

Mrs. and Mr. X, after exhausting all of their domestic remedies, are conscious of the fact that, before the European Court, they cannot object findings and reasons set forth by the national authorities concerning:

- The establishment of the facts of the case,
- The interpretation and the application of domestic law,
- The admissibility and the evaluation of evidence during the trial,
- The substantive fairness of the outcome of a civil dispute.

These principles force the petitioners to establish the existence of their rights, then to prove the latter have not been respected. The discretion of the national courts cannot be held liable and more than 95% of the requests are dismissed by the European Court, without even giving reasons for the requests being refused. Very often, the Court considers it inappropriate to translate requests into the language of the Magistrate who will approve the admissibility of the application. As a consequence, petitioners are required to unambiguously prove that they own their house and that their right to personal and private property has been flagrantly infringed without any compensation. In order that the admissibility of their request may be examined, the petitioners have decided to have their request translated into the English language. The output of French judgments led to the deprivation of the property of Mrs. and Mr. X, as the conditions set out in Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms have not been fulfilled.

The domestic law of each country is applicable without discussion and the Court is not a 4th instance to retry the case against the opposing party. Thus, the petitioners avoid discussing the hearings and judgments. They only demonstrate infringements of the rules of the French law and of article 1 of the Protocol to the Convention, and the ignorance of articles 8 and 6-1 of the Convention. This principle is not only a European principle but it is also fundamentally part of the French law, not only by the Civil Code but also by the constitutional principles.

According to domestic law, French magistrates cannot conceal or refuse the application of rights laid down in the law.

Before going into the facts of the argument about the infringement of their rights, the letter (see enclosure 1) Mrs. and Mr. X received from the land registry clearly demonstrates their rights on easements have been modified by the final decision. This is why the land registry office has decided to change the property deeds of Mrs. and Mr. X for their neighbours and for free.

The subject of the request is the infringement of the petitioners' easement.

The plaintiffs own a house located in xxxxxxxx (France) and purchased this house 18 February 2002 (see enclosure 2).

According to the French law, articles 2 et 17 of the 1789 Declaration of the Rights of Man and the Citizen acknowledges property rights:

- Art. 2 : *"The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, **Property**, Safety and Resistance to Oppression".*
- Art. 17 : *"**Since the right to Property is inviolable** and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid".*

Article 543 of the French Civil Code also acknowledges property rights: *"One may have a right of ownership, or a mere right of enjoyment, or only land services to be requested on property".*

Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms imposes property rights to all of the other European states: *"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".*

The litigation is based on a disagreement between two neighbours. When Mrs. and Mr. X purchased the house where they are still living today (see enclosure 2), their new neighbours Mrs. and Mr. Y took advantage of the funds transfer period between seller and buyer (Mrs. and Mr. X) to demolish their own studio and rebuild a new building on the same place of the non aedificandi or non altius tollendi easement, and two times higher than the previous building. The plaintiffs took the issue before the Court of First Instance of xxxxx (France) while the building continued to be carried out on the view, the solar (or right to light) and the non aedificandi or non altius tollendi easements of the petitioners.

Before the Chief Magistrate, the only argument used by Mrs. and Mr. Y was their building permit.

On the building permit (see enclosure 3), one can read the following written 2 times in block letters, bold type and boxed text:

PLEASE READ THE INFORMATION CAREFULLY

RIGHTS OF THIRD PARTIES: *This decision shall be notified without prejudice to the rights of third parties (more particularly: contractual obligations; private law easements such as easements of view, solar easement (or right to light), easement of*

party wall and right of way easement; rule included in the specifications of the subdivision...). It is the responsibility of the recipient of the permit to respect it.

In France, a building permit is always "**subject to the right of third parties**". This is a fundamental principle, meaning that the administration does not need to know anything about the relationships and servitudes between the permit applicant and the owners of the lands next door. Thus, the building permit is "neutral" in relation to this type of disputes. This principle was clearly accepted by **the case-law of the Court of Cassation** (see enclosure n°4).

The principle of the real property easement right according to the French law

easement is a real property right. This principle is defined by stability. A situation is created and its change at the convenience of one of the parties is avoided. Neither the grantee nor the owner of the property burdened by an easement can reduce or worsen it.

The case law of the 3rd civil chamber of 17 December 2003, decision n° 02-10300, published in bulletin 2003 III N° 241 p. 215, says (see enclosure n° 5): « *A demolition is the sanction of an infringed legal entitlement. The Court of Appeal infringes the provisions of article 701 of the French Civil Code when refusing to order the demolition of a construction erected according to the violation of an easement; one shall remember to take into account the seriousness of the consequences of this measure and that the complementary request for damages extends the powers of the Court of Appeal.* ». Article 665 of the French Civil Code describes the following: "*Where a party wall or a house is rebuilt, active and passive easements continue with regard to the new wall or the new house, without, however, their being allowed to become more burdensome, and provided rebuilding is made before prescription is acquired*".

Both constructions have not been modified since 1945. Article 701 of the French Civil Code forbids the violation of the non aedificandi or non altius tollendi easement, especially land transfer records (see enclosure n° 6) and a satellite photo (see enclosure n° 7, showing there were 6 meters between the previous constructions and the separating wall).

According to article 690 of the French Civil Code: "*Continuous and apparent easements are acquired by an instrument of title or by possession of thirty years*".

An expert was appointed and wrote the following:

"In fact, Mr. X requires the same views from his windows as before, according to the landscape. The raising and protruding of Y's gable have reduced them." (see enclosure 8, page 8 – 5th paragraph). Article 701 of the French Civil Code reads as follows: "*The owner of a servient estate may do nothing tending to diminish its use or to make its use more inconvenient.*"

"Thus, according to Mr. X and his "Judicial Counselor", a non aedificandi or non altius tollendi easement with all its consequences would be incurred by the effects of time." (enclosure 8, page 9 – 2nd paragraph).

"Deprivation of sunshine and view" (enclosure 8, page 9 – 7th paragraph).

The expert says: *"Mr. X's gable has south-facing windows:*

- *2 windows with a raised ground floor aimed at lighting the stairs' porch. Sunshine and view deprivations are real and almost total, thus appearing to be moderately prejudicial in a pathway and an entrance.*
- *1 bedroom window upstairs. The 180°-view of x's roofs is removed at 50%. In winter the sun is removed at 70%; it is never removed in the morning when it is nice. In summer, it is removed at about 30%" (enclosure 8, page 10 – 1st paragraph).*

However, in similar cases, the Court of Cassation has always ordered to demolish the constructions built on the common courtyard.

Infringement of article 8 of the Convention

While Mrs. and Mr. X where protesting against the infringement of their property, their neighbours (Mrs. and Mr. Y) were requiring to have access to their home in order to finish the construction of their studio. Needless to say that the studio was already nearly finished. Mrs. and Mr. Y requested a right on the petitioners' property, that is to say the creation of a maintenance easement. This easement is a conventional one, that is to say a neighbour is entitled to require the right to enter the property of another neighbour before the beginning of the restoration works or walls repair. The price of this easement may be freely negotiated between the parties.

The government generally does not interfere in these negotiations and judges cannot impose the sale of this easement. If the latter is sold, then the transaction shall be recorded by the cadastral services.

The French law requires those who pretend they have a right on their neighbour's property to prove it by means of an officially registered land transfer record. ***Discontinuous and non-apparent*** easements cannot be acquired by limitation.

This trespass on the petitioners' property, the exhibition of their family and their private life to workers for many months and during several times is also an infringement of article 8 of the Convention for the Protection of Human Rights.

There was no reason for this forced trespass on the petitioner's property and neither a law, nor

a rule of law would allow it.

Once the final decision has been handed down, the neighbours asked the cadastral services to modify Mrs. and Mr. X's property deeds for their own benefit as justice had confiscated the property of Mrs. and Mr. X in order to redistribute it to Mrs. and Mr. Y.

The petitioners are hard-pressed and retired people. They saw their life savings disappear and placed their hopes in the European Court.

In order to facilitate the work of the judges of the European Court, Mrs. and Mr. X are offering an English translation of their request.

We thank you in advance for giving this matter your careful consideration.

The petitioners are hoping the European Court will grant their request according to the Convention.

ENCLOSURES

Enclosure 1: Letter from the cadastral services modifying Mrs. and Mr. X's property easement.

Enclosure 2: Mrs. and Mr. X's property deeds.

Enclosure 3: Building permit.

Enclosure 4: Court of Cassation's case law.

Enclosure 5: Court of Cassation's case law.

Enclosure 6: Land transfer records.

Enclosure 7: Satellite photo.

Enclosure 8: Expert's report.