APPLICATION N° 38192/97

ASSOCIATION DES AMIS DE SAINT-RAPHAEL ET DE FRÉJUS and others
v/ FRANCE

DECISION OF 1 July 1998 on the admissibility of the application

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Article 6, paragraph 1 of the Convention *Restrictions on the exercise of the right of ownership concern a civil right However an application for judicial review of a prefectoral order approving a development plan in respect of an area is not decisive for such a right, since insufficient details of the restrictions were not given*

Article 25 of the Convention:

a) The concept of "victim" is an autonomous concept It must be interpreted independently of concepts of domestic law such as capacity to bring or take part in legal proceedings

b) The Convention does not provide for an "actio popularis"

c) A person who is unable to demonstrate that he is personally affected by the application or omission he criticises cannot claim to be the victim of a violation of the Convention

In the instant case the only subject of the proceedings was whether or not a particular prefectoral order was lawful However only municipal orders granting building permits were likely to have had the effect of restricting the applicants' rights of ownership

d) It is only in exceptional circumstances that the risk of a future violation can confer the status of victim on an applicant

e) An association cannot claim to be itself a victim of measures which affect its members but do not affect the association itself

f) An association may act on behalf of its members before the Commission only on the condition that it identifies them and provides evidence of its authority to represent them

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THE FACTS

The first applicant is an association called Les Amis de Saint-Raphael et de Frejus whose registered office is in Paris It is represented by Emilie Michaud-Jeannin, secretary to the association

On 14 May 1997, at the association's general meeting, a number of the members asked the association to represent them and lodge an application on their behalf with the European Commission

The second applicant, Catherine Omezzoli, born in 1965, is a French national and lives in Saint Raphael

The third applicant, Josyane Blanc born in 1942 is a French national and lives in Saint Raphael

The fourth applicant, Louis Duccini, born in 1930, is a French national and lives in Saint-Raphael

The fifth applicant, Roland Hessel, born in 1941, is a French national and lives in Agay

The sixth applicant, Monique Seite born in 1948 is a French national and lives in Agay

The seventh applicant, Lucien Benchimol, born in 1946, is a French national and lives in Agay

The eighth applicant, François Michaud, born in 1958, is a French national and lives in Saint-Raphael

They are represented before the Commission by Emilie Michaud Jeannin

A *The particular circumstances of the case*

The facts of this case centre on a planned urban development zone (*zone d amenagement concerté* - "ZAC"), known as the "ZAC du cap du Dramont", several kilometres to the east of Saint Raphael and built against the little wooded mound which, on one side of the Dramont headland, overlooks the beach where the Allies landed in 1944 and Agay harbour on the other

This *ZAC* was created pursuant to a ministerial order of 4 January 1985, which provided, *inter alia*, that "the task of developing the zone shall be entrusted to a public or private corporation in accordance with the terms of an agreement"

1 Proceedings relating to the application for judicial review of the ministerial order creating the *ZAC*

After petitioning the Ombudsman and applying to the Minister of Infrastructure to reconsider his decision, the applicant association, whose object - as described in its Memorandum and Articles of Association - is "the protection of the surroundings, quality of life and appearance of the two municipalities", applied to the Administrative Court on 5 August 1987 for judicial review of the ministerial order The court dismissed the association s application, holding that neither section 35 of the Act of 7 January 1983, nor section I of the National Planning Directive for the Protection and Development of Coastal Areas laid down specific rules of conduct and "the alleged flaws, even if proved, in the development agreements could not render the order complained of unlawful "

On 16 October 1992 the *Conseil d'Etat* upheld the Administrative Court's judgment

2 Proceedings relating to the application for judicial review of the prefectoral order

On 26 March 1987 the applicant association applied to Nice Administrative Court for judicial review and a stay of execution of the order of 18 July 1986 by which the Prefect of the Var had approved the plans for the Cap Dramont *ZAC* to be built at Saint-Raphael

On 4 July 1991 Nice Administrative Court set aside the prefectoral order, upholding four grounds submitted by the applicant association to the effect that the Act of 3 January 1986 on the Development Protection and Enhancement of Coastal Areas had been infringed

The court held first that the development plan infringed Article L 146-7, paragraph 2 (inserted into the Town Planning Code by the Act of 3 January 1986), which provides that "any new through-roads shall be laid at a minimum distance of 2 000 metres from the shore" because "the documentary evidence shows that the access roads planned to the east and west of the *Route Nationale 98*, which follows the coastline will involve new through roads being laid less than 2,000 metres from the shore Moreover, these roads will result in further congestion of the coastal road traffic"

The court went on to hold that the development plan infringed the provisions of section 27 of the Coastal Areas Act (which had not been inserted into the Code), according to which "other than in harbour and industrialised harbour areas . no alteration shall be made to the natural state of the seashore, whether by erecting breakwaters, draining, stone bedding, backfilling or otherwise " and noted "that the documentary evidence, particularly the survey and the attached plans, show[ed] that an area is to be stone bedded, a breakwater reinforced, a quay constructed, and jetties and permanent structures built, particularly seafront restaurants, all of which [was] intended to cater for the many visitors whom this vast project [would] attract, especially during the summer"

The court also examined the submission that there had been an infringement of Article L 146 6, paragraph 1, of the Town Planning Code, which provides that "documents and decisions relating to the zoning or occupation and use of land shall preserve the land and sea, and sites and landscapes of special interest or characteristic of the natural and cultural heritage of the coast . ." and found "that there is no evidence of any concern to protect the coast from damage to, among other things, the quality of the landscape and the state of the seabed near the shore, particularly the abundant clusters of posidonia growing along this hitherto unspoilt stretch of the coastline, a matter which should have received special attention in the course of the enquiry made prior to declaring the project to be in the public interest "

Lastly, the court referred to Article L 146-2, paragraph 1, of the Town Planning Code, which provides "in determining the capacity of sites which have been or are to be developed, the planning documents must take into consideration the need to protect the areas and types of environment referred to in Article L.146-6". It noted "that the documentary evidence show[ed] that the proposed project [would] cover a surface area of 105,000 m2 and that one of the zones (Za1), near the sea, [would] have a net surface area of 3,900m^2 on which hotel and other tourist accommodation, and commercial premises and services [would] be built to a height of 7 metres and, in some cases, even 13 metres, such a large scale project, which [would] inevitably drastically alter Agay bay, reveal[ed] a clear error of judgment "

The companies Dramont-Agay and Dramont Aménagement, which had been awarded the contract to develop the *ZAC*, applied to the *Conseil d'Etat* for the Administrative Court's judgment to be set aside

The applicant association submitted its written pleadings on 16 March 1992

In his pleadings the Government Commissioner submitted, *inter alia*, that "the development plan stops far short of turning a natural area into a potentially built up one. natural, wooded and protected areas account for almost two thirds of the *ZAC*'s

surface The reference in the judgment to the potential construction by the sea of buildings 13 metres high actually concerns only an exception, which must be limited to one building and will be in an area separated from the shore by a protected woodland Any development of a greenfield is of course regrettable However, neither this project nor the development plan implementing it is in any way so excessive as to give rise to a finding of a clear error" As regards the applications for cancellation of the building permits granted in respect of land in the *ZAC*, the Government Commissioner, relying on the Administrative Court s ruling that they had been filed out of time (see third set of proceedings), submitted that they should also be dismissed

In a judgment of 29 November 1996 the *Conseil d'Etat* quashed the Administrative Court s judgment on the grounds "that the public building works entrusted to the developer are to be undertaken outside the Cap Dramont ZAC, so that the submission that the object of those works breaches section 27 of the Act of 3 July 1996 is ineffective for the purposes of challenging the decision approving the development plan" The *Conseil d'Etat* also found that, in authorising the construction of buildings of a maximum height of 7 metres and, in one exceptional case, of up to 13 metres, the Prefect of the Var had not committed a clear error of judgment

3 Proceedings relating to the applications to stay execution of the building permits issued by the mayor of Saint-Raphael

In municipal orders of 30 November, 10 and 13 December 1990, and 7 January and 27 June 1991, the mayor of Saint-Raphael issued Dramont-Aménagement with a number of building permits for the construction of a building complex

On 27 September 1991 the applicant association applied to the President of Nice Administrative Court for judicial review of the municipal orders of 13 November 1990, 10 December 1990 and 7 January 1991 granting Dramont-Aménagement building permits

On 24 October 1991 Nice Administrative Court dismissed the applications for judicial review of the three municipal orders granting building permits, on the ground that it had been lodged out of time, that is more than two months after the first day on which the building permits in question had last been posted

On 29 November 1996 the *Conseil d'Etat* upheld the Administrative Court's judgment of 24 October 1991 dismissing the applications for judicial review of the building permits on the ground that they had been lodged out of time

B *Relevant domestic law*

Town Planning Code

Article L 111-1 1

"Development and town-planning laws may lay down national provisions or provisions specific to certain parts of the territory
"

Article L 146-1

"The provisions of this chapter shall be regarded as development and town-planning laws within the meaning of Article L 111-1-1 They specify the conditions of use of land, sea and lacustrine areas
(1) in the coastal municipalities defined in section 2 of Law no 86-2 of 3 July 1986 on the Development, Protection and Enhancement of Coastal Areas "

Article L 146-2

"In determining the capacity of areas which have been or are to be developed, all planning documents must take into consideration
(1) the need to protect the areas and types of environment referred to in Article 146-6
"

Article L 146 6

"Documents and decisions relating to the zoning or occupation and use of land shall preserve the land and sea, sites and landscapes of special interest or characteristic of the natural and cultural heritage of the coast, and the environments necessary to maintaining the biological balance "

Article L 146 7

"The construction of new roads is governed by the provisions of this Article Any new through roads shall be laid at a minimum distance of 2,000 metres from the shore
"

COMPLAINTS

1 The applicant association complains under Article 1 of Protocol No 1 to the Convention that it and its members, who own property in the Cap Dramont area, have suffered infringements of their right to peaceful enjoyment of their possessions It refers in this respect to the prefectoral and municipal orders pursuant to which property developers have succeeded in reducing the area of certain people s property and restricting their use thereof

2 The applicant association complains further both on its own and its members behalf of a lack of impartiality on the part of the Litigation Division of the *Conseil d Etat* which in a judgment of 29 November 1996 held that the Prefect of the Var had not committed a clear error of judgment It alleges that an owner of land in the ZAC who had been seeking to sell his property was a relative of one of the judges of the Litigation Division, which heard the appeal It also complains that the proceedings were unfair in so far as it was neither summoned before nor able to address the *Conseil d Etat* and complains of the length of the proceedings, which it alleges, began with an application in 1986 to the Minister to reconsider his decision, continued with the referral of the case in 1987 to the Administrative Court, which did not rule until 4 August 1991 and ended with the *Conseil d Etat* s judgment of 29 November 1996 (see second set of proceedings)

3 It complains lastly of a violation of Article 13 of the Convention on the ground that its right to an effective remedy was infringed by the prefect and the mayor

THE LAW

1 The applicant association claims that it and its members are victims of administrative decisions resulting in a violation of Article 1 of Protocol No 1 to the Convention

The Commission s first task is to examine whether the conditions laid down by Article 25 para 1 of the Convention have been complied with in this case

The relevant part of Article 25 para 1 of the Convention reads

> The Commission may receive petitions from any person non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention

The Commission recalls that in order to rely on that provision two conditions have to be satisfied the applicant must fall into one of the categories of applicants referred to in Article 25 and must be able to claim to be the victim of a violation of the Convention

a Can the applicant association be described as a victim?

As regards the first condition laid down by Article 25 of the Convention, the Commission notes that the applicant association is an association of natural persons, which complies with the definition of an "association" in French domestic law. As such, it clearly falls into one of the categories of applicants referred to in Article 25 of the Convention, namely that of non governmental organisations.

As regards the second condition, the Commission recalls that the concept of victim' as used in Article 25 of the Convention must be interpreted autonomously and independently of concepts of domestic law such as capacity to bring or to take part in legal proceedings (see for example No. 34614/96, Dec. 7.4.97, D.R. 89, p. 163).

An applicant cannot claim to be the victim of a breach of one of their rights or freedoms protected by the Convention unless there is a sufficiently direct connection between the applicant as such and the injury they maintain they suffered as a result of the alleged breach. According to the established case law of the Commission, an applicant association cannot claim to be itself a victim of measures alleged to have interfered with the Convention rights of its individual members (see, among other authorities, No. 24581/94, Dec. 6.4.95, D.R. 81, p. 123, at p. 127).

In the present case it is clearly not the applicant association as such which is the victim of the alleged violations of the rights guaranteed by Article 1 of Protocol No. 1 to the Convention. Solely the members of the applicant association as individuals, could claim to be victims of a violation of those rights (see, *mutatis mutandis*, No. 34614/96, cited above, p. 171).

b Can the members of the applicant association be described as "victims"?

In this respect the Commission notes that the applicant association claims also to represent its members as alleged victims of a violation of the right to peaceful enjoyment of their possessions. Furthermore it has shown that it was instructed by its members to lodge an application with the Commission on their behalf. The Commission also notes that the members of the association can be identified (see, by converse implication, No. 34614/96, cited above, p. 171).

Nevertheless, the Commission notes that it is not apparent from the domestic proceedings relating to the application for judicial review of the prefectoral order (see the second proceedings) that the association expressly complained about the possible consequences of that order for its members' right to peaceful enjoyment of their property.

It is clear both from the judgment of 4 July 1991 of Nice Administrative Court and from the applicant association's pleadings in reply to the *Conseil d'Etat* on 16 March 1992 that the application for judicial review of the prefectoral order was based only on general considerations relating to the protection of the environment and, more specifically, compliance with the provisions of the Coastal Areas Act of 1986.

The Commission recalls in this respect that the Convention does not provide for an *actio popularis* but requires the applicant to establish that he or she is or will be personally and directly affected by an act or omission amounting to a violation of the Convention There must therefore have been an actual infringement of a right and not a mere threat of an infringement (see No 28204/95, 4 12 95 D R 83, p 112)

In the instant case, however, the only subject of the proceedings in the administrative courts related to submissions, under the Coastal Areas Act, that the prefectoral order which created the project to develop the *ZAC* was unlawful

The Commission notes that the individual applicants have failed to show, either in the domestic proceedings or before the Commission, that their right to peaceful enjoyment of their possessions would have been infringed, contrary to Article 1 of Protocol No 1 to the Convention, unless the order in question had been set aside

In so far as the applicants real allegation is that there is a risk that their right to peaceful enjoyment of their property will be infringed if the prefectoral order is implemented, the Commission recalls that it is only in highly exceptional circumstances that an applicant may claim to be a victim of a violation of the Convention owing to the risk of a future violation An example of this would be a piece of legislation which, while not having been applied to the applicant personally, subjects him to the risk of being directly affected in specific circumstances of his life (see No 28204/95, cited above, pp 130 131)

In the instant case, the Commission notes that the applicants, taken individually have not submitted any evidence in support of their allegations, such as their title-deeds to property or documents relating to the consequences or losses they have allegedly suffered as a result of the implementation of the prefectoral order (see, *mutatis mutandis*, No 28204/95 cited above, p 133)

The Commission is of the opinion that there would be no real risk of the applicants right to peaceful enjoyment of their property being affected unless, in implementation of the prefectoral order, building permits concerning them directly and individually had been issued by the relevant authority

In this regard the Commission notes that the applicant association did indeed apply to Nice Administrative Court on 27 September 1991, while the proceedings to set aside the prefectoral order were still pending for judicial review of three municipal orders granting building permits There is no evidence however, that those building permits affected the applicants' right to peaceful enjoyment of their property, and even supposing that they had, the Commission notes that the actions to set aside the municipal orders granting building permits were ruled inadmissible by the *Conseil d'Etat* on 29 November 1996 on the ground that they were time-barred

The Commission notes further that there is no evidence either that the members of the association individually challenged the building permits on the merits

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 27 para 2 of the Convention

2 The applicant association goes on to complain that it did not have a fair hearing because it was not summoned to give evidence at the *Conseil d'Etat* hearing (see second proceedings) It submits further that, on account of the composition of the Litigation Division of the *Conseil d'Etat*, which gave judgment on 29 November 1996 (see second proceedings), and, in particular, the vested interest of certain members of that court in overturning the Administrative Court's judgment, given their relationship with, *inter alia*, a landowner wishing to sell his land to the property developers responsible for developing the ZAC, its right to be heard by an impartial tribunal was infringed It contends, lastly, that the overall length of the proceedings failed to comply with the "reasonable time" requirement It relies on Article 6 para 1 of the Convention, which in so far as relevant provides

> "In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal "

The Commission must first examine whether Article 6 para 1 applies to the present case and, in particular, whether there was a dispute concerning a "civil right" which could be claimed, at least arguably, to be recognised in domestic law A dispute of a genuine or serious nature must be at issue and the outcome of the dispute must be directly decisive for the right in question (see Eur Court HR, Oerlemans v the Netherlands judgment of 27 November 1991, Series A no 219, pp 20-21, paras 45-49)

In the instant case the Commission notes that the applicant association complains, under Article 6 of the Convention, solely about the proceedings relating to its application for judicial review of the prefectoral order approving a project for an urban development zone which it considered contrary to the 3 January 1986 Act on the Development, Protection and Enhancement of Coastal Areas (see second proceedings)

Having regard to its conclusions regarding Article 1 of Protocol No 1, the Commission concludes that the applicant association itself cannot rely on any infringement of a civil right

However, the Commission notes that the applicant association also claims that the prefectoral order resulted in restrictions on the exercise by its members of their right to peaceful enjoyment of their property The Commission concludes from this that there was a "civil right" at issue within the meaning of Article 6 para 1 of the Convention (see, for example, Eur Court HR, Zander v Sweden judgment of 25 November 1993, Series A no 279-B, p 40, para 27)

Nevertheless, and having regard to its conclusions in respect of the complaint based on an alleged violation of Protocol No 1 the Commission considers that the prefectoral order in question did not result in sufficiently serious restrictions on the right of the members of the association to peaceful enjoyment of their property As the Commission has noted above, only the municipal orders granting building permits in implementation of that prefectoral order could have had the effect of restricting the exercise of their property rights The Commission notes that the domestic proceedings to set aside the municipal orders granting those building permits are not at issue in this case Furthermore, it observes that in the domestic proceedings to set aside the prefectoral order, the applicant association did not refer to the consequences of that order for its members property but contested only the lawfulness of the order under the Act of 3 January 1986

The Commission therefore considers that it has not been established that the use made by the members of the association of their property was restricted as a result of the prefectoral order

The Commission therefore considers that, in the circumstances of this case, the dispute in question was not directly decisive for the "civil" rights of the applicant association or its members Article 6 para 1 of the Convention is therefore inapplicable

It follows that this complaint must be rejected as being incompatible *ratione materiae* with the Convention pursuant to Article 27 para 2

3 The applicant association claims that it did not have an effective remedy within the meaning of Article 13 of the Convention on the ground, *inter alia*, that given the alleged partiality of the *Conseil d'Etat*, that body should have declined jurisdiction

The Commission notes that the applicant was able freely to exercise in the administrative courts the remedies available to it under French law Furthermore the guarantees under Article 13 have been consistently interpreted by the Convention organs as applying only in respect of a grievance which can be regarded as "arguable" (see Eur Court HR, Powell and Rayner v the United Kingdom judgment of 21 February 1990, Series A no 172, p 14, para 31)

In the present case however, the Commission has dismissed the submissions on the merits on the ground that they do not reveal any appearance of a violation of the Convention

It follows that the complaint is manifestly ill-founded, pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.