CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FIRST SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 33212/02
by Stipe COKARIĆ and others
against Croatia

The European Court of Human Rights (First Section), sitting on 19 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 17 August 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

# THE FACTS

The applicants are 72 inhabitants of the coastal town of Stobreč (see Appendix I), of whom 35 claim to be the owners of real property in the area (see Appendix II). They are represented before the Court by an environmental association named Association for Preserving the Cultural and Natural Heritage Stobreč Epetium (*Udruga za očuvanje kulturne i prirodne baštine Stobreč "Epetium"*), with its seat in Stobreč and the aim to promote preservation of the environment and of cultural and historical monuments. The respondent Government are represented by their Agent, Ms Š. Stažnik.

## A. The circumstances of the case

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

Within the framework of a project to protect the Kaštel Bay of the Adriatic Sea, the State is constructing a sewer network, with an outlet near the coastal town of Stobreč.

### *1. Administrative proceedings*

On 12 November 2001 the Ministry of Environment and Zoning (*Ministarstvo zaštite okoliša i prostornog uređenja*; "the Ministry") granted the company V.K. a building permit for constructing the sewer outlet in Stobreč.

On 29 April 2002 the applicants filed a motion for re-opening of the above administrative proceedings (*prijedlog za obnovu postupka*) with the Ministry. They claimed not to have been afforded the opportunity to participate in those proceedings, which had violated their constitutional rights and international environmental treaties as the sewer would not be equipped with a proper biological purification system.

On 2 August 2002 the Ministry requested the applicants to substantiate their complaints and submit additional documents. The applicants replied on 27 August 2002.

On 30 April 2003 the Ministry dismissed the applicants' motion, finding that they had failed to prove their *locus standi* or to substantiate their allegations as required by the relevant legislation.

On 27 June 2003 the applicants brought an action in the Administrative Court (*Upravni sud Republike Hrvatske*) against the Ministry's decision. On 13 January 2005 the Administrative Court quashed the Ministry's decision. In its judgment, the Administrative Court stated that, due to the fact that

they lived in the area of possible negative impact of the building works, the applicants could not have been denied *locus standi* in the case.

Currently, the proceedings concerning the applicants' request to reopen the administrative proceedings are again pending before the Ministry.

*2. Constitutional Court proceedings*

On 29 April 2002 the applicants lodged a constitutional complaint, seeking to have the building permit quashed. They submitted that the permit violated some of their constitutional rights, including freedom of movement, as well as the right to work and to protection of health. Moreover, in their constitutional complaint the applicants requested an interim measure in order to stop the ongoing building works.

On 30 January 2003 the Constitutional Court (*Ustavni sud Republike Hrvatske*) declared the applicants' constitutional complaint inadmissible for non-exhaustion of legal remedies.

*3. Proceedings concerning the interim measure*

On 13 March 2003 the applicants requested the Split Municipal Court (*Općinski sud u Splitu*) to issue an interim measure in order to stop the building works. On 22 May 2003 the court scheduled an on-site inspection for 29 May 2003. Following the inspection, on 31 July 2003 the court experts submitted an offer, charging 42,000 Croatian kunas (HRK) for their opinion. The applicants never advanced the amount sought; the proceedings are still pending.

*4. Civil proceedings*

Sometime in 2003, three of the 72 applicants lodged a civil action with the Split Municipal Court seeking compensation for damage resulting from the construction of the sewer outlet. The proceedings are still pending before the first-instance court.

*5. Freedom of movement*

With a view to securing the building site, the police cordoned off the area. On 23 July 2002 several applicants, while swimming, approached the visibly marked area. The police intervened, preventing the applicants from approaching the site.

## B. Relevant domestic law and practice

Section 156 of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 53/91, 73/91, 3/94, 7/96 and 112/99), provides for a so-called ecological action and, insofar as relevant, reads as follows:

> 1. Everyone may request another person to remove a source of danger, which might cause substantial damage to him or to other persons or to sustain from an activity which causes disturbance or might cause damage...
>
> 2. The court shall, at the request of an interested person, order appropriate measures to be undertaken, for prevention of damage or disturbance or removal of the source of danger, at the expense of the possessor of the source of such danger...
>
> 3. If damage occurs while performing an activity in the general interest, for which a permit of the competent authority has been obtained, one may seek compensation for such damage as exceeds only the usual limits..."

In its decisions Rev 1681/1998-2 of 11 July 2001, the Supreme Court found that the owner of agricultural land near a factory chimney had the right to compensation for damage to his products ruined due to chimney emissions.

In its decision Rev 1711/1996-2 of 16 December 1999, the Supreme Court ruled that the owners of a house had the right to compensation for damage suffered due to the construction of a nearby road. The damage they sustained included the drop of the value of their property.

Section 49 of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette nos. 53/1991 and 103/1996) provides that a party to the administrative proceedings is a person, at whose request the proceedings have been instituted, or a person against whom the proceedings have been instituted, or any other person who can participate in the proceedings with a view to protecting his or her rights or interests.

Section 218 § 1 of the Administrative Procedure Act provides that in simple matters an administrative body is obliged to issue a decision within a period of one month following the lodging of the party's request. In more complex cases, an administrative body is obliged to issue a decision within a period of two months after the request was lodged. Section 218 § 2 of the same Act enables a party whose request has not been decided within the periods established in the previous paragraph to lodge an appeal, as if his or her request had been denied.

Section 26 § 1 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 53/1991, 9/1992 and 77/1992) provides that, if a second-instance authority fails to issue a decision on an appeal by the party within 60 days, and within an additional period of seven days following the repeated request, the party may lodge an action with the Administrative Court as if his or her request had been dismissed. The same applies to the failure of a first-instance authority to issue a decision, if no appeal against that decision is allowed.

The relevant part of section 63 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002, of 3 May 2002; "the Constitutional Court Act") reads as follows:

"(1) The Constitutional Court shall examine a constitutional complaint whether or not all legal remedies have been exhausted if the court with jurisdiction fails to decide a claim concerning the applicant's rights and obligations or a criminal charge against him or her within a reasonable time ...

(2) If a constitutional complaint ... under paragraph 1 of this section is upheld, the Constitutional Court shall set a time-limit within which the court with jurisdiction must decide the case on the merits...

(3) In a decision issued under paragraph 2 of this section, the Constitutional Court shall assess appropriate compensation for the applicant for the violation of his or her constitutional rights ... The compensation shall be paid out of the State budget within three months from the date a request for payment is lodged."

## COMPLAINTS

1. The applicants complain under Article 1 of Protocol No. 1 to the Convention that their houses in Stobreč are being destroyed by the ongoing building works. They submit that the value of their property as such is accordingly decreasing due to the construction of the sewer outlet.

2. The applicants also complain under Article 13 of the Convention that they had no effective remedy in respect of the alleged violation of Article 1 of Protocol No. 1 to the Convention.

3. The applicants further complain under Article 2 of Protocol No. 4 to the Convention that the authorities unlawfully prevented their movement along the coast, where the building works are taking place.

4. Finally, the applicants complain, in substance, under Article 6 § 1 taken in conjunction with Article 14 of the Convention that they have been discriminated against in the domestic proceedings since they could not take part in the proceedings concerning the building permit.

## THE LAW

1. The applicants complain about the damage to their property caused by the ongoing building works and the decrease in the value of their properties due to the vicinity of the sewage. They rely 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."

The Government firstly dispute the applicants' victim status in the present case. Only 35 applicants (listed in Appendix II) claim to be the owners of real properties in the area affected by the works, whereas the other applicants do not claim that they have any possessions within the meaning of Article 1 of Protocol No. 1. They can therefore not be considered victims of a violation of the Convention right relied on.

Moreover, the Government point out that the applicants failed to make probable that they are personally affected by the measures complained of, and that the present case was in fact to be treated as an *actio popularis* of a group of citizens represented by an environmental organisation.

The Government further submit that in Croatia there exist several domestic remedies which the applicants did not exhaust before addressing the Court. With respect to the administrative proceedings following the applicants' motion for re-opening of the proceedings concerning the building permit, they draw attention to the fact that the Administrative Court granted their action and remitted the case. Since the competent Ministry has not yet given a decision, the applicants' complaint is premature.

In addition, the Government claim that only three applicants lodged a civil action in damages with the Split Municipal Court, whereas the others have never done so. They claim that such an action is also to be considered an effective remedy that needs to be exhausted in the present case.

Finally, as to the proceedings concerning the interim measure, the Government stress that the competent Municipal Court immediately reacted to the applicants' request, conducting an on-site inspection after which it was necessary to obtain an expert opinion on the matter. However, the applicants never advanced the costs of the expert opinion. By failing to advance those costs, the applicants put into question the seriousness of their complaint that irreparable damage is being inflicted on them because of the on-going building works. Since the proceedings have not yet come to an end due to their own fault, the applicants' complaint in this respect is likewise premature.

The applicants contest these views. They maintain that the sewer which is being constructed is not equipped with a proper biological purification system and that they were unable to participate in the administrative proceedings granting the company V.K. the necessary building permit. As to the judgment of the Administrative Court, they claim that the Ministry never issued a new decision in line with that judgment and that they will have to address that court anew.

In respect of the civil proceedings, the applicants claim that those proceedings would not offer an effective protection against the damage they are suffering on their property, because the costs of the expert opinions necessary for those proceedings are exorbitant. Therefore they requested the

domestic courts to issue an interim measure, but their request was never decided on. The applicants submit that they did not advance the costs of the necessary expert opinions because they have low incomes, and that the court should have applied section 156 of the Civil Obligations Act of its own motion halting the building works at the expense of the one undertaking such works.

The Court considers it unnecessary to determine who of the applicants actually owns real properties in the area affected by the building works, as the present complaint is in any event inadmissible for the following reasons.

At the outset, the Court recalls that Article 1 of Protocol No. 1 does not, in principle, guarantee the right to enjoy one's possessions in any particular environment. However, considerable noise nuisance may infringe the right to peaceful enjoyment of possessions, due to a drop in the value of real property (see *S. v. France*, no. 13728/88, Commission decision of 17 May 1990, Decisions and Reports 65, p. 261).

In the present case, assuming that there may be an interference with the applicants' rights under Article 1 of Protocol No. 1, the Court observes that under section 156 of the Civil Obligations Act anyone can seek prevention of damage, *inter alia*, to the environment. Moreover, under the same section, the owners of property may seek compensation for the damage actually sustained on account of activities in the general interest. Noting the case-law of the Supreme Court in this respect, which shows that the above section covers material damage as well as the possible drop in value of property, the Court is satisfied that the applicants should have filed such an action with the competent domestic courts, which all but three of them, failed to do.

It follows that the complaints of the applicants who never instituted civil proceedings in damages must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. The proceedings of the applicants who brought such an action in the domestic courts are still pending and their complaints must also be rejected pursuant to the above provisions as premature.

2. The applicants further complain that they had no effective remedy at their disposal in order to prevent damage to their property. They rely on Article 13 of the Convention.

In view of the conclusion above, the Court is satisfied that the applicants have at their disposal a civil action which may cover any damage they may have sustained. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicants also complain that the authorities prevented them from moving freely along the coast, in particular in the area where the building works are taking place. They rely on Article 2 of Protocol No. 4 to the Convention

The Court observes that the applicants were not allowed to approach the building site for reasons of their own personal safety. This cannot be

interpreted as an infringement of their freedom of movement within the meaning of Article 2 of Protocol No.4.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Lastly, relying in substance on Articles 6 and 14 of the Convention, the applicants complain that they were discriminated against during the domestic proceedings, in particular in that they could not participate in the administrative proceedings concerning the building permit.

The Court firstly observes that under the Administrative Procedure Act, any person whose rights may be affected by an administrative act may participate in the preceding administrative proceedings. In application of this rule, the Administrative Court acknowledged the applicants' *locus standi* in the proceedings complained of and remitted the case. The proceedings were therefore reopened and the applicants given the opportunity to express their view concerning the building permit. Those proceedings are still pending as the Ministry has not adopted a decision in this respect. It follows that this complaint is premature and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

In so far as the applicants may be understood to complain about the length of the administrative proceedings, the Court observes that, while the proceedings were pending before the Administrative Court, the applicants could have filed a complaint with the Constitutional Court but they never did so (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). In addition, since the Ministry has not yet adopted a decision in their case, the applicants can still bring an administrative action for failure to respond (*tužba zbog šutnje administracije*). In these circumstances, given that the applicants had means at their disposal to speed up the proceedings, but did not use them, this part of the application is manifestly ill founded within the meaning of Article 35 § 3 of the Convention (see, *mutatis mutandis*, *Štajcar v. Croatia* (dec.), no. 46279/99, 20 January 2000) and must be rejected pursuant to provide 35 § 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to discontinue the application of Article 29 § 3 of the Convention and *declares* the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

| **Appendix I** | |
|---|---|
| 1. Stipe Cokarić | 2. Matko Plosnić |
| 3. Bernard Plosnić | 4. Marianne Lochen |
| 5. Ilda Mihanović | 6. Nikša Rojan |
| 7. Zlata Šupeljaković | 8. Goran Cokarić |
| 9. Vitomir Stipinović | 10. Lovre Stipinović |
| 11. Andrija Perasović | 12. Ljuba Stipinović |
| 13. Šime Cokarić | 14. Vesna Cokarić |
| 15. Pave Stipinović | 16. Slavko Kojić |
| 17. Mijo Stipinović (born in 1940) | 18. Ljiljana Kojić |
| 19. Ante Sičenica | 20. Živka B. Stipinović |
| 21. Aleksa Bralić | 22. Ana Stipinović |
| 23. Ivan Perasović | 24. Mirko Stipinović |
| 25. Nada Miloš | 26. Goran Sičenica |
| 27. Petar Očašić | 28. Nada Perasović |
| 29. Stipe Perasović | 30. Jela Stipinović |
| 31. Andrija Stipinović | 32. Sunčana Cokarić |
| 33. Ranko Amižić | 34. Vjekica Kasalo |
| 35. Ante Cokarić (born in 1952) | 36. Dražen Kasalo |
| 37. Martin Bilonić | 38. Marica Kasalo |
| 39. Silvijo Blažević | 40. Andrea Bogdanović |
| 41. Vjeko Knezović | 42. Marica Gitić |
| 43. Marin Mihanović | 44. Sunčica Cokarić |
| 45. Ivo Cokarić | 46. Ivan Cokarić |
| 47. Marin Blažević | 48. Milan Stipinović |
| 49. Jakov Cokarić | 50. Mateo Blažević |
| 51. Bartul Plosnić | 52. Slavko Orlić |
| 53. Ante Cokarić (born in 1933) | 54. Mladen Radovilja |
| 55. Tomo Vukelić | 56. Barbara Cokarić |
| 57. Branka Knezović | 58. Marija Stipinović |
| 59. Ante Cerotić | 60. Lenka Mamić |
| 61. Vinko Stojanović | 62. Zoran Voloder |
| 63. Ante Stipinović | 64. Nino Barbarić |
| 65. Zdenko Perasović | 66. Julijana Barbarić |
| 67. Darko Knezović | 68. Marija Meter |
| 69. Filip Meter | 70. Damir Bogdanović |
| 71. Marija Batalić | 72. Matijas Batalić |

| **Appendix II** |
|---|
| 1. Stipe Cokarić |
| 2. Bernard Plosnić |
| 3. Ilda Mihanović |
| 4. Zlata Šupeljaković |
| 5. Vitomir Stipinović |
| 6. Andrija Perasović |
| 7. Šime Cokarić |
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| 15. Stipe Perasović |
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| 21. Vjeko Knezović |
| 22. Marin Mihanović |
| 23. Ivo Cokarić |
| 24. Marin Blažević |
| 25. Jakov Cokarić |
| 26. Bartul Plosnić |
| 27. Ante Cokarić (born in 1933) |
| 28. Tomo Vukelić |
| 29. Mijo Stipinović (born in 1935) |
| 30. Ante Cerotić |
| 31. Vinko Stojanović |
| 32. Ante Stipinović |
| 33. Zdenko Perasović |
| 34. Nedjeljko Plosnić |
| 35. Darko Knezović |