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

FIRST SECTION

# DECISION

Application no. 45360/10
Veljko ĐUZEL
against Croatia

The European Court of Human Rights (First Section), sitting on 7 January 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 5 October 2010,

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

1. The applicant, Mr Veljko Đuzel, is a Croatian national, who was born in 1959 and lives in Zagreb. He was represented before the Court by Ms L. Kušan, a lawyer practising in Ivanić Grad.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

### A. The circumstances of the case

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

4. The applicant is the owner of a hotel, D., in Baška Voda, a municipality in the coastal part of Croatia, which he bought with a view to first reconstructing it and later on using it commercially. The hotel was built in 1962, according to a building permit issued in the same year, and was registered in the Land Registry.

5. At the relevant time the regulations concerning zoning permits in Baška Voda were the Decision on Adoption of the Makarska Municipality Spatial Plan (*Odluka o donošenju Prostornog plana općine Makarska*, Official Gazette of the Makarska Municipality, nos. 8/85, 10/90, 6/91, 8/91 and 4/92), a larger central municipality from which the Baška Voda municipality was formed, and the Decision on Rules of Development in Constructed Areas in the Baška Voda Municipality (*Odluka o odredbama za provođenje u izgrađenim naseljima na području Općine Baška Voda,* hereinafter "the Development Rules") adopted by the Baška Voda Municipality in 1999 and published in the Official Gazette of the Baška Voda Municipality no. 2/99 on 21 April 1999. According to these regulations and the relevant domestic law (see paragraph 23 below), a zoning permit (*lokacijska dozvola*) was required before any construction could be commenced on the buildings in the area concerned.

6. On the basis of the above zoning documents, on 26 July 2001 and 2 August 2001 the owners of the properties adjacent to the applicant's hotel obtained zoning permits from the Makarska State Administration Office for Spatial Development, Communal Affairs, Construction and Ecology (hereinafter: the "Makarska State Administration Office") for renovation and reconstruction of their buildings.

7. On 16 October 2001 the applicant applied to the Makarska State Administration Office for a zoning permit as required by the relevant legislation before reconstruction works could be commenced. The applicant submitted all relevant documents concerning his ownership of the hotel and the reconstruction project. In his project the applicant indicated that the hotel consisted of a ground-floor, three upper floors and in one part an additional fourth floor whereas he wanted to build a basement and a loft and to extend further the fourth floor.

8. On 17 April 2003, while the applicant's request was still pending, the Ministry of Ecology and Spatial Development (*Ministarstvo zaštite okoliša i prostornog uređenja,* hereinafter "the Ministry") ordered the Baška Voda Municipality to set aside (*staviti izvan snage*) the Development Rules, after finding that they had been adopted contrary to the relevant law. The Ministry found that the Development Rules merely reflected provisions of a similar document of the Makarska Municipality which had been already found by the Ministry to be contrary to the relevant law.

9. On 9 May 2003 the Baška Voda Municipality adopted a Decision setting aside the Development Rules and published it in the Official Gazette of the Baška Voda Municipality no. 5/2003.

10. Thereafter, on 4 July 2003 the Makarska State Administration Office dismissed the applicant's request for a zoning permit. The relevant part of the decision reads:

> "Under section 34 § 2 of the Spatial Development Act (Official Gazette nos. 30/94 and 68/98) the zoning permit is an administrative decision which must be issued on the basis of zoning documents, special law and other relevant acts, in accordance with the law.
>
> Given that at the moment the Baška Voda Municipality does not have the relevant zoning documents, it follows, and in view of what was said above, that zoning permits for renovation or reconstruction of buildings cannot be issued until the adoption of the municipal spatial plan or some related spatial plan."

11. On 18 July 2003 the applicant lodged an appeal with the Ministry, pointing out that he had lodged his request for a zoning permit on 16 October 2001 and that his request had been accompanied by all relevant documents, which followed from the fact that the Makarska State Administration Office had not dismissed his request as unsubstantiated or ill-founded. Instead, his request had been dismissed only because the Baška Voda Municipality had not adopted a spatial plan, despite the fact that he had lodged his request when the relevant zoning documents existed. He therefore considered that the law and the zoning documents which existed and were relevant at the time when he had lodged his request, should be applied.

12. On 11 September 2003 the Ministry quashed the first-instance decision and remitted the case. It instructed the Makarska State Administration Office to determine whether a zoning permit could be granted on the basis of the zoning documents adopted for the wider area.

13. In the resumed proceedings, on 18 February 2004 the Makarska State Administration Office again dismissed the applicant's request. It found that the zoning document for the larger area, that is, the Splitsko-Dalmatinska County Spatial Plan (*Prostorni plan Splitsko-dalmatinske županije*, adopted on 23 July 2002, published in the Official Gazette of Splitsko-Dalmatinska County no. 1/2003), prescribed adoption of the spatial plan of the Baška Voda Municipality, and itself contained no provisions on the basis of which a zoning permit could be granted.

14. On 19 April 2004 the applicant lodged an appeal before the Ministry, arguing that the Makarska State Administration Office had failed to comply with the instruction of the Ministry of 11 September 2003. He considered that it should be established whether a zoning permit could be issued on the basis of a spatial plan which covered an even wider area than that of the county-wide spatial plan. He pointed out that he should not bear burden for the failure of the Baška Voda Municipality to adopt a spatial plan. He also considered that a zoning permit should be issued on the basis of the zoning

documents which had existed at the moment when he had lodged his request.

15. On 2 June 2004 the Ministry dismissed the applicant's appeal and upheld the first-instance decision. It endorsed the finding of the Makarska State Administration Office, that at present there was no zoning document on the basis of which a zoning permit for property located in Baška Voda could be granted.

16. The applicant then brought an action in the Administrative Court (*Upravni sud Republike Hrvatske*) on 27 July 2004 contesting the decisions of the administrative authorities.

17. On 3 July 2008 the Administrative Court dismissed the applicant's action. It held that the Splitsko-Dalmatinska County Spatial Plan provided for an obligation to prepare and adopt a spatial plan for the Baška Voda Municipality, but that such plan had not yet been adopted, and that therefore the applicant's request for a zoning permit could not be granted.

18. On 23 October 2008 the applicant lodged a constitutional complaint before the Constitutional Court (*Ustavni sud Republike Hrvatske*). He pointed out that he had submitted his request for a zoning permit at the time when the zoning documents had existed for the Baška Voda Municipality. However, it had taken the administrative authorities almost two years to decide on his request, and in the meantime the zoning documents had been set aside and a spatial plan had not yet been adopted. Therefore, given that there had been a legal gap, the administrative authorities had been obliged to apply the law and the zoning documents which had existed at the time when he had lodged his request. He contended that this had done significant damage to his legitimate interests and that there had been no legitimate public interest justifying the refusal to grant him a zoning permit, since such permits had been issued for a number of properties adjacent to his hotel.

19. In the meantime, the Baška Voda Municipality had proceeded with the adoption of a spatial plan. It first initiated a public debate in which various experts, public officials and interested citizens were able to put forward all their arguments, proposals and objections. The municipal executive authorities then accepted or rejected the proposals and objections and drafted a provisional spatial plan. The provisional draft was afterwards submitted for approval to the Ministry, the competent Splitsko-Dalmatinska County authorities, the State Administration for the Ecology (*Državna uprava za zaštitu prirode*), the Ministry of Culture (*Ministarstvo kulture*), the Defence Ministry (*Ministarstvo obrane*), the public water utilities authorities, the Ministry of Agriculture, Fishing and Rural Development (*Ministartsvo poljoprivrede, ribarstva i ruralnog razvoja*), the Ministry of Regional Development (*Ministarstvo regionalnog razvoja*) and the competent seaport authority. Only after all the approvals were obtained the final draft spatial plan was submitted to the Baška Voda Municipal

Assembly which adopted it on 2 April 2009 (Official Gazette of the Baška Voda Municipality no. 4/2009).

20. After the adoption of the spatial plan the applicant did not submit a new request for a zoning permit.

21. On 18 March 2010 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded. The Constitutional Court's decision was served on the applicant's representative on 28 April 2010.

## B. Relevant domestic law and practice

### *1. Constitution*

22. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum), 76/2010, 85/2010) read as follows:

**Article 48**

"The right of ownership shall be guaranteed ..."

### *2. Relevant spatial development legislation*

23. The relevant provisions of the Spatial Development Act (*Zakon o prostornom uređenju*, Official Gazette nos. 30/1994, 68/1998, 61/2000, 32/2002 and 100/2004) read:

**Section 24**

"(1) A municipal spatial plan shall be adopted by the municipal council, after the state administration office has confirmed that it is compatible with the county spatial plan ...

**Section 34**

"(1) Any spatial intervention must be in accordance with zoning documents, relevant law and any zoning permit.

(2) A zoning permit is an administrative decision which must be issued on the basis of zoning documents, special law and other relevant acts, in accordance with the law ..."

**Section 47**

"The inspection of individual and general acts, conditions and manner of work of relevant legal and physical persons, and the enforcement of measures under this Act, shall be conducted by an Inspection of the Ministry [of Ecology, Spatial Development and Construction]."

**Section 49**

"(1) The inspector shall order the local authority to correct irregularities and/or any unlawfulness in the report or planning [of spatial development], found in the inspection.

(2) If the local administration fails to comply with the order under paragraph 1 of this section, the Ministry shall, upon a request of the Inspector, set aside the report or plan of measures [for spatial development]."

24. The Spatial Development Act enacted on 14 April 1994 (Official Gazette no. 30/1994), in section 57 provided for municipal spatial plans adopted under the previous legislation to be applied until new zoning documents were adopted, and in any event no longer than five years from the moment when the Act entered into force. This time-limit elapsed on 23 April 1999.

25. The Amendments to the Spatial Development Act of 20 May 1998 (*Zakon o izmjenama i dopunama Zakon o prostornom uređenju*, Official Gazette no. 68/1998) in section 52 extended the period for adoption of municipal spatial plans to 31 December 2000.

26. The Amendments to the Spatial Development Act of 1 July 2000 (*Zakon o izmjenama i dopunama Zakon o prostornom uređenju*, Official Gazette no. 61/2000) in section 3 extended the period for adoption of municipal spatial plans to 30 March 2002.

27. Section 37 of the Amendments to the Spatial Development Act of 28 July 2004 (*Zakon o izmjenama i dopunama Zakon o prostornom uređenju*, Official Gazette no. 100/2004) extended the period for adoption of municipal spatial plans to 31 December 2005.

28. Section 347 of the Spatial Development and Construction Act of 1 October 2007 (*Zakon o prostornom uređenju i gradnji*, Official Gazette no. 76/2007) extended the period for adoption of municipal spatial plans to 31 December 2007, and expressly prohibited the grant of zoning permits in the absence of relevant zoning documents.

## COMPLAINTS

29. The applicant complained, under Article 1 of Protocol No. 1, that he had been unable to renovate his hotel because he could not obtain a zoning permit.

30. He also complained, under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, that he had been discriminated against in obtaining the zoning permit in comparison to his neighbours who had been granted such permits.

# THE LAW

## A. The applicant's complaint under Article 1 of Protocol No. 1

31. The applicant relied on Article 1 of Protocol No. 1, 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."

### *1. The parties' arguments*

32. The applicant contended that he had bought hotel D. in Baška Voda with a view to using it commercially. The hotel had been built in 1962 and had needed reconstruction so it could be used again to its full capacity. Since the zoning permit was necessary for the renovation and reconstruction works, by not adopting the relevant zoning documents and not granting him a zoning permit the domestic authorities had unjustifiably interfered with his right to peaceful enjoyment of his possessions. In the applicant's view such interference had not pursued any legitimate aim, and moreover it could be said that it was in the public interest to adopt relevant zoning documents, which the domestic authorities had failed to do for a considerable period. He pointed out that the spatial plan had been adopted only in 2009, and that for more than eight years he had not been able to obtain a zoning permit and thus to use his property as he had wished, namely for commercial purposes. In his view, this had placed an excessive and disproportionate burden on him.

33. The Government submitted that the applicant had not used all available and effective domestic remedies. In particular, the applicant had failed to lodge an action for damages against the State and in his constitutional complaint he had not complained of a violation of his right to peaceful enjoyment of possessions. Moreover, the applicant had not suffered any significant disadvantage since he had had full use of his hotel, and the zoning permit had only concerned his future investments.

34. In any event, in the Government's view, there had been no interference with the applicant's right to peaceful enjoyment of his possessions. The applicant had applied for a zoning permit so he could carry out some further construction work on his hotel, and therefore it had concerned his future and not existing property. He had applied for a zoning permit at a time when the Baška Voda Municipality had had no valid spatial

plan, since its existing spatial plan had been declared null and void by the Ministry and therefore had no legal effect. The decisions of the domestic authorities had been based on the relevant domestic law and had been in the public interest of spatial planning and protection of property. The Government also considered that an excessive and disproportionate burden had not been placed on the applicant, because throughout the period in which he had not been able to obtain a zoning permit he had had every opportunity to make full use of his property, and in fact he had advertised on the Internet that he had carried out some reconstruction work on his hotel. Eventually, the competent domestic authorities had adopted a spatial plan, and it had then become open to the applicant to apply for a zoning permit.

*2. The Court's assessment*

35. The Court finds it unnecessary to address all of the Government's objections, as the complaints are in any event inadmissible for the following reasons.

36. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property, and should therefore be construed in the light of the general principles enunciated in the first rule, and must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, amongst many others, *Hellborg v. Sweden*, no. 47473/99, § 45, 28 February 2006).

37. The Court finds that the situation complained of by the applicant constitutes a control of the use of property which is to be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Allan Jacobsson v. Sweden (no. 1)*, 25 October 1989, § 54, Series A no. 163; and *Hiltunen v. Finland* (dec.), no. 30337/96, 28 September 1999).

38. In this respect the Court recalls that the second paragraph of Article 1 of Protocol No. 1 allows Contracting States to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose, which means that there must exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Sporrong and Lönnroth v. Sweden*, 23 September

1982, § 64, Series A no. 52). As regards the choice of the detailed legal rules implementing a measure for the control of the use of property, the domestic legislature must have a wide margin of appreciation. As regards the purpose of the measures, the Court must respect the domestic legislature's judgment as to what is in the general interest, unless that judgment was manifestly without reasonable foundation (see *Haider v. Austria* (dec.), no. 63413/00, 29 January 2004).

39. In the present case the Court notes that the setting aside of the Baška Voda Municipality's zoning documents after the Ministry's inspection in April 2003 which found irregularities in their adoption, was based on the relevant domestic legal provisions of the Spatial Development Act (see paragraph 23 above). Consequently, given that a zoning permit is an administrative document which can be issued only on the basis of zoning documents (see paragraph 23 above; section 34 § 1 of the Spatial Development Act), the Court accepts that the administrative authorities' decisions refusing the applicant's request for a zoning permit were in conformity with the relevant domestic law.

40. The Court also considers that these decisions affecting spatial development and planning pursued a legitimate aim "in accordance with the general interest" for the purposes of the second paragraph of Article 1 of Protocol No. 1 (see *Hellborg*, cited above, § 48).

41. As to the proportionality of the interference complained of by the applicant, the Court observes that the applicant had failed to substantiate if and to what extent the changes in the relevant zoning documents had actually affected his property interests or that the value of his property in question had been substantially diminished or that his ownership of the hotel was in any manner rendered precarious (compare *Moore v. the United Kingdom* (dec.), no. 40425/98, 15 June 1999; *Hiltunen*, cited above; and, by contrast, *Sporrong and Lönnroth*, cited above, § 63).

42. Moreover, it appears from the available evidence that throughout this period the applicant was not prevented from making use of his property, as he was able to administer it and use it for the commercial purposes (compare *Diaconescu v. Romania* (dec.), no. 38353/05, § 43, 17 September 2013).

43. It is true that the applicant was left in uncertainty for a considerable period as to his possibilities to develop his property due to the non-existence of the zoning documents. However, the Court notes the complex and delicate procedure for adopting a spatial plan. During this procedure the municipal authorities were obliged to institute a public debate including a number of interested subjects, to take into account their arguments and objections and to obtain approvals from several Ministries and the relevant state authorities. Only after that the Municipality was able to adopt its spatial plan (see paragraph 19 above).

44. In any event, the Court does not find it established that the applicant had acquired any unconditional right to obtain a zoning permit and to carry out the construction work which he intended. It has not been shown that during the relevant period the authorities would have been obliged to grant him a zoning permit because no absolute right to obtain a zoning permit could be deducted from the mere existence of the relevant zoning documents (compare *Allan Jacobsson*, cited above, § 60).

45. Moreover, after the adoption of the spatial plan for the Baška Voda Municipality on 2 April 2009 it was open for the applicant to request a zoning permit but he never availed himself of that opportunity (see paragraphs 19 and 20 above). It would therefore be impossible for the Court to speculate why the applicant had not applied for the zoning permit and whether he could have been granted such a permit under the Baška Voda Municipality zoning documents for the construction work he intended to carry out.

46. Therefore, having regard to what has been set out above (see paragraphs 41-45 above) and the margin of appreciation enjoyed by the State under the second paragraph of Article 1 of Protocol No. 1, the Court finds no appearance of a violation of Article 1 of Protocol No. 1 to the Convention in the particular circumstances of the present case.

47. It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### B. Alleged violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1

48. As to the applicant's complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, the Court observes, in view of its findings concerning the applicant's complaint under Article 1 of Protocol No. 1 taken alone (see paragraphs 41-47 above), that the zoning permits granted to the other owners of property had been issued based on the legislation in force at the relevant time which distinguishes their situation to the one complained of by the applicant.

49. Therefore, in accordance with Article 35 §§ 3 (a) and 4 of the Convention, the Court rejects the applicant's complaint as manifestly ill-founded.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

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| Søren Nielsen<br>Registrar | Isabelle Berro-Lefèvre<br>President |