of "no significant disadvantage"

43. The Government raised another objection on the grounds of lack of significant disadvantage, claiming that the applicants "ha[d] only paid the amounts owed in accordance with the lease agreement as well as the procedural costs", without claiming that the amount was wrong and without the existence of any non-pecuniary damage.

44. The applicants argued that, as a consequence of the alleged violation, they suffered undeniable and significant pecuniary as well as non-pecuniary damage. They added that the means of appeal they had availed themselves of were not the proper mechanisms to contest the amount.

45. The Court notes that the question of whether the applicant has suffered any significant disadvantage represents the main element of the

criterion set forth in Article 35 § 3 (b) of the Convention (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 39, 1 June 2010, and *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). The Court has held that the absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Konstantin Stefanov v. Bulgaria*, no. 35399/05, § 44, 27 October 2015).

46. In the present case, the consequences of the lack of proper service of the summons on the applicants cannot be underestimated. As a result of the default eviction proceedings, the applicants faced a pecuniary claim of over EUR 20,000 and had their bank accounts frozen, with EUR 864.76 seized from their bank account, apart from several other non-pecuniary implications. Accordingly, there are no grounds for concluding that the applicants have suffered no significant disadvantage.

4. Conclusion

47. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

48. The applicants submitted that the first-instance court had not observed the procedural rules when summoning them. In particular, they complained that service had only been attempted at one address and that, in spite of that attempt having been unsuccessful, the first-instance court had not even carried out a minimal search to find out any alternative addresses of the applicants. They furthermore argued that on the header of the lease-purchase agreement they had indicated a different address for service, to which the first-instance court had never sent the summons. Concerning the address for service designated on clause 13 of the agreement, they claimed that it had not been expressly negotiated by the parties, because the contract had been a standard type of contract, as shown by the fact that on clause 4 of both lease-purchase agreements it had been established that each apartment would be their habitual residence, which would of course have been impossible. Lastly, they stated that they had left the Avenida de Mijas apartment and had handed the keys to the bank on May 2011, and that, owing to the failure of the first-instance court to inform them of the eviction proceedings, they had been unable to defend themselves.

49. The Government submitted that the attempts to summon the applicants had been carried out in accordance with the relevant procedural

law. They argued that the summons had been served at the address that the applicants had expressly designated for service under clause 13 of the agreement and that the first-instance court had not been required to carry out any other searches. They also pointed out that the applicants had not submitted any evidence showing that the keys had been handed back to the bank in 2011, which should have been easy for them to prove. The Government lastly stated that it had been solely the lack of diligence on the part of the applicants that had resulted in the proceedings advancing without their involvement.

2. The Court's assessment

50. The relevant general principles of the Court's case-law concerning the right to present a case effectively before the court and to enjoy equality of arms with the opposing side, as guaranteed by Article 6 of the Convention, are summarised in *Gankin and Others v. Russia* (nos. 2430/06, 1454/08, 11670/10 and 12938/12, §§ 25-28 and 35-39, 31 May 2016) and *Bartaia v. Georgia* (no. 10978/06, §§ 26-29, 26 July 2018).

51. From these general principles it follows that the questions to be addressed in the present case are: (i) whether or not the authorities were diligent in informing the applicants of the proceedings, and whether or not the applicants can be considered to have waived their right to appear before the court and to defend themselves; and, if the response is negative, (ii) whether or not domestic law provided the applicants with the appropriate means to secure a fresh adversarial hearing, once they had learned of the default decisions (see *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 80, 4 March 2014; *Ažd*ajić *v. Slovenia*, no. 71872/12, § 53, 8 October 2015; and *Immoterra International Denia S.L.*, cited above, § 29).

52. In the present case, the Court observes that the alleged breach of the applicants' rights took place in the framework of the eviction proceedings, and that the subsequent enforcement proceedings were a consequence of these initial proceedings.

53. Bearing that in mind, the Court notes that in the eviction proceedings the first-instance court made two attempts to serve the summons to the applicants. Both attempts were made at the same address – Avenida de Mijas – which was the address that the bank had designated for service of documents on the applicants. When the court officer went to the Avenida de Mijas apartment to serve the summons after the first unsuccessful attempt, he noted that the names of some persons other than the applicants appeared on the letterbox, which might have been an indicator that the applicants had not been residing at that address. In spite of that finding, the first-instance court did not consider the possibility of issuing a summons to the applicants at an alternative address and did not search on the courts' internal

information system for any alternative addresses; instead, it directly ordered the notice to be served by means of a public announcement.

54. The Court is of the view that a search could have been useful to get an alternative address at which the applicants might be contacted. Indeed, sections 155 and 156 of the LEC, as interpreted by the Spanish Constitutional Court, provide that the courts are required to perform such a search before resorting to a public announcement. Furthermore, as the applicants pointed out, even without resorting to that search, the first-instance court had been in possession of an alternative address to which a summons could have been issued – Calle Las Viñas, Fuengirola –, which had been designated as the home address of the applicants on the header of the contract.

55. In such circumstances, the Court does not consider that by resorting to a public announcement without any additional attempts to serve the summons, the national authorities had taken the action that could legitimately and reasonably have been expected of them. This appears to be not in compliance with the first-instance court's obligations under sections 155 and 156 of the LEC. The Court also notes that this task does not appear very complex, as in the subsequent enforcement proceedings the applicants' assets, as well as alternative addresses, were speedily located.

56. The present case thus differs from the case of *Immoterra International Denia S.L.* (cited above, §§ 30-31), where the Court recently concluded that the first-instance court had searched for alternative addresses of the applicant company and had tried to serve the summons at more than one address.

57. Accordingly, the Court concludes that the authorities were not diligent in informing the applicants of the eviction proceedings and the latter were not given a reasonable opportunity to participate in the proceedings against them.

58. Moreover, the Court considers that there is nothing to suggest that the applicants had waived their right to a fair trial. The main precondition for waiving a right is that the person concerned must know of the existence of the right in question and, therefore, of the related proceedings (see *Dilipak and Karakaya,* cited above, § 87). In this case, there is no material in the case file proving that the applicants had been apprised of the proceedings against them, even if the outcome of the proceedings might have had undesirable consequences for them (see *Díaz Ochoa v. Spain*, no. 423/03, § 47, 22 June 2006, and *Lacárcel Menéndez v. Spain*, no. 41745/02, § 33, 15 June 2006). The Government did not contest the fact that the applicants had become aware of the proceedings only on 15 November 2013, when they had already ended and Mr Njie had learned that his bank account had been frozen. Finally, the Court does not consider that certain lack of diligence displayed by the applicants in the signing of

the lease contracts with a wrong notification address can be regarded as an indication of such waiver.

59. It remains to be determined whether domestic law afforded the applicants, with sufficient certainty, an opportunity to have a new trial.

60. In the instant case, the Court observes that, once the applicants learned of the eviction proceedings, they firstly lodged an action for the annulment of proceedings, which was the only remedy available for challenging the validity of the notification in the eviction proceedings. The first-instance court dismissed their claim, stating that they could have used the term for contesting the enforcement in order to request the annulment and that the notification had been validly effected. Then, they lodged an *amparo* appeal with the Constitutional Court, which was declared inadmissible owing to the lack of special constitutional significance, despite the fact that the public prosecutor attached to the Constitutional Court had lodged a *súplica* appeal. It follows that their attempts to obtain a fresh examination of their case did not result in any real opportunity to have a new trial.

61. The foregoing considerations are sufficient to enable the Court to conclude that the requisite steps were not taken to inform the applicants of the proceedings against them and that they were not given an opportunity to appear at a new trial, despite the fact that they had not waived their right to be present (see *Dilipak and Karakaya,* cited above, § 94).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed EUR 20,840 in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

65. The Government argued that the applicants had not suffered pecuniary damage, given that the amount seized had had a legal basis. As for the non-pecuniary damage, they submitted that the applicants' assertions were unsupported by any evidence and that the lease-purchase agreements had been signed for the purpose of property speculation.

66. The Court observes that the applicants submitted no evidence to show that the amounts claimed by the bank had actually been paid by them.

In addition, the Court has consistently held that where, as in the instant case, an individual has been the victim of proceedings that have entailed breaches of the requirements of Article 6 of the Convention, the most appropriate form of redress would, in principle, be a retrial or the reopening of the case, at the request of the interested person (see, among other authorities, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003). In this connection, it notes that sections 510 and 511 of the LEC provide for the possibility of revision of a final decision where it has been determined in a ruling of the Court that there has been a violation of the Convention or one of the Protocols thereto.

67. On the other hand, the Court is of the view that the applicants must have suffered a certain amount of distress as a result of the violation of their rights under Article 6 § 1 of the Convention, which cannot be compensated solely by the finding of a violation or by the reopening of the proceedings (see, *mutatis mutandis*, *Gil Sanjuan v. Spain*, no. 48297/15, § 52, 26 May 2020, and *Elisei-Uzun and Andonie v. Romania*, no. 42447/10, § 78, 23 April 2019). It therefore awards the applicants EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

68. The applicants also claimed a total of EUR 10,532.50 in respect of costs and expenses. This sum was divided as follows: EUR 1,815 for barrister fees incurred in the action for the annulment of proceedings; EUR 300 for solicitor (*procurador*) fees incurred in that action; EUR 3,327.50 for barrister fees incurred in the *amparo* appeal before the Constitutional Court; EUR 250 for solicitor (*procurador*) fees incurred in that appeal; and EUR 4,840 for barrister fees incurred before the Court.

69. The Government submitted that pursuant to the Court's case-law claims in respect of costs appertaining to domestic proceedings should be rejected. As regards the award in respect of the costs incurred before the Court, they left that matter to the latter's discretion.

70. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court dismisses the applicants' claim concerning costs and expenses before the ordinary courts and considers it reasonable to award the sum of EUR 8,417.50 for the costs incurred before the Constitutional Court and before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,417.50 (eight thousand four hundred and seventeen euros and fifty cents), plus any tax that may be chargeable to the applicants, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Georgios A. Serghides
President