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

FIRST SECTION

DECISION

Application no. 13482/15
Radmila TOLIĆ and others
against Croatia

The European Court of Human Rights (First Section), sitting on 4 June 2019 as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to the fact that Ksenija Turković, the judge elected in respect of Croatia, withdrew from sitting in the Chamber (Rule 28) and that the President of the Chamber accordingly decided to appoint Jovan Ilievski, the judge elected in respect of the Republic of North Macedonia, to sit as an *ad hoc* judge (Rule 29 § 2 (b));

Having regard to the above application lodged on 11 March 2015,

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

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. They were all represented by Mrs Lj. Maravić-Pirš, a lawyer practising in Zagreb.

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

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A. The circumstances of the case

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

1. Background information

4. The applicants are owners of flats located in a residential building in Palinovečka Street in Zagreb (Vrbani III). The building was constructed by a private investor, company G., in 2005-06. The building work was sub-contracted to company Z. and supervised by company C. All three companies, G., Z. and C., are privately-owned.

2. Water contamination

5. On 30 May 2006 the water supply in the building was analysed for the purposes of issuing a permit for use of the building (so-called "A-analysis"). The A-analysis by default did not include testing for mineral oils and its results of 2 June 2006 indicated that the water supply was in compliance with the relevant regulations.

6. The applicants moved into the flats between June and December 2006. Shortly after moving in they started noticing that the water had a specific odour and left greasy traces, of which they informed the three companies.

7. On 30 June 2006 company Z. requested a further water analysis, including of the water's mineral oil content. Four samples were taken in four different flats. The quantity of mineral oils in three of the samples was below the permitted maximum of 10 micrograms per litre (µg/L), whereas in one sample the quantity of mineral oils was 11 µg/L.

8. On 5 July 2006 the municipal authority performed a technical inspection of the building. The report (*zapisnik*) of the sanitary inspectorate, which formed part of the file, stated that the results of the water analyses carried out by the Public Health Institute of the City of Zagreb (*Zavod za javno zdravstvo Grada Zagreba* – hereinafter "the PHIZ") were in order (*nalaz uredan*).

9. Further analyses carried out by the PHIZ on 28 September and 3 October 2006 in the flat of one of the applicants showed an increase in mineral oils – 160 µg/L and 500 µg/L respectively (from samples taken on 22 and 29 September 2006). The water was described as unfit for consumption and in breach of the health regulations (*zdravstveno neispravna*). At the same time the analysis of the water in the public water-supply system showed that it was in compliance with the regulations.

10. Between 25 October and 5 December 2006, at the request of company Z. and the residents' representatives (*predstavnici stanara*), the PHIZ analysed the mineral-oil content of an additional forty-three samples,

of which twenty-four showed an increased presence of mineral oils, the highest quantity being 3,530 µg/L.

11. Between 17 November 2006 and 26 January 2007 four meetings were held with company G.'s representatives. Company G. undertook (*obvezuje se*) to permanently resolve the problem of water contamination, including covering all the expenses related thereto and paying the water bills in the building.

12. On two unspecified dates at the end of 2006 and beginning of 2007 the residents' representatives had two meetings with the mayor of Zagreb. He said that the City of Zagreb would cover the expenses related to establishing the cause of the contamination, and all water bills until the problem was resolved.

13. On 9 February 2007, pursuant to company G.'s request, the municipal authority issued a permit for the use of the building in question on the basis of the findings of the technical inspection performed on 5 July 2006 (see paragraph 8 above) and the water analysis conducted in May and June 2006 (see paragraphs 5 and 7 above). The permit was signed by M.S. As no one appealed against it, the permit became final on 26 February 2007.

14. On two occasions between March and May 2007 the pipes in the building were flushed out (*ispiranje*) in order to remove the contamination, but to no avail. The costs of the flushing appear to have been covered by company G. and/or company Z.

15. In July 2007 the Zagreb office responsible for health (*Gradski Ured za zdravstvo, rad, socijalnu zaštitu i branitelje* – hereinafter "the municipal health office") got involved in the matter, and subsequently organised a number of meetings with the representatives of Z., PHIZ, the water supply company, the sanitary inspectorate and the residents.

16. In August 2007 PHIZ analysed the water from fire-extinguishing hydrants in the building at least three times. The results issued in September 2007 showed increased levels of mineral oils. Also in August 2007 hyper-chlorination was undertaken on two occasions in order to remove the contamination, but to no avail. The municipal health office planned another hyper-chlorination exercise in September 2007.

17. On 29 August 2007 the applicants were informed by PHIZ that the water was not safe to use (*nije zdravstveno ispravna*).

18. In early September 2007 the City of Zagreb established a crisis committee, the members of which were representatives of the PHIZ, the Croatian Public Health Institute, and the Toxicology Institute. It coordinated the taking of samples of water and the flushing out of pipes, and conducted analyses of water in various points in the city's water-supply system, as well as in the flats in the building at issue. The costs of the water analyses were covered by the City of Zagreb. The city also provided the applicants with a drinking-water tank.

19. On 4-5 September 2007 a total of 219 drinking-water samples were collected in the building, the analyses of which, performed by PHIZ, showed that the water in the building was contaminated.

20. On 5 September 2007 the Zagreb Sanitary Inspectorate (*odjel sanitarne inspekcije*) issued a notice that the water in the building was fit only for flushing toilets.

21. On 11 September 2007 the crisis committee issued its conclusions: the quality of the city water supply was in compliance with the regulations, whereas that of the water within the building was not in compliance with the health regulations and should not be used, except for flushing toilets. It also considered that the levels of contamination found were not dangerous for people's health (*ne predstavljaju akutnu opasnost za zdravlje*) as they were several times lower than those which, according to WHO and EU directives, could provoke mild reactions.

22. On 12 September 2007 the PHIZ formed an investigation team in order to find out the source of the contamination.

23. In September 2007 the applicants flushed out the water pipes in their flats on at least four occasions. This was followed by a further analysis by the PHIZ, which showed some improvement.

24. By 25 September 2007 the PHIZ had collected about 1,200 water samples, of which about 800 had been analysed by the same date.

25. Following analyses carried out on 6 and 14 September and on 3 and 4 October 2007, the PHIZ issued a report confirming that the city water-supply system was in compliance with the regulations, whereas the water in the building was not, apparently because the sanitary installation work had not been done properly. The same report proposed the replacement of all the water-supply installations in the building.

26. In October 2007, at the request of the crisis committee, the water pipes in some of the flats were analysed. The results indicated that the pipes were not the source of the contamination.

27. In the same period, October 2007, following a request by the city authorities (*Gradsko poglavarstvo*) of August 2007, the Ruđer Bošković Institute issued its opinion. In substance, it agreed that the cause of the water contamination was within the building. It also specified that the water contained high levels of alkyl-benzene compounds, primarily ethyl-benzene and xylene.

28. On 4 and 16 October 2007, following a request by the Croatian Ministry of the Interior and the Ministry of Health and Social Care, the Maribor Public Health Institute carried out an additional water analysis. Its results presented in November 2007 confirmed that the water in the public water-supply system was in compliance with the regulations, whereas the water in the flats contained high levels of mineral oils such as xylene, toluene, mesitylene and ethyl-benzene. The experts from Maribor opined that the levels found were not dangerous to human health. They had also

found increased levels of copper, zinc and lead, but stated that they were below the maximum levels allowed.

29. It transpires from the case file that by 31 December 2007 the Ministry of Health had sought an additional analysis in Graz, and the city health office had sought an analysis from the Vienna Public Health Institute. The results of both analyses corresponded to the existing results of the PHIZ analyses.

3. Request to revoke the permit for use of the building

30. On 31 December 2007 the applicants submitted a request to the Ministry for Environmental Protection, Planning and Construction (*Ministarstvo zaštite okoliša, prostornog uređenja i graditeljstva*) to revoke the permit for use of the building, considering that it had been issued unlawfully.

31. By a letter of 29 January 2008 the Ministry notified the applicants that at the time when the technical inspection had taken place, a sanitary inspector had examined two findings of the PHIZ, which had confirmed that the water in the building was safe. The permit had therefore been issued in compliance with the law. The applicants received that letter on 6 February 2008.

32. On 18 February 2008 the applicants appealed against that notification to the same Ministry, complaining, *inter alia*, that their right to appeal had been breached as the Ministry had not issued a decision on their request. The matter is still pending.

4. Criminal proceedings

33. In August 2007, following numerous articles in the media on contaminated water, the Zagreb Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*) compiled a case file. In September and October 2007 the State Attorney Office obtained the relevant documentation from the PHIZ and the crisis committee indicating that the source of the contamination was within the building. In the same period the police interviewed forty-two people, including sanitary inspectorate and PHIZ employees.

34. On 26 October 2007 the applicants lodged a criminal complaint with the State Attorney Office against companies G. and Z.; the investors I.V. and B.V.; the supervising engineers D.P. and D.V.; the chief engineer M.V.; and M.S., the head of the municipal authority that had issued the permit for use of the building. The applicants alleged that those people were responsible for the water becoming contaminated, endangering the health and well-being of a number of people. The case file compiled on the basis of that criminal complaint was joined to the existing case file compiled by the State Attorney.

35. Between 16 November 2007 and 7 February 2008, following the requests of the State Attorney to that effect, the police submitted transcripts of the interviews with all the suspects, sanitary inspectors and the power supply company employees; the results of the Maribor Public Health Institute's water analysis of November 2007; and information on the pipes in the building, as well as on the circumstances of the water tests carried out before the permit for use had been issued. The State Attorney also requested the entire case file from the authority that had issued the permit for use.

36. On 14 March 2008 a coordination meeting was held in the State Attorney office, attended by the Principal State Attorney, his deputies, the Municipal State Attorney and his deputy. They were informed that the contamination might have been caused by badly installed hydro-insulation in the course of construction.

37. On 17 April 2008 a coordination meeting was held at the Zagreb Police Department, attended by representatives of the sanitary inspectorate, the police, the Ministry of Health and Social Welfare, the State Attorney Office and the Maribor Public Health Institute. The representative of the latter informed those present that the cause of the contamination was bituminous matter which had not dried sufficiently before having been covered by cement and had penetrated pipes and contaminated the water with xylene, toluene and mesitylene.

38. In April 2008 the State Attorney Office requested information on the harmfulness of the water for human health. On 23 June 2008 the PHIZ informed them that the contaminated water presented a danger to human health. On 15 July 2008 the Ministry of Health and Social Welfare submitted the report of the Toxicology Institute indicating that the water in the flats at issue was not safe because of an increased level of mineral oils and its use for drinking, cooking or washing was not recommended. On 7 August 2008 the Toxicology Institute, pursuant to a further enquiry by the State Attorney, submitted that it could not rule out the possibility that the water might be harmful to health. In September 2008 the State Attorney ordered the police to seize all construction logs and construction records related to the building at issue.

39. On 7 October 2008 the State Attorney Office informed the applicants that it had asked an investigating judge of the Zagreb County Court (*Županijski sud u Zagrebu*) to investigate their complaints.

40. On 17 October 2008 the Zagreb County Court ordered a toxicological and forensic examination of the water samples. The expert report of 2 July 2009 indicated that the water contained increased levels of heavy metals, copper, zinc and lead as a result of metal corrosion, but that consuming the water posed no danger for the health of adults. There was no evidence, however, that the water posed no risk of kidney and liver damage for babies and small children. That expert report was received by the State Attorney on 19 August 2009. On 10 November 2009 the experts issued a

supplementary opinion, specifying that the drinking water represented a threat to human health as it could cause kidney and liver damage and have a carcinogenic effect.

41. Between July 2010 and January 2011 the experts' findings provided in the course of the civil proceedings were obtained (see paragraphs 47 and 49 below).

42. On 29 February 2012 the State Attorney rejected the applicants' criminal complaint against I.V., B.V., D.V., M.V., M.S. and company G. on the grounds that there was nothing to suggest that they had committed a criminal offence. In particular, in respect of M.S., the State Attorney found that the permit for use of the building had been issued on the basis of valid water analyses performed by an authorised laboratory, which had confirmed that the water was safe, and that there were therefore no elements on which to base her criminal liability.

43. The applicants were informed that they could ask for the case to be brought before an investigating judge of the Zagreb County Court. They availed themselves of that possibility on 3 May 2012, but after a remittal their case was dismissed on 26 November 2013. That decision was upheld on 10 March 2014.

44. On the same date as the applicants' criminal complaint against I.V., B.V., D.V., M.V., M.S. and company G. was rejected, on 29 February 2012, the State Attorney indicted D.P., company Z., and four other persons to whom the investigation had been extended – E.M.B., M.R., S.B., and M.B. – in the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*). They were charged with endangering life and property by failing to take the necessary measures to prevent mineral oils and acids from entering the water-supply system in the applicants' building.

45. Between 19 September 2012 and 1 March 2013 four hearings were held in which the defendants gave statements and it was decided that five witnesses would be heard. The hearings scheduled for 4 April 2013 and 27 April 2015 were adjourned. On 28 May 2015 the main hearing started afresh due to the replacement of the president of the panel. Between 28 May 2015 and 6 February 2018 thirteen hearings were held, during which the court read the indictment, heard fourteen witnesses, examined the case file, and ordered a forensic expert report on the quality of construction of the building at issue. That report has not yet been obtained.

46. As of 1 February 2019 the criminal proceedings were still ongoing.

5. The civil proceedings

(a) Non-contentious proceedings

47. On 30 October 2007, 3 April and 15 May 2008 the applicants initiated three sets of non-contentious proceedings aimed at securing evidence. In the course of those proceedings three on-site inspections took

place and a number of expert reports were drawn up, establishing, *inter alia*, that the water from the city water-supply system was safe and that the source of the contamination was within the building, most probably caused by an inadequate insulation coating, which was allowing various chemical compounds to penetrate into the water running through the pipes.

(b) Civil proceedings

48. On 26 May 2008 the applicants brought a civil claim for compensation in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against companies G., Z., and C. They submitted, *inter alia*, that there had been a hidden defect, which they could not have observed through the usual inspection of the flats before they had moved in.

49. In the course of the proceedings extensive forensic evidence was collected and examined, amounting to several thousands of pages, and a number of witnesses and expert witnesses were heard. The court examined expert reports drawn up by the PHIZ, the public health institute Andrija Štampar (former PHIZ), the Croatian Public Health Institute, the Ruđer Bošković Institute, Ingekspert, the Maribor Public Health Institute, and documentation related to the work of the crisis committee. In substance, all the reports and experts agreed that the water in the city water-supply system was in compliance with the regulations, whereas the water within the building was contaminated because the hydro-insulation work had not been done properly. Notably, hydro-insulation material had been applied directly onto the pipes, whereas layers of different material should have been applied in between. In addition, the hydro-insulation material, which had been previously diluted, had not been left to dry completely before being covered by concrete (*beton*). As a result, mineral oils and various chemical compounds (heavy metals, xylene, toluene, mesitylene and ethyl-benzene) had penetrated the pipes and entered the water. The experts agreed that the only solution was for the entire water-supply installation within the building to be replaced.

50. Among the witnesses heard were PHIZ employees. They submitted that the samples taken for the purpose of issuing the permit for use of the building had indicated that the water in the building at the time had been in compliance with the relevant regulations. It had not been until 2007 that a large-scale water analysis had been undertaken, which had indicated that the water was contaminated and that the source thereof was within the building.

51. On 19 July 2013 the Zagreb Municipal Civil Court issued an interim judgment, finding companies G., Z. and C. jointly liable for the damage suffered by the applicants, pursuant to the Obligations Act and the Construction Act. It reserved its decision on the amount of damages until the interim judgment became final. In substance, the court accepted the experts' findings. It also established that there had been a hidden defect which could not have been detected by the applicants at the time they had

moved in, as the contamination and the unpleasant odour had developed gradually given that the results of the analysis done at the time had been within the legal norms.

52. On 9 June 2015 that judgment was largely upheld by the Zagreb County Court. Notably (a) the ninety-sixth applicant's claim against company G. was quashed and sent to the Commercial Court, as the court with jurisdiction to rule on the matter, and (b) the twenty-third, forty-eighth and forty-ninth applicants' claim in respect of company C. was dismissed as the Obligations Act in force in 2005, when they had bought their flats, had not provided for the liability of construction site supervisors. The remainder of the judgment was upheld.

53. On 17 July 2015 company C. sought the re-opening of the proceedings.

54. Between 23 and 28 July 2015 companies G., Z. and C. lodged appeals on points of law before the Supreme Court.

55. On 2 October 2015 the Municipal Civil Court decided to stay the proceedings on the proposal to reopen the proceedings until the Supreme Court had ruled on the appeals on points of law.

56. As of 1 February 2019 the appeals on points of law were still pending.

6. Other relevant facts

57. On October 2006 the sanitary inspectorate issued an instruction that in the future any analysis related to issuing permits for the use of buildings must include testing on mineral oils.

58. The applicants submitted a copy of an email of 5 September 2007, sent by a private person G.Š. to the press relations service of the City of Zagreb enquiring about the technical inspection and the permit for use. On the email there was a handwritten note to the effect that the analysis of 2 June 2006 (see paragraph 5 above) had never been delivered to "this office" (see paragraph 81 below). The note appears to have been made by M.S.

59. It would appear that company C. lodged a criminal complaint against D.P. and I.V., as the supervision contract (*ugovor o provođenju nadzora*), which bore the date of 5 May 2003, was first drawn up on 1 October 2007.

B. Relevant domestic law

1. The Constitution

60. Article 34 of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with further amendments) provides for the inviolability of the home.

61. Article 35 provides that everyone has the right to respect for and legal protection of his or her private and family life, dignity, reputation and honour.

62. Article 48 guarantees the right of ownership.

2. Administrative Procedure Act

63. Section 11 of the Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86 with further amendments, and Official Gazette of the Republic of Croatia no. 53/91 with further amendments) provides, *inter alia*, that a party to proceedings (*stranka*) has the right to lodge an appeal against a first-instance decision.

64. The other relevant provisions of this Act, notably sections 49 (relating to the parties to the proceedings) and 218 (governing an appeal for failure to respond; *žalba zbog šutnje administracije*), are set out in *Ptičar v. Croatia* (dec.), no. 24088/07, 6 January 2011, and *Rauš and Rauš-Radovanović v. Croatia* (dec.), no. 43603/05, 2 October 2008.

3. Administrative Disputes Act

65. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77, and Official Gazette of the Republic of Croatia no. 53/91 with further amendments) governing an action for failure to respond (*tužba zbog šutnje administracije*) are set out in *Rauš and Rauš-Radovanović*, cited above.

4. Obligations Act

66. The Obligations Act (*Zakon o obveznim odnosima*, Official Gazette no. 35/05) entered into force on 1 January 2006, with the exception of certain parts of sections 26 and 29, which are irrelevant in the present case.

67. Sections 400, 404, and 410 set out details as regards sellers' liability for the material defects of sold goods, latent defects and the rights of buyers, respectively.

68. Section 633 provides details on liability for the basic requirements of construction.

69. Section 1107 provides for joint responsibility of two or more persons for any damage caused (*solidarna odgovornost*).

5. Construction Act

70. Section 9(1) of the Construction Act (*Zakon o gradnji*, Official Gazette no. 175/03) provides that a building must be planned and constructed in such a way that it does not jeopardise hygiene and human

health, or the working and living environment, in particular due to, *inter alia*, water contamination.

71. Section 129(1) provides that a new building (*izgrađena građevina*) can be used after a permit for its use has been issued.

COMPLAINTS

72. Applicants nos. 1 to 95 complained, under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1, and applicant no. 96 under Article 13 and Article 1 of Protocol No. 1, of the lack of an adequate and effective response by the domestic authorities to their allegations that they had been exposed to serious environmental danger for several years related to water contamination in their flats.

73. In their observations the applicants specified that they were complaining (a) that a permit had been issued for use of the building; it had not been revoked following their request to that effect; the Ministry for Environmental Protection had ruled on their request not by issuing a decision, but by means of a letter; and the Ministry had not decided on their appeal against the ruling in that letter; (b) that no indictment had been filed against those they considered responsible, in particular M.S., who had signed the permit for use; and (c) about the criminal proceedings and the fact that no one had been criminally sanctioned yet. They stressed that they were not complaining about the civil proceedings.

THE LAW

74. The Court reiterates that the scope of a case referred to it in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, ECHR 2018). The Court considers that the complaints in the present case fall to be examined under Article 8 of the Convention, which reads as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

75. The Government submitted that the State had fulfilled its positive obligations and that there had been no violation of the Convention.

76. In particular, the contamination of the water was not the fault of the State but the result of improper construction work by private companies. The authorities had not known that the water was unfit for use at the time of the technical inspection, as the prior water analyses had indicated that the water quality was fine, with only one minor exception, and the first signs of contamination had been noticed only afterwards. As regards the applicants' submission that the results of the water analysis had not formed part of the case file for the permit for use, the Government submitted that they never were. The case file contained only the sanitary inspector's opinion as to whether the water was of a satisfactory quality or not, issued on the basis of the analysis performed by an authorised laboratory. Moreover, the defect had been hidden and could not have been detected either at the time the applicants had moved in or during the technical inspection.

77. The procedure for issuing the permit for use had been lawful. In any event, the permit for use had never been of relevance to the applicants as they had bought the flats and moved into them before it was issued. They had thus ignored section 129(1) of the Construction Act, which prohibited the use of a building before a permit for use was issued. As the permit for use had been issued in February 2007, the application had been lodged with the Court outside of the six-month time-limit. The Ministry had not ruled on the applicants' appeal as it had obviously considered that no new and relevant complaints in that regard had been raised.

78. The State had undertaken a number of measures in order to find the cause of the water contamination and remove it. It had set up a crisis committee, asked the public health institutes of Zagreb and Maribor to carry out water analyses and notified the applicants that the water must not be used. It had established, following the analysis carried out in September 2007, that the source of the contamination was within the building, and it had ordered the hyper-chlorination of the internal water-supply system. It had also conducted exceptionally complex civil proceedings and had found

the defendant companies liable for the damage the applicants had suffered, thus meeting the requirements of Article 13. Given that the exact amount of damages was yet to be determined, the application was premature. In any event, the applicants had not complained about the civil proceedings.

79. The Government maintained that the institution of criminal proceedings was not an appropriate remedy within the meaning of Article 8, as there had been no acts of violence against any of the applicants, but that an effective domestic remedy was available in civil proceedings. Also, Article 8 did not guarantee criminal prosecution of individuals whom the applicants deemed responsible. In any event, the respondent State's criminal-law system was entirely in compliance with the Convention requirements. The police and the State Attorney Office had conducted a comprehensive investigation, examined voluminous documentation, and interviewed a number of witnesses. This had resulted in complex criminal proceedings, which were still ongoing, thus making the application premature. Whatever its outcome, even if the defendants were punished, it would have no bearing on the applicants' right to a home and ownership. There was also nothing to indicate that the State Attorney's decision not to prosecute M.S. had been arbitrary or unfounded, as the State Attorney had provided adequate, sufficient and extensive reasons why he had considered there to be no evidence on the basis of which she could be prosecuted.

2. The applicants

80. The applicants submitted that their complaints did not relate to the civil proceedings, but to a violation of their rights in the procedure for issuing the permit for use, the procedure for having it revoked, and the criminal proceedings.

81. The permit for use should never have been issued, as the problem of contaminated water had been known, or should have been known, to the three companies and the relevant authority. The A-analysis had been incomplete, as it had not included testing for the presence of mineral oils. Moreover, the results had never been sent to the relevant office (see paragraph 58 above) or published; nor had the applicants ever seen them. By 5 July 2006 analyses had shown elevated levels of mineral oils in the water supply of four flats. The applicants had started complaining about the water already in autumn 2006, after they had moved in, which was before the permit had been issued.

82. The applicants further submitted that the Ministry had had a duty to issue a decision on their request that the permit for use be revoked, so that they could have known whether to initiate administrative dispute proceedings. They had also never received a reply to the appeal they had lodged against the Ministry's notification. They had thus been deprived of their right to appeal under Article 13. Given that their appeal was still

pending, their complaint about the issuing of the permit for use had been submitted within the six-month time-limit.

83. Furthermore, the relevant bodies had failed to undertake an effective and thorough investigation as they had not indicted all those that the applicants considered responsible. In particular, the permit for use had been issued by M.S., against whom the applicants had lodged a criminal complaint but against whom no criminal proceedings had ever been instituted. The supervision contract, which should have been submitted to M.S. and which bore the date of 5 May 2003, had been first drawn up on 1 October 2007, that is after the permit for use had been issued. Therefore, the conclusion that there were no elements for her criminal prosecution had been arbitrary.

84. The applicants further submitted that the criminal proceedings, which had lasted for more than ten years, were just a formality and not really aimed at punishing those responsible for the contamination. The applicants had lodged a criminal complaint on 26 October 2007 but it had been only on 7 October 2008 that the State Attorney had requested an investigation, and only in 2012 that an indictment had been issued against six defendants. Those proceedings were still ongoing. Since then, the judges in the case had changed and every so often the hearings had been adjourned at the defendants' request as they were obviously stalling the proceedings so that they would become time-barred.

85. The sanitary inspectorate's notification made at the end of 2007, that the water was suitable only for flushing toilets, was still in force. The applicants submitted that the unbearable odour in their flats, which had lasted for more than ten years, amounted to an act of violence. The contamination was the result of work carried out unprofessionally by three privately-owned companies, but the owner of one of them was a former Croatian politician. The current legal system did not offer them adequate protection given that it had taken ten years to conduct all the proceedings, while those who were really responsible had evaded liability. Although the crisis committee had taken certain measures, the State had taken no action to remove the contamination or to provide them with adequate housing until the problem was resolved.

B. The Court's assessment

1. Permit for use of the building

86. The relevant principles are set out in *McFarlane v. Ireland* [GC] (no. 313333/06, §§ 107 and 108 *in limine*, 10 September 2010), and *Sabeh El Leil v. France* [GC] (no. 34869/05, § 32, 29 June 2011).

87. Regardless of the question whether the applicants could or could have not appealed against the permit for use (see paragraphs 63-64 above)

the Court notes that, in any event, they filed a request that the permit for use be revoked (see paragraph 30 above). It also observes, however, that they failed to pursue their request in accordance with the conditions set out in the Administrative Procedure Act and the Administrative Disputes Act. Notably, as the Court has already established, the Administrative Procedure Act enables applicants whose request has not been dealt with within the statutory time-limit to lodge an appeal as if their request had been denied (appeal for failure to respond). Furthermore, under the Administrative Disputes Act administrative dispute proceedings can be instituted before the Administrative Court when a competent body has failed to issue an administrative decision on the party's request or appeal (see paragraph 65 above; see *Štajcar v. Croatia* (dec.), no. 46279/99, 20 January 2000). Therefore, the applicants had at their disposal remedies that would have enabled them to pursue their request for the revocation of the permit and/or the appeal in that regard and to bring the matter before the Administrative Court. If that court had rejected their application, they could even have lodged a constitutional complaint (see *Pavlović and Others v. Croatia*, no. 13274/11, § 32, 2 April 2015, with further references).

88. Accordingly, the applicants' complaint about the permit for use and the lack of an effective domestic remedy in that regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Failure to charge M.S., I.V., B.V., D.V., M.V. and company G.

89. The relevant principles are set out in *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 258-60, ECHR 2014 (extracts)). In particular, the six-month period runs from the final decision in the process of exhaustion of domestic remedies (ibid., § 259).

90. Quite apart from the fact that the Convention does not guarantee anybody's criminal prosecution or conviction, the Court notes that the applicants' criminal complaint against M.S., I.V., B.V., D.V., M.V., and company G. was dismissed on 10 March 2014 at the latest (see paragraph 43 above), whereas they lodged their application with the Court, including this complaint, on 11 March 2015. Accordingly, their complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. The ongoing criminal proceedings against D.P., E.M.B., M.R., S.B. M.B., and company Z, and the respondent State's response

91. The relevant principles in this regard are set out, for example, in *Hatton and Others v. the United Kingdom* ([GC], no. 36022/97, §§ 96-98, ECHR 2003-VIII). Although there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously

affected by noise or other pollution an issue may arise under Article 8 (see *Hatton and* Others, cited above, § 96). Severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see, *mutatis mutandis*, *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C, and *Guerra and Others v. Italy*, 19 February 1998, § 60, *Reports of Judgments and Decisions* 1998-I). Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly.

92. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 41, Series A no. 172; *López Ostra*, § 51; and *Hatton and Others*, § 98, both cited above).

93. The State's positive obligations under Article 8 of the Convention implying that the authorities have a duty to apply criminal-law mechanisms of effective investigation and prosecution concern allegations of serious acts of violence by private parties. Nevertheless, only significant flaws in the application of the relevant mechanisms amount to a breach of the State's positive obligations under Article 8. Accordingly, the Court will not concern itself with allegations of errors or isolated omissions since it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators' criminal responsibility (see *B.V. and Others v. Croatia* (dec.), no. 38435/13, § 151, 15 December 2015).

94. Previous cases in which the Court found that Article 8 of the Convention required an effective application of criminal-law mechanisms, in relations between private parties, concerned the sexual abuse of a mentally handicapped individual; allegations of a physical attack on the applicant; the beating of a thirteen-year-old by a grown-up man, causing multiple physical injuries; the beating of an individual causing a number of injuries to her head and requiring admission to hospital; and serious instances of domestic violence (ibid., § 154, with further references). In contrast, as far as concerns less serious acts between individuals which may cause injury to someone's psychological well-being, the obligation of the

State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *Noveski v. the Former Yugoslav Republic of Macedonia* (dec.), nos. 25163/08 and 2 others, § 61, 13 September 2016, and *Söderman v. Sweden* [GC], no. 5786/08, § 85, ECHR 2013).

95. The Court notes that the allegations of environmental harm in the instant case do not, as such, relate to the State's involvement in industrial pollution (see, in the context of serious industrial pollution, *Dubetska and Others v. Ukraine*, no. 30499/03, § 73, 10 February 2011). The allegations concern the State's failure to adequately and effectively respond to the applicants' allegations that they were exposed to serious environmental danger for several years related to water contamination in their flats. The Court's task in such a situation is to assess whether the State took all reasonable measures to secure the protection of the applicants' rights under Article 8 of the Convention (see the *López Ostra*, cited above, § 55). In making such an assessment all the factors, including domestic legality, must be analysed in the context of a given case (see, *mutatis mutandis*, *Dubetska and Others*, cited above, § 141).

96. Turning to the present case, the Court notes firstly that there is no dispute between the parties that the water contamination was caused by the private companies and not by the State.

97. Secondly, the applicants had acquired the flats and moved in before the permit for use was issued. They conceded that the water contamination had not been detectable when they had moved in. At that time, two water analyses were conducted, the so-called A-analysis and a subsequent one at company Z.'s request. While the applicants submitted that the A-analysis had been incomplete as it had not included testing for the presence of mineral oils, the Court notes that at the time A-analyses by default did not include testing for mineral oils. It was only later that the sanitary inspectorate issued an instruction that in the future A-analyses should include testing for mineral oils (see paragraphs 5 and 57 above). It is also noted that, contrary to the applicants' submission, the second analysis indicated a slightly increased quantity of mineral oils in only one flat out of four (see paragraph 7 above). It was on the basis of those analyses and the consent of the sanitary inspector, *inter alia*, that the permit for use was issued. It was also on the same grounds that the State Attorney decided that there were no grounds for prosecuting M.S.

98. Thirdly, once the applicants had started complaining about the water, the State undertook a series of measures, including the following: (a) at the end of 2006 it decided to cover the expenses related to finding out the cause of the water contamination and the water bills, even though it is not clear from the case file whether it was the State or company G. that covered the

bills (see paragraphs 11-12 above); (b) it established a crisis committee composed of experts in order to identify the cause of the water contamination; (c) it had hundreds of water samples analysed by various institutes, both domestically and abroad (see paragraph 29 above); (d) it provided the applicants with drinking water (see paragraph 18 *in fine* above); and (e) it had the water pipes hyper-chlorinated on several occasions in an attempt to remove the contamination. Even though it was not until June 2008 that it was indicated for the first time that the water was unfit for human consumption and posed a health risk, it was as early as August 2007 that the respondent State had informed the applicants that the water was not safe to use, and that it should be used only for flushing toilets (see paragraphs 17 and 20 above). It is noted in this respect that in October 2007 the water was still considered to pose no danger to health (see paragraph 28 above).

99. Although the criminal proceedings are still ongoing, the Court observes that the acts alleged by the applicants do not consist of physical violence. Therefore, it considers that in the present case, as disagreeable as the water contamination must be for the applicants, there was no obligation under Article 8 of the Convention for the domestic authorities to effectively apply criminal-law mechanisms and that civil proceedings sufficed (see paragraph 95 above). Nevertheless, the Court cannot but observe that the State Attorney had compiled a criminal case file in respect of the water contamination at issue even before the applicants lodged their criminal complaint, and had undertaken a number of actions related thereto (see paragraph 33 above). He also conducted an investigation in this regard, including in respect of persons against whom the applicants had not lodged a criminal complaint, and issued an indictment against a number of persons.

100. Finally, the Court observes that following the applicants' civil claim civil proceedings were conducted. A number of forensic expert reports were ordered, a number of witnesses and expert witnesses heard, the volume of the domestic file amounting to several thousand pages, and determined the exact cause of the contamination (see paragraph 49 above). Both the Municipal and the County Court of Zagreb ruled in favour of the applicants, finding the three defendant companies liable for the damage the applicants had suffered. While it is true that those proceedings are currently ongoing, pending a decision on an appeal on points of law, and that the exact amount of compensation has not yet been determined, the Court notes that the applicants stressed that they had not complained about the civil proceedings.

101. In view of the above, the Court considers that the respondent State has taken all reasonable measures to secure the protection of the applicants' rights. Accordingly, the applicants' complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 June 2019.

Abel Campos Registrar	Krzysztof Wojtyczek President

APPENDIX

No.	First name LASTNAME	Birth year	Nationality	Place of residence
1.	Radmila TOLIĆ	1966	Croatian	Zagreb
2.	Kornelia ACAR	1972	Croatian	Zagreb
3.	Zoran ARAMBAŠIĆ	1972	Croatian	Zagreb
4.	Anita BARAĆ MUTAK	1974	Croatian	Zagreb
5.	Eduard BATINIĆ	1967	Croatian	Zagreb
6.	Gordana BATINIĆ	1973	Croatian	Zagreb
7.	Vedran BELANČIĆ	1973	Croatian	Zagreb
8.	Ana BILIĆ	1999	Croatian	Zagreb
9.	Ljubomir BILIĆ	1966	Croatian	Zagreb
10.	Lucija BILIĆ	1999	Croatian	Zagreb
11.	Saša BILIĆ	1972	Croatian	Zagreb
12.	Anka BILIĆ KESEROVIĆ	1972	Croatian	Zagreb
13.	Darko BIŠĆAN	1969	Croatian	Zagreb
14.	Đurđa BLAGOJEVIĆ	1939	Croatian	Zagreb
15.	Mirko BLAGOJEVIĆ	1937	Croatian	Zagreb
16.	Robert BOŠKOVIĆ ŽARAK	1977	Croatian	Zagreb
17.	Karmen BRADVICA-MAROHNIĆ	1977	Croatian	Zagreb
18.	Darko CAVALLI	1964	Croatian	Zagreb
19.	Đurđica CAVALLI	1967	Croatian	Zagreb
20.	Boris ĆEVID	1975	Croatian	Zagreb
21.	Ines ĆEVID	1976	Croatian	Zagreb
22.	Ante ČIZMIĆ	1958	Croatian	Zagreb

No.	First name LASTNAME	Birth year	Nationality	Place of residence
23.	Jasna CVETKOVIĆ LAY	1958	Croatian	Zagreb
24.	Gordana DADIĆ	1956	Croatian	Zagreb
25.	Marin DAJNOVIĆ	1971	Croatian	Zagreb
26.	Milica DOKIĆ	1953	Croatian	Zagreb
27.	Petra DRAŠKIĆ	1985	Croatian	Zagreb
28.	Zrinka DRAŠKIĆ	1988	Croatian	Zagreb
29.	Marko DUJMIĆ	1975	Croatian	Zagreb
30.	Robert EREŠ	1969	Croatian	Zagreb
31.	Borislav FAITH	1966	Croatian	Zagreb
32.	Štefica GABERŠEK	1975	Croatian	Zagreb
33.	Matea GAJSKI	1986	Croatian	Zagreb
34.	Romano GALIĆ	1959	Croatian	Zagreb
35.	Vlatko GRGURIĆ	1968	Croatian	Zagreb
36.	Saša GRUBAČIĆ	1963	Croatian	Zagreb
37.	Dalibor GRUIČIĆ	1977	Croatian	Zagreb
38.	Vladimir HERCEG	1961	Croatian	Zagreb
39.	Marica HODAK MIHELIĆ	1973	Croatian	Zagreb
40.	Adela JELINEK BIŠĆAN	1976	Croatian	Zagreb
41.	Sabina JOVIĆ	1975	Croatian	Zagreb
42.	Saša JOVIĆ	1976	Croatian	Zagreb
43.	Vedran JURIĆ	1980	Croatian	Zagreb
44.	Borna KESEROVIĆ	1973	Croatian	Zagreb
45.	Vesna KLARICA	1968	Croatian	Zagreb
46.	Aleksandar KLETEČKI	1960	Croatian	Zagreb
47.	Spomenka KLETEČKI	1962	Croatian	Zagreb
48.	Dragica KLOBUČAR	1955	Croatian	Zagreb
49.	Drago KLOBUČAR	1955	Croatian	Zagreb
50.	Ljiljana KOZOMARA	1970	Croatian	Zagreb

No.	First name LASTNAME	Birth year	Nationality	Place of residence
51.	Miroslav KOZOMARA	1969	Croatian	Zagreb
52.	Jasna KRPANEC BILIĆ	1972	Croatian	Zagreb
53.	Mislav KRŠULOVIĆ	1979	Croatian	Zagreb
54.	Tomislav KUNŠTEK	1965	Croatian	Zagreb
55.	Nataša LEDIĆ GRGURIĆ	1965	Croatian	Zagreb
56.	Petra LJEVAK	1979	Croatian	Zagreb
57.	Melita MAGANIĆ	1972	Croatian	Zagreb
58.	Nataša MANOJLOVIĆ	1977	Croatian	Zagreb
59.	Katarina MARASOVIĆ	1972	Croatian	Zagreb
60.	Lukša MARASOVIĆ	1972	Croatian	Zagreb
61.	Jasna MARIĆ KRAJAČIĆ	1969	Croatian	Zagreb
62.	Mara MARKOTA	1935	Croatian	Zagreb
63.	Anita MARKOTA ŠTRIGA	1972	Croatian	Zagreb
64.	Viktor MAROHNIĆ	1975	Croatian	Zagreb
65.	Ljiljana MEŠTROVIĆ MORO	1956	Croatian	Zagreb
66.	Sandra MIKULČIĆ	1976	Croatian	Zagreb
67.	Marijana MOLNAR	1955	Croatian	Zagreb
68.	Miroslav MUTAK	1971	Croatian	Zagreb
69.	Irena OLUJIĆ	1969	Croatian	Zagreb
70.	Petar OLUJIĆ	1960	Croatian	Zagreb
71.	Srećko OSOJNIK	1970	Croatian	Zagreb
72.	Drago PLANINIĆ	1947	Croatian	Zagreb
73.	Vladimir PLOH	1977	Croatian	Zagreb
74.	Ivana PODNAR	1973	Croatian	Zagreb

No.	First name LASTNAME	Birth year	Nationality	Place of residence
	ŽARKO			
75.	Slaven RADOVANČEVIĆ	1974	Croatian	Zagreb
76.	Marijo RAKIĆ	1969	Croatian	Zagreb
77.	Valentina ŠAKIĆ	1978	Croatian	Zagreb
78.	Rosana ŠAŠIĆ	1966	Croatian	Zagreb
79.	Dražen ŠEVO	1973	Croatian	Zagreb
80.	Sanela ŠEVO	1969	Croatian	Zagreb
81.	Goran SOKOL	1973	Croatian	Zagreb
82.	Tanja SOLOMUN GALIĆ	1967	Croatian	Zagreb
83.	Ivica ŠOŠIĆ	1949	Croatian	Zagreb
84.	Irena ŠPEKULJAK ORLOV	1979	Croatian	Zagreb
85.	Krunoslav ŠTRIGA	1973	Croatian	Zagreb
86.	Danijela THÜR	1971	Croatian	Zagreb
87.	Viliem THÜR	1968	Croatian	Zagreb
88.	Ivan TRLIN	1980	Croatian	Zagreb
89.	Borislav VARIVODA	1974	Croatian	Zagreb
90.	Vlatka VRDOLJAK	1970	Croatian	Zagreb
91.	Dubravka VUKOVIĆ	1958	Croatian	Zagreb
92.	Bruno VULETIĆ	1964	Croatian	Zagreb
93.	Ian Igor ZAGRECKI	1975	Croatian	Zagreb
94.	Tomica ZAJEC	1967	Croatian	Zagreb
95.	Damir ŽARKO	1972	Croatian	Zagreb
96.	ZZ D.O.O.		Croatian	Zagreb