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

FOURTH SECTION

CASE OF GORRAIZ LIZARRAGA AND OTHERS v. SPAIN

(Application no. 62543/00)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

10/11/2004

In the case of Gorraiz Lizarraga and Others v. Spain,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 November 2003 and 23 March 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 62543/00) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Spanish nationals, Mr Mateo Cruz Gorraiz Lizarraga, Mrs Catalina Echamendi Erro, Mr Francisco Javier Gorraiz Echamendi, Mr Miguel Jesús Gorraiz Echamendi and Mr Fermín Luis Gorraiz Echamendi ("the applicants"), and by the Coordinadora de Itoiz association ("the applicant association") on 12 September 2000.

2. The applicants were represented by Mr M.J. Baumont Aristu and Mr J.L.Beaumont Aristu, lawyers practising in Pamplona and Madrid. The Spanish Government ("the Government") were represented by their Agent, Mr J. Borrego Borrego, Head of the Legal Department for Human Rights, Ministry of Justice, until 31 January 2003. They were subsequently represented by Mr I. Blasco Lozano, new Agent of the Government and Head of the Legal Department for Human Rights, Ministry of Justice.

3. Relying on Article 6 § 1 of the Convention, the applicants submitted that they had not had a fair hearing in the judicial proceedings brought by them to halt construction of the Itoiz dam, in that they had been refused permission to take part in the proceedings concerning the reference of the preliminary question as to the constitutionality of Autonomous Community Law no. 9/1996 of 17 June 1996, whereas Counsel for the State and State Counsel's Office had been able to submit observations to the Constitutional Court.

They also complained that the Autonomous Community law in question had been enacted with a view to preventing execution of a Supreme Court

judgment which had become final. In their opinion, the enactment of that law had interfered with their right to a fair trial as guaranteed by Article 6 § 1 and, for the first five applicants, with their right to respect for their private and family life and their homes, as guaranteed by Article 8 of the Convention, and their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 14 January 2003, the Chamber declared the application admissible and reserved its position on the Government's preliminary questions as to whether the first five applicants lacked "victim" status and had failed to exhaust domestic remedies, and on the objection that Article 6 § 1 was inapplicable to the proceedings brought by the applicant association.

6. On 1 April 2003 the Chamber decided, having regard to the circumstances of the case, to dismiss a Rule 39 request submitted by the applicants.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first five applicants are individual Spanish nationals who live in Itoiz (Navarre province). The third applicant is also the chairperson and legal representative of the sixth applicant, the Coordinadora de Itoiz association. The first, second, fourth and fifth applicants are members of this association.

A. Background to the case

9. The case originated in an engineering project of February 1989 for the construction of a dam in Itoiz (Navarre province) which would result in the flooding of three nature reserves and a number of small villages, including Itoiz, where the applicants live. According to the Government, the total number of landowners affected by the dam's construction is 159, thirteen of whom live in Itoiz itself.

10. On 6 May 1988 the Coordinadora de Itoiz association was set up; its articles of association state, *inter alia*, that its aim is "to coordinate its members' efforts to oppose construction of the Itoiz dam and to campaign for an alternative way of life on the site, to represent and defend the area affected by the dam and this area's interests before all official bodies at all levels, whether local, provincial, State or international, and to promote public awareness of the impact of the dam".

By a ministerial decree of 2 November 1990, the Ministry of Public Works adopted the Itoiz dam project.

B. The administrative appeal to the *Audiencia Nacional*

11. In 1991 the villages concerned by the dam and the applicant association brought an administrative appeal before the *Audiencia Nacional* against the ministerial decree of 2 November 1990. The appeal was based on several allegations of unlawfulness which, in their opinion, had tainted the procedure for informing the public about the proposed dam, the fact that the project had been adopted without the prior approval of the hydrological plans for each river basin or of the national hydrological plan and the lack of any public or social interest served by the project. They also claimed that the project breached the legislation on environmental protection, since no environmental impact study had been commissioned. Finally, the court's attention was drawn to the project's impact on the nature reserves and habitat within the relevant area in the light of the Council of Europe's recommendations on engineering works in the Pyrenees and the European Union's common agricultural policy.

12. In a judgment of 29 September 1995, the *Audiencia Nacional* partly upheld the appeal, considering in particular that, according to the law, the planned dam should have been based on the national hydrological plan, which had not been drawn up when the project was approved. The court also accepted the request for precise designation of the protection zones around the nature reserves affected by the dam and for a breakdown of the quarry use that would be necessary for its construction.

13. The applicant association applied for immediate enforcement of the judgment and, in particular, for suspension of construction work on the dam. By a decision of 24 January 1996, the *Audiencia Nacional* granted a suspension order but directed that the necessary measures be taken to ensure the completion of work already begun and for the maintenance and safety of the work already completed, subject to the payment of security by the applicant association.

14. All the parties to the proceedings lodged *súplica* appeals against the decision of 24 January 1996. In the context of the interim enforcement of its judgment of 29 September 1995 and, in particular, with a view to maintaining the protection zones around the three nature reserves affected

by the project, the *Audiencia Nacional*, by a decision of 6 March 1996, prohibited the filling of the reservoir and displacement of the population concerned.

C. Enactment by the Autonomous Community of Navarre of Autonomous Community Law no. 9/1996

15. On 17 June 1996 the parliament of the Autonomous Community of Navarre (*parlamento foral de Navarra*) passed Autonomous Community Law (*foral*) no. 9/1996 on natural sites in Navarre ("the Autonomous Community law of 1996). This law amended Autonomous Community Law no. 6/1987 of 10 April 1987, particularly with regard to the possibility of reclassifying the protection zones or carrying out activities within them for the purpose of introducing infrastructure that had been declared in the general or public interest. According to the applicants, this Law enabled construction work on the dam to continue, with the consequent deterioration of the protected natural site.

In application of the Autonomous Community law of 1996, the Autonomous Community's government adopted Decree no. 307/1996 of 2 September 1996, which identified the peripheral protection zones for certain nature reserves and strict nature reserves in Navarre.

D. Appeal on points of law by the State and the government of the Autonomous Community of Navarre against the *Audiencia Nacional*'s judgment

16. In the meantime, Counsel for the State and the government of the Autonomous Community of Navarre had appealed on points of law against the *Audiencia Nacional*'s judgment of 29 September 1995. In a judgment of 14 July 1997, the Supreme Court definitively cancelled the dam project in so far as it concerned the 500-metre protection zones around nature reserves RN 9, 10 and 11. As a result of the judgment, the size of the planned dam, and thus of the area to be flooded, was reduced, so that the village of Itoiz, where the applicants' immovable property was located, was saved from flooding.

E. Proceedings to enforce the Supreme Court's judgment

17. In application of the Supreme Court's judgment, by a decision of 4 September 1997, the *Audiencia Nacional* declared final the interim enforcement measures ordered on 6 March 1996 concerning the prohibition on filling the reservoir and other related work. Before ruling on the question of the possible suspension of construction work on a dyke, the *Audiencia Nacional* invited the parties to appear before it so that they

could submit observations on the consequences of the new Autonomous Community law of 1996, particularly with regard to the protection zones around all the nature reserves provided for in that law, and on the impact of the maximum flood levels on the protection zones of the reserves to which the cancelled project had referred.

18. The central State authorities and the Navarre Autonomous Community's government argued before the *Audiencia Nacional* that it had become legally impossible to enforce the Supreme Court's judgment of 14 July 1997, in so far as the Autonomous Community law of 1996 had removed protection-zone status from the area within the nature reserves that was due be flooded. Accordingly, taking that legislative amendment into account, it had become possible to carry out the public-works schemes planned within those protection zones.

19. The applicant association contested the authorities' argument, claiming that the Autonomous Community law of 1996 was inapplicable in the instant case, since it had been enacted following the administrative decisions in the proceedings in issue and subsequent to the *Audiencia Nacional*'s judgment and the two interim enforcement orders. In the alternative, the applicant association requested that certain provisions in the Autonomous Community law be referred to the Constitutional Court for a preliminary ruling on their constitutionality, particularly those authorising the removal of protection-zone status from the three nature reserves in the area to be flooded, which, in the applicant association's submission, would allow the work to be completed and make the reservoir cover the area specified in the original plans.

F. Reference of a preliminary question to the Constitutional Court

20. By a decision of 1 December 1997, the *Audiencia Nacional* asked the Constitutional Court to rule on the preliminary question submitted by the applicant association.

By a decision of 21 May 1998, the Constitutional Court declared the application inadmissible on account of certain errors in its presentation which could nonetheless be corrected.

21. In order to rectify the above-mentioned errors, the *Audiencia Nacional* summoned the parties on 28 May 1998 so that it could hear their submissions on certain aspects of the Autonomous Community law whose constitutionality had been challenged before the Constitutional Court, and on the constitutionality of section 18(3) (A.1.) and (B) of that law. The applicant association submitted its observations on 10 June 1998.

By a decision of 17 June 1998, the *Audiencia Nacional* again asked the Constitutional Court to rule on the preliminary question as to constitutionality and extended the question to include a new point raised

by the applicant association, namely section 18(3) (B) (B.1.) of the Autonomous Community law.

22. By a decision of 21 July 1998, the Constitutional Court declared the issues raised in the preliminary question admissible. Under section 37(2) of the Judicature Act, it gave notice of the questions to the Chamber of Deputies, the Senate, the government and parliament of Navarre and the Spanish government, and invited them to file their observations within fifteen days. The Constitutional Court received Counsel for the State's observations on 4 September 1998. The government and parliament of Navarre submitted their observations on 11 and 15 September 1998 respectively. The Attorney General's observations were submitted on 29 September 1998. The Speaker of the Chamber of Deputies indicated that the Chamber would present no observations. The Speaker of the Senate asked that the Senate be considered a party to the proceedings and offered its assistance. On 1 March 2000 the *Audiencia Nacional* forwarded to the Constitutional Court the written pleadings submitted by the applicant association during the proceedings before it. These pleadings, dated 29 September 1997, 10 June 1998 and 28 February 2000, were formally included in the case file at the Constitutional Court.

G. The Constitutional Court's judgment

23. In a judgment of 14 March 2000, the Constitutional Court, sitting as a full court, held that the impugned provisions of the Autonomous Community law of 1996 were compatible with the Constitution. It observed at the outset that enforcement of the Supreme Court's judgment of 14 July 1997, delivered in accordance with Navarre Autonomous Community Law no. 6/1987, had become impossible since the entry into force of the Autonomous Community law of 1996, in that the cancelled project complied with the new law.

24. Examining the purpose of the Autonomous Community law of 1996, the Constitutional Court held as follows:

> "... Its purpose is to establish a general system for environmental protection of the natural sites in the Autonomous Community of Navarre. Accordingly, this protection system [was] applicable ... to the nature reserves already identified in the previous Autonomous Community law, even though the essential difference between the legal rules established by those two laws lies in the arrangements regarding the peripheral protection zones."

25. The Constitutional Court held, firstly, that this was not to be seen as a legislative solution for the particular problem of the three peripheral zones around the three nature reserves affected by construction of the Itoiz dam and, secondly, that statements and parliamentary initiatives by certain politicians which, in the opinion of the *Audiencia Nacional*, demonstrated

that the main aim of the Autonomous Community law of 1996 was to prevent execution of the Supreme Court's judgment, were immaterial in assessing whether there had been a violation of the principle of lawfulness. The Constitutional Court also ruled that, given the significance of the question raised by the Itoiz dam's construction, which could not simply be ignored, it was justifiable that the explanatory memorandum accompanying the Autonomous Community law of 1996 specifically mentioned the aim and means of environmental protection in the peripheral protection zones around the three above-mentioned nature reserves.

26. As to the alleged infringement of the right to a fair hearing, in so far as the Autonomous Community law of 1996 now prevented execution of the Supreme Court's judgment partly cancelling the Itoiz dam project, the Constitutional Court considered that the fact that in the meantime a new law had been passed amending the legal system applicable to the peripheral protection zones and replacing the previous law on the basis of which the project had been declared partly void was not in itself incompatible with the right to execution of judicial decisions as enshrined in Article 24 of the Constitution.

27. Referring to the case-law of the European Court of Human Rights and, in particular, to the judgments in *Stran Greek Refineries and Stratis Andreadis v. Greece* (9 December 1994, Series A no. 301-B) and *Papageorgiou v. Greece* (22 October 1997, *Reports of Judgments and Decisions* 1997-VI), the Constitutional Court examined whether the impossibility of executing the Supreme Court's judgment as a consequence of the enactment of the Autonomous Community law of 1996 was justified in view of the values and assets protected by the Constitution. Having held that environmental protection was enshrined in the Constitution, the Constitutional Court examined whether the prejudice arising from the failure to execute the judgment in issue was proportionate to the protected or disputed interests or was on the other hand purposeless, excessive or the cause of a clear imbalance between the interests at stake. It found that both the Supreme Court's judgment of 14 July 1997 and the new Autonomous Community law of 1996 were intended to guarantee the existence of a peripheral protection zone around the three nature reserves affected by the dam's construction. The Constitutional Court further noted that the system of peripheral protection zones introduced by this new law had not in itself been considered arbitrary in the *Audiencia Nacional*'s decision; nor had the zones' new boundaries been held responsible for the serious deterioration of the environment. Accordingly, it held that the balance of general interests had been respected and that there was no clear lack of proportion between the conflicting interests. Consequently, the impugned provisions could not be held to be contrary to Article 24 § 1 of the Constitution.

28. As to the argument that the new legal rules governing the peripheral protection zones around the nature reserves appeared in a law rather than in regulations, as had previously been the case, and that this deprived the applicants of the possibility of overseeing the administration's actions through an administrative appeal or enforcement proceedings, the Constitutional Court noted that there was no legal provision requiring that certain subjects be dealt with by regulations. It added that the new law did not amount to *ad causam* legislation, being general in form and in substance, and pointed out that laws could be challenged before the Constitutional Court through the remedy provided for in Article 163 of the Constitution.

Accordingly, the Constitutional Court dismissed the application for a preliminary ruling. The judgment was published in the Official Gazette on 14 April 2000.

II. RELEVANT DOMESTIC LAW

A. The Constitution

29. The relevant provisions of the Constitution read as follows:

Article 161 § 1

"The Constitutional Court shall have jurisdiction for the whole of Spanish territory and is competent to hear:

(a) appeals against alleged unconstitutionality of laws and regulations having the force of law ...;

(b) individual appeals for protection [*recurso de amparo*] against violation of the rights and liberties referred to in Article 53 § 2 of the Constitution, in the circumstances and manner laid down by law;

(c) disputes between the State and an Autonomous Community or between different Autonomous Communities over the scope of their powers.

..."

Article 163

"If in the course of proceedings a judicial body considers that a provision which has the status of law and is applicable in the proceedings and upon whose validity its decision depends might be contrary to the Constitution, it shall refer the issue to the Constitutional Court in the circumstances and manner and with the effects – which shall under no circumstances include suspensive effect – to be laid down by law."

Article 164

"1. Judgments of the Constitutional Court shall be published in the State's Official Gazette together with any dissenting opinions. They shall be final with effect from the day after their publication and no appeal shall lie against them. Judgments declaring a law or a rule having the force of law unconstitutional and all judgments that are not merely *in personam* shall be binding on everyone.

2. Unless stated otherwise in the judgment, parts of the law not declared unconstitutional shall remain in force."

B. Institutional Law no. 2/1979 on the Constitutional Court – Chapter III, "On questions of constitutionality referred by judges and courts"

30. The relevant provisions of this law read as follows:

Article 35

"1. When judges or courts, of their own motion or at the request of a party, consider that a provision which has the status of law and is applicable in the proceedings and upon whose validity its decision depends might be contrary to the Constitution, they shall refer the matter to the Constitutional Court, in accordance with the provisions of the present Law.

2. The judge or court concerned shall make the referral only when the case is ready for trial and within the time allowed for giving judgment. They must specify which law or provision having the status of law is alleged to be unconstitutional and which Article of the Constitution is considered to have been breached. They must also state the precise reasons why the outcome of the proceedings depends on the validity of the contested provision. Before taking a final decision on whether to refer an issue to the Constitutional Court, the judge or court shall first hear any representations the parties and a representative of State Counsel's Office may wish to make regarding the relevance of the issue within a ten-day non-extendable time-limit that shall apply to each of them. The judge shall give his or her decision within three days thereafter, no further action being required. No appeal shall lie against that decision. However, the constitutionality issue may be raised again in subsequent proceedings until such time as the judgment has become final."

Article 36

"A judge or court shall refer constitutionality issues to the Constitutional Court by sending a certified copy of the main case file and any representations made under the preceding Article."

Article 37

"1. On receipt of the case file the Constitutional Court shall follow the procedure laid down in paragraph 2 of this Article. However, it may in a reasoned decision declare the question referred inadmissible after hearing representations by the

Attorney General alone if the procedural requirements have not been complied with or the question referred is manifestly ill-founded.

2. The Constitutional Court shall inform the Chamber of Deputies and the Senate (through their respective Speakers), the Attorney General and the Government (through the Ministry of Justice) of the question referred. If it concerns a law or a provision having the status of law adopted by an Autonomous Community, the legislative and executive authorities of that Community shall also be informed. Each of these bodies shall be entitled to appear before the Constitutional Court and to make representations on the constitutionality issue within a non-extendable fifteen-day time-limit that shall apply to each of them. Once that period has expired, the Constitutional Court shall give judgment within fifteen days, unless it gives a reasoned decision explaining why it considers a longer period – not exceeding thirty days – to be necessary."

C. Autonomous Community Law no. 9/1996 of 17 June 1996 on natural sites in Navarre ("the Autonomous Community law of 1996")

31. The explanatory memorandum to the Autonomous Community law of 1996 states that the text has two objectives: first of all, it establishes a legal system specific to Navarre in order to safeguard, preserve and improve those parts of its territory which contain natural assets worthy of protection in accordance with Spanish legislation and European Union directives on environmental protection; secondly, the law is intended to harmonise the legislation on natural sites enacted by the Autonomous Community of Navarre.

In particular, the law lists the nature reserves and natural sites in Navarre which are protected by law and establishes their boundaries. It also sets out, for each type of protected site, the types of activity and use which are authorised or prohibited. Section 18 reads as follows:

"Peripheral protection areas

1. Through an autonomous law, the parliament of Navarre may identify the boundaries of ... peripheral protection zones around the Strict Nature Reserves and Nature Reserves, which may be discontinuous and shall be intended to avoid external impact on the environment or landscape.

...

3. The regulations governing activities and land use within the peripheral protection zones of the Strict Nature Reserves, Nature Reserves and Nature Parks shall be as follows:

(A) Non-construction activities

(A.1.) The following may be authorised:

...

– Activities related to the creation of infrastructure which is in the public or general interest.

...

(B.) Construction activities

(B.1.) The following may be authorised:

...

– Infrastructure declared to be in the public or general interest.

..."

THE LAW

32. Relying on Article 6 § 1 of the Convention, the applicants alleged that, in the judicial proceedings brought by them to halt construction of the Itoiz dam, they had not had a fair hearing in that they had been prevented from taking part in the proceedings concerning the preliminary ruling on the constitutionality of the Autonomous Community law of 1996, while Counsel for the State and State Counsel's Office had been able to submit their observations to the Constitutional Court.

They also complained that the enactment of the Autonomous Community law of 1996 had been intended to prevent the execution of a Supreme Court judgment that had become final. The law's enactment had infringed their right to a fair hearing as guaranteed by Article 6 § 1 of the Convention and, with regard to the first five applicants, their right to respect for their private and family lives and their homes, protected by Article 8 of the Convention, as well as their right to the peaceful enjoyment of their possessions, guaranteed by Article 1 of Protocol No. 1.

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. As to the applicants' lack of "victim" status and the non-exhaustion of domestic remedies

33. The Government pointed out that the first five applicants, who had applied to the Court, had not participated in the domestic proceedings under review in the present application. In addition, at no point during the

contested proceedings were the domestic courts appraised of their existence or that of their properties. In that connection, the Government emphasised that the applicants' explanation of why they had not taken part in the domestic proceedings – namely that this would have entailed long and costly proceedings - was not serious. As to the applicants' properties, they noted that expropriation proceedings in respect of those properties were ongoing and that the applicants were in a position to defend their "civil rights and obligations" in them without this raising any problem.

34. The applicants emphasised the clear consequences of the contested proceedings on their civil rights. Firstly, they pointed out that they all lived in Itoiz, where their immovable property was situated. Construction of the dam would result in flooding of this area and, consequently, of their homes and other assets. In addition, they submitted that, as members of the Coordinadora de Itoiz association since its formation in 1988, they had taken part in the proceedings with that association as their intermediary. They stressed the indisputable direct link between them and the damage that would be sustained from the dam's construction, and submitted that the remedy used was the only one which, if successful, would have allowed for the definitive protection of their civil rights and interests. In this connection, they stressed that they would have been acting unreasonably had each of them brought a separate individual appeal against the proposed dam and thus entered long and costly proceedings with the same final outcome as that achieved by the association. Moreover, it was clear that, from the outset, they had entrusted the association with the defence of their civil rights and interests. Indeed, this was the logical result of one of the association's stated aims, namely the "defence of an alternative way of life on the site". In conclusion, they contended that they could claim to be victims of a violation within the meaning of Article 34 of the Convention.

35. The Court points out that, in order to rely on Article 34 of the Convention, two conditions must be met: an applicant must fall into one of the categories of petitioners mentioned in Article 34, and he or she must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case–law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. In addition, in order for an applicant to be able to claim to be a victim of a violation of the Convention, there must be a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation (see, among other authorities, *Tauira and Others v. France*, no. 28204/95, Commission decision of 4 December 1995, Decisions and Reports (DR) 83-B, p. 112; *Association des amis de Saint-Raphaël et de Fréjus and Others v. France*, no. 38192/97, Commission decision of 1 July 1998, DR 94-B, p. 124;

Comité des médecins à diplômes étrangers v. France and Others v. France (dec.), nos. 39527/98 and 39531/98, 30 March 1999).

1. As to whether the applicant association was a "victim"

36. In so far as the applicant association alleges a violation of Article 6 § 1 of the Convention, the Court notes that the association was a party to the proceedings brought by it before the domestic courts to defend its members' interests. Accordingly, it considers that the applicant association may be considered a victim, within the meaning of Article 34, of the alleged shortcomings under the provision relied upon (see *Association for the Protection of Car Purchasers and Others v. Romania* (dec.), no. 34746/97, 10 July 2001).

2. As to the "victim" status of the first five applicants and the exhaustion of domestic remedies

37. The Court notes at the outset that the question of victim status, for the purposes of Article 34 of the Convention, is, in the instant case, closely linked to the requirement of exhaustion of domestic remedies contained in Article 35 § 1. As regards the last point, it reiterates that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see, among other authorities, *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). The Court has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, p. 18, § 35). This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him to exhaust domestic remedies (see, *mutatis mutandis*, the following judgments: *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV, p. 1211, § 69; *Aksoy v. Turkey*, 18 December 1996, *Reports* 1996-VI, p. 2276, §§ 53-54; and *Baumann v. France*, no. 33592/96, § 40, 22 May 2001).

38. In the instant case, the Court observes that the applicant association was established for the specific purpose of defending its members' interests against the consequences of the dam's construction on their environment and homes. In addition, the proceedings before the domestic courts, through the intermediary of the association, concerned not only a

dispute over the lawfulness of the ministerial decree authorising the relevant work in the light of the applicable legislation on the construction of dams, but also emphasised the project's impact on the property rights and lifestyles of the association's members due to the change in their place of residence. In its appeals, the applicant association, acting on behalf of its members, repeatedly emphasised that the dam's construction would lead to the flooding of several small villages, including the hamlet of Itoiz, where the applicants had their family homes. From this perspective, it is undeniable that the public-works project, with all that it entailed (expropriation of property, population displacement) had direct and far-reaching consequences both on the applicants' property rights and on their families' lifestyles (see, *mutatis mutandis*, *Association des amis de Saint-Raphaël et de Fréjus and Others*, cited above, p. 131). Admittedly, the applicants were not parties to the impugned proceedings in their own name, but through the intermediary of the association which they had set up with a view to defending their interests. However, like the other provisions of the Convention, the term "victim" in Article 34 must also be interpreted in an evolutive manner in the light of conditions in contemporary society. And indeed, in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. Moreover, the standing of associations to bring legal proceedings in defence of their members' interests is recognised by the legislation of most European countries. That is precisely the situation that obtained in the present case. The Court cannot disregard that fact when interpreting the concept of "victim". Any other, excessively formalistic, interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory.

39. Having regard to the particular circumstances of the case, and especially the fact that the applicant association was set up for the specific purpose of defending its members' interests before the courts and that those members were directly concerned by the dam project, the Court considers that the first five applicants can claim to be victims, within the meaning of Article 34, of the alleged violations of the Convention, and that they have exhausted domestic remedies with regard to the complaints under Article 6 § 1 of the Convention.

B. Applicability of Article 6 § 1 of the Convention

1. Arguments before the Court

40. According to the Government, none of the proceedings brought by the applicant association, whether before the *Audiencia Nacional*, the Supreme Court or the Constitutional Court, concerned "civil rights and obligations" within the meaning of Article 6 § 1. The action brought by the applicant association was intended to uphold the law and defend collective interests such as environmental protection. At no time did the dispute centre on the defence of private economic rights. This was perfectly clear from the memorials filed by the association in support of its various appeals, and was clearly expressed in the various decisions handed down by the domestic courts. Ultimately, the problem of non-enforcement of the Supreme Court's judgment of 14 July 1997 did not affect any private right.

41. Furthermore, the Government considered that the instant case could not be compared to *Ruiz-Mateos v. Spain* (judgment of 23 June 1993, Series A no. 262). While the Rumasa expropriation law had been a specific law which primarily affected the Ruiz-Mateos family, the Autonomous Community law of 1996 was a general purpose law which affected many people, that is,. not only the applicant association and its members, but the tens of thousands of people who would benefit from construction of the Itoiz dam. Moreover, the general scope of the law had been expressly recognised by both the *Audiencia Nacional* and the Constitutional Court. While the constitutional issue in *Ruiz-Mateos* undoubtedly concerned the applicants' economic rights, the issue in the instant case did not concern civil rights and obligations, but the lawfulness of the proposed dam. It followed that Article 6 § 1 was not applicable.

42. The applicants rejected the Government's argument. It was undeniable that the applicant association had acted to defend its members' individual and private rights and interests; at the same time, it was clear that the Supreme Court's judgment of 14 July 1997 concerned the protection and definitive safeguarding of their personal rights and interests as members of the association. In their opinion, the civil rights of the association's members had been at stake from the outset of the proceedings, in that their possessions and lifestyles were likely to be decisively affected by the proposed dam. Thus, in the memorial filed by the association against the ministerial decree of 2 November 1990, it was clearly stated that construction of the dam would entail the expropriation of a whole series of farming and other properties as well as displacement of the population concerned. Those consequences, in terms of the assets and individuals affected by the dam's construction, were pointed out on numerous occasions by the applicant association in the course of the

various proceedings. In conclusion, contrary to the Government's submissions, "civil" rights within the meaning of Article 6 § 1 had unquestionably been in issue before the domestic courts.

2. The Court's assessment

43. The Court reiterates that for Article 6 § 1 to be applicable in its "civil" limb there must be a dispute ("*contestation*") over a "right" that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question: mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, for example, the following judgments: *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, Series A no. 43, pp. 21-22, § 47; *Fayed v. the United Kingdom*, 21 September 1994, Series A no. 294-B, pp. 45-46, § 56; *Masson and Van Zon v. the Netherlands*, 28 September 1995, Series A no. 327-A, p. 17, § 44; *Balmer-Schafroth v. Switzerland*, 26 August 1997, *Reports* 1997-IV, p. 1357, § 32; and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV; see also *Syndicat des médecins exerçant en établissement hospitalier privé d'Alsace and Others v. France* (dec.), no. 44051/98, 31 August 2000).

44. In the instant case, while it is common ground that a dispute existed over a right recognised under domestic law, there was disagreement as to its subject matter. According to the Government, at no point did the dispute focus on the association's economic or private rights, but instead on upholding the law and collective rights, so that no "civil" right was at stake. The applicant association, on the other hand, claimed to have acted to defend the individual and private rights and interests of its members.

45. The Court notes that, in addition to defence of the public interest, the proceedings before the *Audiencia Nacional* and subsequently before the Supreme Court were intended to defend certain specific interests of the association's members, namely their lifestyle and properties in the valley that was due to be flooded. As to the proceedings before the Constitutional Court concerning the request for a preliminary ruling on constitutionality, the applicants emphasise that this was the only method of challenging the Autonomous Community law of 1996, in that only a finding of unconstitutionality could have had the result of protecting both the environment and their homes and other immovable property.

46. Admittedly, the aspect of the dispute relating to defence of the public interest did not concern a civil right which the first five applicants could have claimed on their own behalf. However, that was not true with regard to the second aspect, namely the repercussions of the dam's construction on their lifestyles and properties. In its appeals, the applicant

association complained of a direct and specific threat hanging over its members' personal assets and lifestyles. Without a doubt, this aspect of the appeals had an "economic" and civil dimension, and was based on an alleged violation of rights which were also economic (see *Procola v. Luxembourg*, judgment of 28 September 1995, Series A no. 326, pp. 14-15, § 38).

47. While the proceedings before the Constitutional Court ostensibly bore the hallmark of public-law proceedings, they were nonetheless decisive for the final outcome of the proceedings brought by the applicants in the ordinary courts to have the dam project set aside. In the instant case, the administrative and constitutional proceedings even appeared so interrelated that to have dealt with them separately would have been artificial and would have considerably weakened the protection afforded in respect of the applicants' rights. By raising the question of the Autonomous Community law's constitutionality, the applicants used the single, albeit indirect, means available to them for complaining of interference with their property and lifestyles (see *Ruiz-Mateos*, cited above, p. 24, § 59). The Court therefore finds that the proceedings as a whole may be considered to concern the civil rights of the first five applicants as members of the association.

48. Accordingly, Article 6 § 1 of the Convention applied to the contested proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

49. According to the applicants, the proceedings before the Constitutional Court to examine the question of constitutionality referred by the *Audiencia Nacional* did not respect the principle of equality of arms, an inherent part of the right to a fair hearing as guaranteed by Article 6 § 1 of the Convention.

50. The applicants argued in this connection that they had been prevented from taking part in the proceedings concerning the preliminary ruling on constitutionality, while Counsel for the State and State Counsel's Office had been able to submit their observations to the Constitutional Court. As a result, they had been unable to assert their interests before that court with regard to the balance to be struck between the conflicting interests.

51. The applicants also submitted that Autonomous Community Law no. 9/1996 had been enacted in order to prevent execution of the Supreme Court's judgment, which had become final and enforceable. In their opinion, this amounted to interference by the legislature in the outcome of a dispute, contrary to Article 6 § 1, the relevant part of which states:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

52. The Court will examine in turn the complaint based on the alleged violation of the principle of equality of arms, then that concerning the legislature's alleged interference in the outcome of the dispute.

A. Alleged violation of the principle of equality of arms

1. The parties' submissions

(a) The applicants

53. The applicants submitted, firstly, that a number of the provisions of the Autonomous Community law of 1996 had been drafted for the sole and exclusive purpose of circumventing the grounds for cancellation of the dam project and, consequently, of rendering unenforceable the Supreme Court judgment which, in this respect, had become final. It was not a general law but, on the contrary, a new regulation. In their opinion, the only method of challenging the Autonomous Community law of 1996 was to apply to the Constitutional Court for a preliminary ruling. A finding of unconstitutionality would have had the effect of protecting both the environment and their civil right to peaceful enjoyment of their homes, dwelling houses and other immovable property. They had been unable to defend their point of view and counter the arguments put forward by the opposing parties before either the *Audiencia Nacional* or the Constitutional Court, despite the fact that it was the applicant association itself which had requested that a preliminary ruling on constitutionality be sought. Further, the Constitutional Court's judgment took no account of any of their arguments. In this regard, the applicants stressed that, had they had an opportunity to take part in the proceedings before the Constitutional Court, they would have been able to repeat and develop their arguments and the grounds that they considered relevant to their case. The applicants submitted that, taken together, this had resulted in a violation of Article 6 § 1 of the Convention.

(b) The Government

54. The Government observed that, while in *Ruiz-Mateos* the case centred on an expropriation law impinging primarily on the Ruiz-Mateos family, in the instant case the Autonomous Community law of 1996 was of general application, affecting not only the applicant association and its members, but also many other people who would benefit from construction of the Itoiz dam, as expressly stated by the *Audiencia Nacional* and the Constitutional Court.

2. The Court's assessment

55. The Court accepts the Government's submission that the Autonomous Community law of 1996 differed from the Rumasa expropriation law in terms of the number of people affected. Nevertheless, the applicants were among the restricted circle of persons most directly affected by the Autonomous Community law of 1996's endorsement of the dam project, which they had challenged in the ordinary courts and with regard to which judgments in their favour had been given. This particular interest with regard to the Autonomous Community law of 1996 was confirmed by the Constitutional Court's decision on the admissibility of their request for a preliminary ruling on the constitutionality of certain provisions of that law.

56. The Court reiterates that the principle of equality of arms is part of the wider concept of a fair hearing within the meaning of Article 6 § 1 of the Convention. It requires a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage *vis-à-vis* their opponent or opponents (see, *inter alia*, the following judgments: *Ankerl v.* Switzerlan, 23 October 1996, *Reports* 1996-V, pp. 1567-68, § 38; *Nideröst-Huber v. Switzerland*, 18 February 1997, *Reports* 1997-I, pp. 107-08, § 23; and *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001-VI).

57. The Court has already considered, in *Ruiz-Mateos*, the question of respect for certain guarantees arising from the concept of a fair hearing in the context of examination of a question of constitutionality by the Spanish Constitutional Court. In that case, the Court found that there had been a violation of Article 6 § 1 with regard to the fairness of the proceedings before the Constitutional Court. The decisive factor in the Court's finding of a violation lay in the fact that Counsel for the State had had advance knowledge of the Ruiz-Mateos family's arguments and was consequently able to comment on them in the last instance before the Constitutional Court, whilst the applicants had not had a similar opportunity to reply to his remarks (loc. cit., p. 26, §§ 65 and 67).

58. In the instant case, the situation is somewhat different. In the first place, while the expropriation law in issue in *Ruiz-Mateos* could be considered as *ad personam* legislation, in the present case the Autonomous Community law of 1996 was of general application and did not concern the applicants alone.

59. In addition, having declared the question of constitutionality admissible on 21 July 1998, the Constitutional Court gave notice of the problems raised in the application for a preliminary ruling to the Chamber of Deputies, the Senate, the government and parliament of the Autonomous Community of Navarre, and the State government, so that those bodies could file their observations within the same fifteen-day

period (Article 37 § 2 of the Institutional Law on the Constitutional Court). The Constitutional Court received Counsel for the State's observations on 4 September 1998. The government and parliament of the Autonomous Community of Navarre submitted their observations on 11 and 15 September 1998 respectively. The Attorney General submitted his on 29 September 1998.

On 1 March 2000 the registrar of the First Section of the *Audiencia Nacional* forwarded to the Constitutional Court the documents, dated 29 September 1997, 10 June 1998 and 28 February 2000, submitted by the Coordinadora de Itoiz association during the proceedings before it; these were formally joined to the case file at the Constitutional Court.

60. The Court notes that proceedings on the constitutionality of a law do not provide for either an exchange of memorials or for a public hearing. Thus, even supposing that the applicants had formally been parties to the procedure, they would not have received the memorials submitted by the other participants. Admittedly, it cannot be ruled out that some form of consultation took place between those State authorities which submitted their observations to the Constitutional Court. However, a major difference between the instant case and *Ruiz-Mateos* lies in the fact that all the memorials filed by the applicants through the applicant association in support of their arguments as to the unconstitutionality of the Autonomous Community law of 1996 (memorials dating from September 1997 to January 2000) were forwarded by the *Audiencia Nacional* to the Constitutional Court, which formally joined them to the case file before ruling on the question of constitutionality. Another distinguishing feature between the two cases is that, in the earlier case, the Ruiz-Mateos family asked the Constitutional Court for leave to take part in the proceedings, a request that was dismissed by that court (see *Ruiz-Mateos*, p. 13, §§ 17-18). In the instant case there is nothing in the case file to suggest that the applicants applied to the Constitutional Court at any time for leave to take part in the proceedings, although they could have relied on the Court's previous case-law in *Ruiz-Mateos* to support such an application. Finally, the Court observes that the Constitutional Court replied at length in its judgment to the arguments submitted by the applicants throughout the entire proceedings.

61. In conclusion, having regard to the special features of the procedure for a preliminary ruling on constitutionality, there has not been an infringement of the very essence of the principle of equality of arms as guaranteed by Article 6 § 1 of the Convention.

B. Alleged interference by the legislature in the outcome of the dispute

62. According to the applicants, the aim of the enactment of the Autonomous Community law of 1996 was to prevent the execution of the Supreme Court's judgment, which had become final and enforceable. In their opinion, this amounted to an interference by the legislature in the outcome of the dispute, contrary to the principle of a fair hearing guaranteed by Article 6 § 1 of the Convention.

63. According to the Government, the impugned law was adopted in the public interest and by no means for the purpose of influencing the judicial determination of the case.

64. The Court has already had occasion to rule on allegations of intervention by the State, through the legislature, in order to influence the outcome of a case to which it was party in which a finding had already been made against it in the examination on the merits. This was the situation that obtained in *Stran Greek Refineries and Stratis Andreadis* (cited above), *Papageorgiou* (cited above), *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society* ("*Building Societies*") *v. the United Kingdom* (judgment of 23 October 1997, *Reports* 1997-VII), and *Zielinski and Pradal and Gonzalez and Others v. France* ([GC], nos. 24846/94 and 34165/96 to 34173/96, ECHR 1999-VII). On this subject, the Court reaffirms that, while in principle the legislature is not precluded from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute save on compelling grounds of the general interest (see the following judgments cited above: *Stran Greek Refineries and Stratis Andreadis*, p. 82, § 49; *Papageorgiou*, p. 2288, § 37; *Building Societies*, p. 2363, § 112; and *Zielinski and Pradal and Gonzalez and Others*, § 57).

65. In *Stran Greek Refineries and Stratis Andreadis*, *Papageorgiou* and *Zielinski and Pradal and Gonzalez and Others*, the Court found that there had been a violation of Article 6 § 1 of the Convention.

66. In *Stran Greek Refineries and Stratis Andreadis*, two essential features led the Court to conclude that there had been an infringement of the right to a fair hearing: firstly, the Greek legislature's intervention in the case had taken place at a time when judicial proceedings in which the State was a party were pending; secondly, the fact that the Court of Cassation had decided to adjourn the hearing on the ground that a draft law concerning the case was before Parliament (loc. cit., pp. 81-82, § 47).

67. In *Papageorgiou*, the Court's criticism of the interference was prompted by the following three considerations: firstly, the disputed

legislative provision, namely section 26 of Law no. 2020/1992, provided that any claims for repayment of contributions previously paid by the applicants to the Manpower Employment Organisation were extinguished and that any proceedings concerning such claims pending in any court were to be struck out; secondly, section 26 was contained in a statute whose title bore no relation to that provision, a practice prohibited by Article 74 § 5 of the Greek Constitution; finally, the disputed provision had been enacted after the appeal had been lodged by the Public Electricity Company, which employed the applicants, against the judgment of the Athens Court of First Instance, sitting as an appellate court, and prior to the hearing before the Court of Cassation.

In those circumstances, the Court concluded that the enactment of section 26 at such a crucial point in the proceedings before the Court of Cassation resolved the substantive issues for practical purposes and made carrying on with the litigation pointless (see *Papageorgiou*, p. 2289, § 38).

68. In *Zielinski and Pradal and Gonzalez and Others*, the Court held that the passing of legislation with retrospective effect had had the effect of endorsing the State's position in the proceedings that had been brought against it and which were still pending in the ordinary courts (loc. cit., § 58).

69. However, there are significant differences between the present case and those cases.

70. A common feature of the cases previously examined by the Court lies in the fact that the State's intervention through legislative acts was intended either to influence the outcome of pending judicial proceedings, to prevent proceedings being opened, or to render void final and enforceable decisions which recognised personal rights to receive payment.

In the instant case, the dispute between the applicants and the Autonomous Community of Navarre concerned regional development plans, a sphere in which an amendment or change to legislation following a judicial decision is generally accepted and practised. Whilst creditors may, in general, avail themselves of firm and intangible rights, this is not the case with regard to issues of urban or regional planning, a sphere concerning rights of a different nature which are essentially evolutive. Urban and regional planning policies are, *par excellence*, spheres in which the State intervenes, particularly through control of property in the general or public interest. In such circumstances, where the community's general interest is pre-eminent, the Court takes the view that the State's margin of appreciation is greater than when exclusively civil rights are at stake (see, *mutatis mutandis*, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 32, § 46; *Mellacher and Others v. Austria*, judgment of 19 December 1989, Series A no. 169, p. 29, § 55; and

Chapman v. the United Kingdom [GC], no. 27238/95, § 104, ECHR 2001-I).

71. Nevertheless, the effective protection of a party to proceedings and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with the judgments of the domestic courts. The Court points out in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees enjoyed under Article 6 by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Antonetto v. Italy*, no. 15918/89, § 28, 20 July 2000). In the instant case, the Court would emphasise that the *Audiencia Nacional*'s decisions in favour of the applicants' arguments did not remain inoperative; on the contrary, they were always complied with by the administrative authorities. This was so with regard to the suspension of construction work ordered by the *Audiencia Nacional* in its decisions of 24 January and 6 March 1996 (see paragraphs 13-14 above). At every point, the administrative authorities complied with the judicial decisions given against them.

72. The Court notes that the situation complained of by the applicants cannot be considered similar to that in *Stran Greek Refineries and Stratis Andreadis*, where the State had intervened in a decisive manner to sway in its favour the outcome of proceedings to which it was a party. In the instant case, the enactment of the Autonomous Community law of 1996 was certainly not intended to remove jurisdiction from those Spanish courts called upon to examine the lawfulness of the dam project. Admittedly, the explanatory memorandum referred specifically to the peripheral protection zones around the nature reserves affected by the dam and to the law's objective. Nevertheless, the disputed law concerned all of Navarre's protected nature reserves and natural sites, and not only the area affected by construction of the dam. Its general application is not open to doubt. In addition, the parliament of Navarre did not enact legislation with retrospective effect, as was proved by the fact that, notwithstanding the enactment of the Autonomous Community law on 17 June 1996, the Supreme Court, a few weeks after adoption of the law, delivered a judgment which partly but definitively cancelled the original dam project. Whilst it is undeniable that the parliament of Navarre's enactment of the law in question was ultimately unfavourable for the arguments put forward by the applicants, it cannot be said that the text was approved for the purpose of circumventing the principle of the rule of law. In any event, once the Autonomous Community law had been enacted, the applicants' request for a preliminary ruling by the Constitutional Court on the constitutionality of some of its provisions was granted, and that court ruled

on the merits of their complaints. Before the Constitutional Court, the applicants' arguments were examined on the same footing as those submitted by the government and the parliament of Navarre. In conclusion, the dispute between the applicants and the State was examined by the Spanish courts in compliance with the principle of a fair trial as guaranteed by Article 6 § 1.

73. For the above reasons, the Court concludes that the interference by the legislature in the outcome of the dispute, as alleged by the applicants, did not make the proceedings unfair. There has accordingly been no breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

74. The applicants alleged that the enactment of the Autonomous Community law of 1996 represented a violation of their right to respect for private and family life and their homes under Article 8 of the Convention, as well as of the right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

75. The Court notes that the applicants' complaints are substantially the same as those submitted under Article 6 § 1 and examined above. Accordingly, it considers that it is not necessary to examine them separately under the other provisions relied on.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been no breach of Article 6 § 1 of the Convention as regards the alleged violation of the principle of equality of arms;

3. *Holds* that there has been no breach of Article 6 § 1 of the Convention as regards the alleged interference by the legislature in the outcome of the proceedings;

4. *Holds* that it is not necessary to examine separately the applicants' complaints under Article 8 of the Convention and Article 1 of Protocol No. 1.

Done in French, and notified in writing on 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President