



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

FOURTH SECTION

Application no. 52499/11
Inita VECBAŠTIKA and others
against Latvia
lodged on 18 August 2011

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix. They are represented before the Court by Mrs I. Nikuļceva, a lawyer practising in Rīga.

A. The circumstances of the case

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

3. The applicants are either land or house owners (first, third, fourth, fifth, seventh, eighth, tenth, twelfth, fifteenth, sixteenth, seventeenth and eighteenth applicants) or residents (second, sixth, ninth, eleventh, thirteenth, fourteenth and nineteenth) in Dunika parish, now within the territory of Rucava municipality. Dunika parish is located in the western part of Latvia, in an area of some 12 to 30 km from the Baltic coast; it borders with Lithuania.

1. General spatial planning

4. Between 28 July 2004 and 10 November 2006 the Dunika Parish Council adopted several decisions with a view to general spatial planning of Dunika parish. On 10 November 2006 a general spatial plan was approved and the relevant municipal by-laws were issued. None of the above provided for any wind-energy related zoning in Dunika parish.

5. On 11 January 2007 the relevant Ministry at the time (*Reģionālās attīstības un pašvaldības lietu ministrija*) forwarded their observations on the general spatial plan to the Dunika Parish Council. Several deficiencies were found, among which it was noted that no public discussion (*sabiedriskā apspriešana*) had taken place.

6. On 26 January 2007 the Dunika Parish Council annulled its 10 November 2006 decision. A time-limit until 28 February 2007 was set to

draft a new general spatial plan in view of the Ministry's objections. It was decided to organise a public discussion between 1 and 22 March 2007.

7. On 22 March 2007 the Dunika Parish Council approved a new general spatial plan. A wind energy zone was established in Dunika parish; it included, among other things, the applicants' real estate and their neighbouring properties. It was sent to the Ministry for observations; they were provided on 13 June 2007.

8. On 21 June 2007 the Dunika Parish Council approved the final general spatial plan and issued municipal by-law no. 3 (*Liepājas rajona Dunikas pagasta teritoriālais plānojums*). A wind energy zone of about 35% of the parish territory was included in the plan and the construction of wind farms was allowed in that zone; this zone included, among other things, the applicants' real estate and their neighbouring properties. The by-law took effect on 6 July 2007.

9. Subsequently, on 3 November 2009, the newly established Rucava Municipal Council (see paragraphs 14-15 below) issued municipal by-law no. 27 and approved the general spatial plan for Rucava municipality, which also included Dunika parish (*Rucavas novada teritorijas plānojums*).

2. Detailed spatial planning

(a) In relation to the first applicant's real estate

10. On 22 December 2008 the Dunika Parish Council decided to commence detailed spatial planning for the real estates "Šuķi" and "Skrandas", which were adjacent to the first applicant's real estate "Kalvaiti" and where construction of wind turbines was planned. A protection zone (*aizsargjosla*) for a wind power station reached into the first applicant's real estate.

11. On 9 March 2009 the first draft of the detailed spatial plan for these properties was opened for public discussion.

12. On 22 April 2009 the Dunika Parish Council adopted some changes to its first draft of the detailed spatial plan for the real estates "Šuķi" and "Skrandas".

13. On 18 June 2009 the first applicant approached the municipality with a view to making amendments to the detailed spatial plans for real estates "Šuķi" and "Skrandas" as concerns the protection zone for a wind power station. She also alleged a breach of her property rights on account of the restrictions imposed on her real estate by virtue of the protection zone. Finally, she asked that a public discussion be organised and that an environmental impact assessment (*ietekmes uz vidi novērtējums*) be carried out in that respect.

14. Following an administrative reform in 2009, Dunika parish was included in the territory of Rucava municipality; the newly established municipality was governed by the Rucava Municipal Council.

15. On 1 July 2009 the Rucava Municipal Council convened for the first time. In accordance with the domestic law, newly established municipal councils were to re-issue the general and detailed spatial plans for their territories within three months. Until then, the previously issued general and detailed spatial plans were applicable.

16. On 28 July 2009 the Rucava Municipal Council replied to the first applicant that they had taken into account her comments and noted that the protection zone would have to be changed. A public discussion had taken place.

17. On 27 August 2009 the Rucava Municipal Council amended its draft detailed spatial plan and “took note of the views expressed by its residents”.

18. On 3 September 2009 the relevant domestic authority decided not to carry out an environmental impact assessment for the construction of 41 wind power stations in Dunika parish.

19. On 23 September, 23 and 27 November 2009 the first applicant voiced her disagreement with the detailed spatial plan for the real estates “Šuķi” and “Skrandas” and noted that the domestic procedures had not been followed in this respect. She wished to receive information about the exact location of the wind turbines and, accordingly, of the protection zone on her real estate; she wanted to receive a confirmation that her property rights would not be infringed.

20. On 30 November 2009 the Rucava Municipal Council examined the first applicant’s submissions and rejected them.

21. On 17 December 2009 the Rucava Municipal Council approved the final detailed spatial plan for the real estates “Šuķi” and “Skrandas” and issued municipal by-law no. 41. The by-law took effect on 24 December 2009.

(b) In relation to other properties

22. On an unspecified date in 2009 the process for detailed spatial plans for 41 wind power stations in Dunika parish with a maximum height of 149 metres was started. It was only at this point that the applicants learned about wind-energy related plans in their municipality. On 3 April 2009 the applicants signed a petition addressed to the Mayor of Dunika parish in which they expressed their dissatisfaction with the construction of wind power stations.

23. On 19 March 2009 the first public discussion took place in connection with the detailed spatial plan for wind farms in Dunika parish.

24. On 17 April 2009 an information meeting took place concerning wind farms in Dunika parish.

25. The applicants on several occasions approached the State and the municipal authorities with a view to amending or rendering inapplicable the general spatial plan in so far as it concerned wind energy zones. They also expressed their disagreement with the detailed spatial plans for the territories where wind turbines were to be constructed.

26. There is no information concerning the approval of the detailed spatial plans in respect of the applicants’ properties.

3. The proceedings before the Constitutional Court

27. The present applicants lodged two individual constitutional complaints with the Constitutional Court (*Satversmes tiesa*) in accordance with section 19.³, paragraph 2 of the Law on the Constitutional Court. The first applicant submitted in her individual complaint that municipal by-law no. 41 was not compatible with the Constitution; all applicants submitted in their joint individual constitutional complaint that municipal by-law no. 27

was not compatible with the Constitution. In particular, they relied on the rights enshrined in the Constitution: the right to property and the right to adequate environment.

28. On 1 and 16 July 2010 respectively the Constitutional Court initiated the proceedings. On 23 September 2010 the proceedings concerning both individual constitutional complaints were joined.

29. On 24 February 2011 the Constitutional Court delivered its judgment in case no. 2010-48-03 (see paragraph 36 below) without holding an oral hearing.

4. Subsequent events

30. On 31 March 2010 the relevant domestic authority issued a permission to construct three wind power stations on “Skrandas” and approved the corresponding technological plan (*tehniskais projekts*).

31. The first applicant contested this permission. Firstly, on 30 April 2010 she applied to the Rucava Municipal Council. Then, on 12 July 2010 she lodged an application with the Administrative District Court (*Administratīva rajona tiesa*).

32. On 9 May 2011 the district court terminated the proceedings on the grounds that the technological plan and the permission had been declared null and void by the relevant domestic authority on 14 March 2011 for their non-compliance with the detailed spatial plan.

33. On 8 June 2011 the relevant domestic authority issued a permission to construct one wind turbine on “Skrandas”. The applicant contested this permission before the Rucava Municipal Council. These proceedings appear to be currently pending.

B. Relevant international and domestic law and practice

34. The relevant international material has been summarised elsewhere (see the Relevant international law and practice part in *Tătar v. Romania*, no. 67021/01, 27 January 2009). Latvia ratified the Aarhus Convention on 14 June 2002.

35. The legal framework for spatial planning in Latvia was laid down in the Spatial Planning Law (*Teritorijas plānošanas likums*), effective from 26 June 2002 to 1 December 2011. Since then, a new law has taken effect (*Teritorijas attīstības plānošanas likums*).

36. On 24 February 2011 the Constitutional Court delivered its judgment in case no. 2010-48-03, which had been brought by the present applicants. The Constitutional Court ruled that the general and detailed spatial plans for Dunika parish in so far as they related to wind-energy zoning were compatible with Articles 105 (right to property) and 115 (right to adequate environment) of the Constitution (*Satversme*)¹.

¹ Available at: http://www.satv.tiesa.gov.lv/upload/spriedums_2010-48-03.htm (accessed: 26 November 2012)

COMPLAINTS

37. The applicants, who are either land or house owners (first, third, fourth, fifth, seventh, eighth, tenth, twelfth, fifteenth, sixteenth, seventeenth and eighteenth applicants) or residents in Dunika parish (second, sixth, ninth, eleventh, thirteenth, fourteenth and nineteenth), allege violations of Articles 6, 8 and 13 of the Convention. In addition, the above-mentioned applicants, who are land- or house owners, also complain under Article 1 of Protocol No. 1 to the Convention.

38. According to the general spatial plan, the land owned by the first, third, fourth, fifth, seventh, eighth, tenth, twelfth, fifteenth, sixteenth, seventeenth and eighteenth applicants and their surrounding territories have been included in wind energy zones. This prevents them from using their properties fully, destroys their plans for development and radically changes the surrounding area. There are plans to construct wind power stations in the vicinity of their properties as well as next to the residences of the second, sixth, ninth, eleventh, thirteenth, fourteenth and nineteenth applicants. This means that the noise-levels will be close to, if not exceeding, the maximum-level allowed and that the quiet country side landscape and the nature will change.

39. First of all, invoking Article 1 of Protocol No. 1 to the Convention, the first group of applicants (first, third, fourth, fifth, seventh, eighth, tenth, twelfth, fifteenth, sixteenth, seventeenth and eighteenth applicants) allege that the commercial activities of wind farms, which have been allowed by the general spatial plan, as well as the construction of wind power stations in their neighbouring properties, which have been allowed by the detailed spatial plans, amounts to a breach of their property rights. They argue that the value of their properties has been significantly reduced and that they cannot freely sell or rent them. Their existing or future business plans (e.g. countryside tourism, livestock farming, agriculture or apiculture) have been ruined.

40. Secondly, all applicants further complain under Article 6 § 1 of the Convention of a breach of their right of access to a court to contest the general and detailed spatial plans which allowed for construction of wind farms in Dunika parish. The only venue available for them was the Constitutional Court, but it was not “a court” within the meaning of Article 6 § 1 of the Convention. They could not participate in person; there was no public hearing before the Constitutional Court. Their case was decided by means of a written procedure. Most importantly, the Constitutional Court is a subsidiary mechanism for protection of human rights and its jurisdiction is limited to reviewing the constitutionality of legal provisions. It cannot decide on other issues such as, for instance, to grant compensation for human rights’ breaches.

41. Thirdly, they complain of a breach of their rights under Article 8 of the Convention on account of the fact that the State authorised the construction of wind energy farms near their homes in Dunika parish (which the first group of the applicants owned and where the second group of the applicants resided). In this regard the applicants state that wind turbines generate high noise levels and cause other nuisance (vibrations, low frequency sound, shades etc.) affecting their health and well-being. They

also maintain that the Contracting States have positive obligations inherent in an effective respect for private life under the Convention. The applicants rely on the Aarhus Convention, which Latvia has ratified, and the right to live in an environment adequate to one's health and well-being.

42. Finally, the first group of applicants further argue that they do not have an effective remedy under Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention to complain about a breach of their property rights.

QUESTIONS TO THE PARTIES

1. Is Article 8 of the Convention applicable in the circumstances of the present case?

2. If so, have the domestic authorities ensured that the decision-making process related to the development of the wind farms in Dunika parish involved appropriate measures in order to predict and evaluate the effects on the environment and to strike a fair balance between various conflicting interests at stake (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 128, ECHR 2003-VIII, and *Tătar v. Romania*, no. 67021/01, § 88, 27 January 2009)?

3. The parties are requested to comment on the scope of the State's positive obligations under Article 8 of the Convention in connection with the above.

4. Is Article 6 of the Convention applicable to the applicants' complaint about the general and detailed spatial plans in the Constitutional Court?

5. If so, has there been a violation of Article 6 § 1 of the Convention in the present case? In particular, a reference is made to the Constitutional Court's competence, to the fact that the applicants were not heard in person and to the fact that their case was decided following a written procedure.

6. The Government are requested to submit to the Court a translation of the Constitutional Court's ruling of 24 February 2011 in English.

APPENDIX

| Nº. | | | | | |
|-----|---------------------------|------|------------|---------|-----------------------|
| 1. | Inita VECBAŠTIKA | 1964 | Latvian | Dunika | Kalvaiti |
| 2. | Vilma DOBELE | 1944 | Latvian | Dunika | Mežāres |
| 3. | Kristīne PREISA | 1981 | Latvian | Liepāja | Preisi, Mežāres |
| 4. | Vilma VARNA | 1952 | Latvian | Dunika | Saulstari, Kretuli |
| 5. | Ilmars VARNA | 1955 | Latvian | Dunika | Saulstari, Cinkusi |
| 6. | Armands VARNA | 1979 | Latvian | Dunika | Saulstari |
| 7. | Anna SEDOLA | 1929 | Latvian | Dunika | Sedoli |
| 8. | Sandra BEŅUŠE | 1965 | Latvian | Dunika | Dzirkaļi |
| 9. | Miķelis SĪKLIS | 1926 | Latvian | Dunika | Jurķi |
| 10. | Ilgvars SĪKLIS | 1963 | Latvian | Dunika | Jurķi, Kaijas |
| 11. | Spodra Mudīte KUNDZIŅA | 1943 | Latvian | Dunika | Iesalnieki |
| 12. | Jānis KUNDZIŅŠ | 1922 | Latvian | Dunika | Iesalnieki |
| 13. | Indra VADEIĶĪTE | 1982 | Lithuanian | Dunika | Iesalnieki |
| 14. | Mareks MIHAILOVS | 1972 | Latvian | Dunika | Iesalnieki |
| 15. | Ausma Līna BALODE | 1940 | Latvian | Dunika | Brīvkalni |
| 16. | Irma Alvīne KAPILINSKA | 1942 | Latvian | Dunika | Gauri |
| 17. | Jānis KŪMA | 1951 | Latvian | Dunika | Mazarāji |
| 18. | Marta MAME | 1949 | Latvian | Dunika | Skalbes |
| 19. | Gatis MAMIS | 1975 | Latvian | Dunika | Skalbes |