



Smolice residents disturbed by years of heavy traffic owing to motorway project

In today's **Chamber** judgment¹ in the case of [Kapa and Others v. Poland](#) (application nos. 75031/13, 75282/13, 75286/13, and 75292/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life).

The case concerned the rerouting of traffic by the applicants' house during the construction of a motorway, and the applicants' attempts to rectify the situation via the authorities.

The Court found in particular that the authorities had knowingly ignored the problem from 1996 and had continued developing the motorway project with total disregard for the well-being of local residents. Overall, the Court found that the diverting of traffic by the applicants' house and the lack of an adequate response by the authorities had harmed their peaceful enjoyment of their home.

Principal facts

The applicants, Katarzyna Kapa, Jacek Juszczyk, Mateusz Juszczyk and Barbara Juszczyk, are Polish nationals who were born in 1984, 1958, 1991 and 1959 respectively. They live in Smolice (Poland). They are a family.

They live together in a house a few metres from the N14 national road in Smolice. The house is 1 km from the junction with the A2 motorway in Stryków.

In 2006, during the staged construction of the motorway, traffic was temporarily deviated from that local motorway junction via the N14. The assessments by the authorities did not include the rerouting of traffic via the N14.

As a result of the opening of the initial section of the motorway, traffic, in particular goods vehicles bound for Warsaw, increased dramatically, causing alleged increases in noise pollution, vibrations, exhaust fumes, among other things. Several studies were done and a plan for a ring road to reduce the traffic burden on the N14 was drawn up. One study noted, in particular, an increase in pollution, with noise pollution beyond statutory norms; another, the possibility of severe psychophysiological ailments, illnesses and perhaps even a decrease in residents' life expectancy.

In late 2008 an extension to the A2 was opened, which reduced traffic on the N14 to an acceptable level, as confirmed by the applicants.

In 2009 the applicants took an action against the State, seeking compensation. That claim was dismissed by the courts.

On 30 November 2010 a court-appointed expert drew up a report on whether the authorities' management of traffic had been adequate. The expert noted many difficulties associated with the increase in traffic on the N14 for residents, and that some of the increase had been caused by an

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

increase in commercial premises along the route and the fact that the adjoining section of the motorway had remained toll-free. The expert stated that although the increase could not have been predicted, the response from the authorities concerning all issues bar the 2006 *ad hoc* solutions had been adequate. The expert concluded that extending the motorway offered an effective solution to the problem in the shortest possible time.

The regional court found that, despite the excess noise pollution, the authorities had been quick to acknowledge the issues for residents, and had pushed on with *ad hoc* and longer term solutions. It concluded that the authorities had acted within the law. It awarded no compensation.

An appeal by the applicants was dismissed in 2013 and a cassation appeal by a joint plaintiff in the domestic proceedings was rejected on procedural grounds.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained that the routing of traffic from the A2 to the N14 had destroyed their peaceful enjoyment of their home.

The application was lodged with the European Court of Human Rights on 22 November 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

The Court reiterated that individuals have a right to quiet enjoyment of their homes. It stated that although there was no explicit right in the Convention to a clean and quiet environment, where an individual was directly and seriously affected by severe environmental harm such as noise or other pollution, an issue might arise under Article 8.

The Court noted the regional court's finding that the noise levels had gone beyond statutory norms. The core of the applicants' complaint was that the issues could have been avoided had the authorities been more diligent in carrying out their road-traffic management plans. In particular, the authorities had not taken into account the mayor of Stryków's objections concerning the endpoint of the motorway, and the reports that had informed the authorities' decisions had not taken into account the impact of the traffic increase on the N14 on local residents, only the construction of the motorway. The Court found that transit traffic (rather than local commercial traffic) must have made up a large proportion of the increase in traffic in the area, especially at night.

The Government stated that the increase in traffic had not been predictable. The Court disagreed, determining, in fact, that the authorities had knowingly ignored the problem from 1996 and had continued developing the motorway project with total disregard for the well-being of local residents, ignoring the objection to the temporary endpoint. It noted that the authorities had faced difficult choices in managing the construction of the motorway, and they had made some attempt to deal with the issues. However, their attempts had had no effect because for various reasons the A2-N14

route had remained a favoured choice for many drivers. In consequence, the State had effectively privileged drivers over residents

Overall, the Court found that the rerouting of traffic by the applicants' house and the lack of an adequate response by the authorities had harmed their peaceful enjoyment of their home, leading to a violation of Article 8 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Poland was to pay the applicants 10,000 euros (EUR) each in respect of non-pecuniary damage and EUR 750 in total in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.