



FIRST SECTION

CASE OF KAPA AND OTHERS v. POLAND

(Applications nos. 75031/13 and 3 others)

JUDGMENT

Art 8 • Respect for home • Fair balance not struck when rerouting heavy traffic to unequipped road near applicants' homes, exposing them to severe nuisance • Lack of timely and adequate response by domestic authorities to the problems affecting nearby inhabitants

STRASBOURG

14 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kapa and Others v. Poland,

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

Ksenija Turković, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Erik Wennerström,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to: the applications (nos. 75031/13, 75282/13, 75286/13 and 75292/13) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 22 November 2013 by four Polish nationals, the first applicant, Ms Katarzyna Kapa, the second applicant, Mr Jacek Juszczyk, the third applicant, Mr Mateusz Juszczyk and the fourth applicant, Ms Barbara Juszczyk (“the applicants”), as indicated in the appended table;

the decision to give notice of the applications to the Polish Government (“the Government”);

and the parties’ observations;

Having deliberated in private on 21 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case raises an issue under Article 8 in so far as the State authorities, for a period of over two years, routed extremely heavy day and night motorway traffic *via* a road unequipped for such a purpose which ran through the middle of a town in very close vicinity to the applicants’ home. This, according to the applicants, had the effect of exposing them to severe nuisance: noise (exceeding domestic and international norms), vibrations and exhaust fumes.

THE FACTS

2. The first applicant was born in 1984. The second applicant was born in 1958. The third applicant was born in 1991 and the fourth applicant was born in 1959. The applicants are relatives and they all live in Smolice. They were represented by Mr Ł. Brydak, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as established by the domestic courts in the course of the civil proceedings described below and as submitted by the parties, may be summarised as follows.

I. BACKGROUND

5. Since an unspecified date the applicant family has lived in a detached house situated in Smolice at no. 11 Cegielniana Street, several metres from national road no. 14 (“the N14 road”).

6. The N14 road runs parallel to the applicants’ street through the middle of the neighbouring town of Stryków, which has approximately 3,500 inhabitants. Where the N14 road runs through Stryków, it is known as Warszawska Street.

7. In the southern part of Stryków, approximately 1 km from the applicants’ house, the A2 motorway crosses the N14 road. The intersection of the two roads is known as “the Stryków II junction”.

8. The A2 motorway forms part of the Second European Transport Corridor, linking Hanover, Berlin, Frankfurt, Poznan, Warsaw, Brest, Minsk and Moscow. It runs through all of central Poland and is one of the most important roads in the country.

9. The Polish part of the motorway, which bears the name “Liberty Motorway” (*Autostrada Wolności*), was built in sections over several years, with construction starting in 2001. It currently comprises eleven sections totalling 475 km. Tolls are payable on some sections of the motorway, and other sections are toll-free.

10. One of the motorway’s sections runs between Konin and Stryków and is 103 km long. It currently has three lanes which are operational. It was free to use this section of the A2 motorway from 2006 until the middle of 2011. Currently, the toll costs approximately 2.50 euros (EUR).

11. When it was built in 2006, the section of the motorway in question ended at the Stryków II junction, and all the motorway traffic was temporarily diverted directly onto the N14 road.

12. Stryków is under the administration of the local authorities of Łódzkie Province (*Województwo łódzkie*).

13. The 1994 local master plan (*plan zagospodarowania przestrzennego*) for Stryków, and the later versions of that plan, feature a motorway project with a ring road around the city.

II. PROCEEDINGS CONCERNING THE CONSTRUCTION AND OPERATION OF THE A2 MOTORWAY SECTION BETWEEN KONIN AND STRYKÓW

14. The first phase of the two-tier procedure concerning the construction of the A2 motorway started on 25 August 1995 when the Head of the

Central Planning Office (*Centralny Urząd Planowania*) issued a decision indicating where the motorway would be located.

15. On 13 February 1996 the Minister for the Environment decided on the course of the relevant section of the motorway, between the towns of Września (near Konin) and Stryków.

16. The second phase of the procedure, namely administrative proceedings concerning the location of the relevant section of the A2 motorway, were initiated on 18 April 1996.

17. On 26 April 1996 the mayor of Stryków (*burmistrz miasta-gminy*) raised a formal objection (*sprzeciw*) to a plan to locate the temporary end point of the A2 motorway (the future Stryków II junction) on the territory of the Stryków Municipality (*gmina*).

18. Among other things, the mayor suggested two alternative locations for the section's end point, namely Łowicz, belonging to Łódzkie Province (*Województwo Łódzkie*), and Żyrardów, belonging to Masovian Province (*Województwo Mazowieckie*). The mayor argued that the traffic on national road no. 71 and regional road no. 712, both passing through Stryków, was already very heavy. Redirecting the motorway traffic through the town, without putting in place any alternative road connection, was likely to obstruct the local road traffic and create environmental risks.

19. On 23 July 1996 the Governor of Łódzkie Province (*wojewoda*) decided that the relevant section of the A2 motorway would run through the southern part of the town of Stryków.

20. To that end, the governor set out various technical specifications relating to the A2 motorway project.

21. In particular, the following actions had to be undertaken during the planning phase. The so-called "zone of nuisance" (*strefa uciążliwości*) was to be determined in the light of the results of an enhanced and extensive environmental impact assessment (*nasilona i pogłębiona ocena oddziaływania na środowisko*). Extensive environmental studies were to be carried out in relation to the problematic areas. The construction project was to reflect the results of those studies. Residential areas along the motorway were to be protected from noise by means of anti-noise screens and other measures. Areas along the motorway were to be forested. At each phase of the project, the owners of properties affected by the motorway were to be protected from the burden of nuisance (noise, air and water pollution) if the latter was of an above-average degree (*ponad przeciętną miarę*).

22. The governor instructed the investor that the relevant application for a construction permit would have to be accompanied by an assessment of the results of local noise monitoring, as well as an extended environmental impact assessment (*pogłębiona ocena oddziaływania na środowisko*).

23. The governor considered himself precluded from examining the objection raised by the mayor of Stryków because, as he explained, in the light of the relevant provisions of the Law on Paid Motorways, a decision

on the location of a motorway could not go beyond the scope of the decision issued by the Head of the Central Planning Office on 25 August 1995, which only concerned the section of the motorway within the limits of Łódzkie Province. The governor found that the development of the motorway did have to be organised section by section. Waiting for the section after Stryków to be planned before approving the location of the section up to Stryków would make the whole project unprofitable for the investor.

24. The above-mentioned decision of 23 July 1996 did not address the question of rerouting the motorway traffic *via* the N14 road.

25. It appears that in 2002 a number of environmental impact assessment reports were produced. These documents have not been submitted to the Court.

26. In the course of a public consultation on the motorway project, one association for the protection of the environment made a series of submissions and was ultimately admitted as a party to the administrative proceedings in question. In particular, the association asked that studies be carried out to measure the impact of the motorway on the health of the population concerned. To that end, they asked that the health of residents living within 1 km of the motorway be monitored. The association also asked that individual vulnerable residents be protected from the impact of the future motorway traffic.

27. On 12 February 2003, considering the results of an assessment of the auditory effects of the motorway on the health of the population concerned, the Governor of Łódzkie Province issued an ordinance. The governor thus declared the part of the section of the motorway which was located directly before Stryków a reduced traffic zone (*obszar ograniczonego użytkowania*).

28. On 26 March 2003 the Governor of Łódzkie Province approved the investor's construction project for the relevant section of the A2 motorway and issued the General Directorate of National Roads and Motorways (*Generalna Dyrekcja Dróg Krajowych i Autostrad*, hereinafter "the roads and motorways authority") with a building permit. As to the environmental association's request to have the health of the population concerned monitored, the governor observed that no legal provisions existed to regulate such action. Overall, the governor considered that the project offered solutions ensuring the protection of the environment.

29. The above-mentioned decision did not address the question of rerouting the motorway traffic *via* the N14 road.

30. On 14 July 2003 the Chief Inspector of Construction Supervision (*Główny Inspektor Nadzoru Budowlanego*) rejected as out of time an appeal lodged by the environmental association against the decision to issue the construction permit.

31. On 25 July 2006 the Inspector of Construction Supervision for Łódzkie Province permitted the roads and motorways authority to use that

section of the motorway. That decision did not address the question of rerouting the motorway traffic *via* the N14 road.

III. OPERATION OF THE SECTION OF THE A2 MOTORWAY BETWEEN KONIN AND STRYKÓW

A. Timeline of events and monitoring of the N14 road

32. On 26 July 2006 the roads and motorways authority opened the new, two-lane, section of the A2 motorway running between the cities of Konin and Stryków (the Stryków II junction).

33. The motorway was then directly connected to the N14 road leading North, to Warsaw and Łódź.

34. Following the opening of the section of the A2 motorway in question, traffic in the centre of Stryków, especially that made up of trucks, seriously increased.

35. An impact assessment carried out in September 2006 by the Warsaw Institute for Environmental Protection (*Instytut Ochrony Środowiska*) revealed that noise levels on the N14 road significantly exceeded the statutory norms.

36. Protests erupted and the residents of Stryków and the surrounding area called on the authorities to urgently limit the traffic on the N14 road, especially at night.

37. Between 2006 and 2017 the applicants did not lodge any complaints about the noise, vibrations or air pollution with the local authorities responsible for environmental protection. They also did not ask for any specific pollution or noise assessment to be carried out in respect of their property.

38. As a result of the protests and complaints lodged by other residents of Stryków, on 10 August 2006 the roads and motorways authority presented to the city council (*Rada Miasta*) a plan for the fast-track construction of a ring road to link the A2 motorway with the N14 road outside the city limits. In the alternative, a 1.7-km extension of the A2 motorway beyond the southern city limits was proposed, in order to connect it with the nearby A1 motorway.

39. In September 2006 noise monitoring was carried out by privately commissioned experts of the Institute for Environmental Protection (*Instytut Ochrony Środowiska*). Their report was drawn up on 15 January 2007.

40. According to that report, the average number of vehicles passing through Stryków *via* the N14 road was 15,381 during the day and 2,818 at night, as measured in September 2006. The noise levels measured in Stryków at the same time significantly exceeded the national norms which at the relevant time were: 60 dB during the day and 50 dB at night

(see paragraph 108 below). In particular, the noise levels in residential areas exceeded the norms by between 9.9 dB (L_{Aeq} – the equivalent continuous sound level) and 12.7 dB (L_{Aeq}) during the day, and by between 18.5 dB (L_{Aeq}) and 21.3 dB (L_{Aeq}) at night.

41. The experts observed that the main cause of the noise was truck traffic, which constituted between 40 and 47% of all the traffic in Stryków.

They considered that such a large number of trucks was highly unusual for traffic within a city.

42. The experts concluded that the noise should not be tolerated in the long term, even assuming that the situation was temporary. They recommended that stringent measures be taken in order to move a large portion of the traffic beyond the city limits.

43. Also in 2006, air and water pollution monitoring was carried out by the Chief Inspectorate for Environmental Protection (*Główny Inspektorat Ochrony Środowiska*). This revealed, *inter alia*, that the annual average concentration of sulphur dioxide and nitrogen dioxide (pollutants which contribute to acid deposition and eutrophication respectively, which in turn can lead to changes in soil and water quality) on Warszawska Street was $8.9 \mu\text{g}/\text{m}^3$ and $33.1 \mu\text{g}/\text{m}^3$ (micrograms per cubic metre) respectively. On a scale of I-V, the river waters in that area were rated IV, “unsatisfactory”. The water in the Stryków well was rated II, “good quality”.

44. In October 2006 the surface of Warszawska Street in Stryków was renovated.

45. In December 2006 the roads and motorways authority reorganised the A2 motorway in order to alleviate the nuisance posed by the increased traffic in Stryków. In particular, alternative roads to Warsaw were indicated to motorway users by means of traffic signs.

46. According to one of the experts appointed by the Warsaw Regional Court (*Sąd Okręgowy*), the above-described measure brought the traffic levels on the N14 road back down to those from before 2006, but did not eliminate the noise emitted by the trucks, especially at night (see also paragraph 78 below). Measurements taken by the expert in September 2008 revealed that the N14 road was still affected by heavy and fluid traffic which included a significant number of trucks. In the Government’s submission, that could be partly caused by the development of industrial zones and service areas in Stryków.

47. The court-appointed expert further observed that on 31 August 2006 the project concerning the *ad hoc* traffic restrictions and reorganisation (see paragraph 45 above) had been approved (by the authority in charge of road and bridge management, *Biuro Zarządzania Drogami i Mostami*), despite its various shortcomings. In particular, contrary to the applicable law, the project had not contained certain maps, a technical description (including the specifications of the road and the traffic), a timeline for its

implementation, or the name of the project designer. On 15 September 2006 the project had been registered with the Office of Motorway Construction (*Biuro Zarządzania Budową Autostrady*) so that it could be implemented, with the implementation date set for 1 October 2006. In view of the great number of custom-made traffic signs which had had to be prepared, the reorganisation of traffic had taken place in December 2006.

48. The roads and motorways authority decided not to opt for anti-noise screens along the N14 road, because the space along Warszawska Street was insufficient and access to multiple individual plots along the street could not be blocked or visually obstructed.

49. The operation of the motorway resulted in the creation of various logistics centres and large warehouses in the Smolice and Stryków areas. A general increase in traffic was thus recorded on the streets of these towns.

50. According to a report drawn up on 30 November 2010 by another expert appointed by the Warsaw Regional Court, the roads and motorways authority could not have predicted what level of traffic in Stryków would result from the operation of that section of the A2 motorway. Truck traffic was generated by not only the operation of the motorway, but also the operation of other national and regional roads in the vicinity of Stryków.

B. Comparative environmental impact assessment drawn up for the A2 motorway in the area of the Stryków II junction

51. In January 2008 a post-construction environmental impact assessment report was issued in respect of the part of the A2 motorway between Dąbie and Stryków (57 km before Stryków).

52. The following relevant information pertaining to the area of the Stryków II junction featured in that document.

53. The measurements carried out in various directions on the motorway revealed the following traffic statistics.

54. On 21 August 2007 the number of light vehicles per hour ranged from 282 to 475 between 6 a.m. and 10 p.m., and from 114 to 206 between 10 p.m. and 6 a.m. The number of heavy vehicles (such as trucks or buses) per hour ranged from 191 to 296 between 6 a.m. and 10 p.m., and from 162 to 234 between 10 p.m. and 6 a.m. The percentage of heavy vehicles in the traffic peaked at 47.5% between 6 a.m. and 10 p.m., and at 64.4% between 10 p.m. and 6 a.m. The total number of vehicles counted in the twenty-four hours was 12,499.

55. On 23 August 2007 the number of light vehicles per hour ranged from 220 to 416 between 6 a.m. and 10 p.m., and from 94 to 190 from 10 p.m. to 6 a.m. The number of heavy vehicles (such as trucks or buses) per hour ranged from 195 to 302 between 6 a.m. and 10 p.m., and from 175 to 230 between 10 p.m. and 6 a.m. The percentage of heavy vehicles in the traffic peaked at 48.8% between 6 a.m. and 10 p.m., and 66.9% between

10 p.m. and 6 a.m. The total number of vehicles counted in the twenty-four hours was 11,587.

56. Overall, the average number of vehicles in the area of the Stryków II junction was 11,244 between 6 a.m. and 10 p.m., and 3,006 between 10 p.m. and 6 a.m., with a total number of 14,250 vehicles every twenty-four hours. Nearly 52% of that traffic consisted of heavy vehicles.

57. The measurements carried out specifically in respect of the junction between the A2 motorway and the N14 road revealed the following numbers of vehicles: 14,552 light vehicles every twenty-four hours; 5,934 heavy vehicles every twenty-four hours; 12,718 light vehicles between 6 a.m. and 10 p.m.; 4,320 heavy vehicles between 6 a.m. and 10 p.m.; a total of 17,038 vehicles between 6 a.m. and 10 p.m.; 1,834 light vehicles between 10 p.m. and 6 a.m.; 1,614 heavy vehicles between 10 p.m. and 6 a.m.; and a total of 3,448 vehicles between 10 p.m. and 6 a.m.

58. The average speed was 105 km/h for light vehicles and 75 km/h for heavy vehicles.

59. The measurements of noise levels which were carried out mainly on sunny days in August 2007, at a distance of 25 to 800 metres from the edge of the road and at a height of 4 metres, revealed that the noise ranged from 49.3 to 61.8 dB during the day, and from 47.7 to 59.6 dB at night. The statutory noise levels were exceeded during the day at three out of eighteen measuring stations (by up to 1.8 dB) and at night at fifteen out of eighteen stations (by up to 9.6 dB). During the monitoring, it was impossible to separate the noise coming from the A2 motorway from that produced by other sources, such as local activities or local roads.

60. Average annual levels of air pollutants for 2006 were as follows: 16-20 $\mu\text{g}/\text{m}^3$ of nitrogen dioxide (the statutory limit of 40 $\mu\text{g}/\text{m}^3$ was not exceeded); 9-15 $\mu\text{g}/\text{m}^3$ of sulphur dioxide (the statutory limit of 20 $\mu\text{g}/\text{m}^3$ was not exceeded); 16-18 $\mu\text{g}/\text{m}^3$ of PM_{10} (the statutory limit of 40 $\mu\text{g}/\text{m}^3$ was not exceeded); 1.5-2.5 $\mu\text{g}/\text{m}^3$ of benzo(a)pyrene (the statutory limit of 5 $\mu\text{g}/\text{m}^3$ was not exceeded); and 0.05 $\mu\text{g}/\text{m}^3$ of lead (the statutory limit of 0.5 $\mu\text{g}/\text{m}^3$ was not exceeded).

61. The 2008 environmental impact assessment report also stated that thirty-four anti-noise screens, the height of which varied from 2.5 to 4.5 metres, and five two-metre-high anti-noise ramparts had been put in place along the section of the A2 motorway between Konin and Stryków.

62. The section of the motorway in question was equipped with watertight ditches and devices which partly cleaned road sludge before it was drained away.

63. To reduce the nitrogen dioxide pollution which was expected to be emitted by the motorway traffic, trees and bushes had been planted along the motorway. The report's authors concluded that because that greenery had been planted only recently, it was not yet fulfilling its filtering function.

C. Development of the A2 motorway's extension between Stryków II and Stryków I junctions.

64. As the section of the motorway between Konin and the Stryków II junction was being developed, the authorities were developing the project concerning the 1.7-km extension of the motorway through the southern outskirts of Stryków, between the Stryków II and Stryków I junctions.

65. The environmental impact assessment for that part of the A2 motorway was completed in September 2003. Following the issuance of a number of permits, works began in late 2006. They were to be completed in the autumn of 2008. The works then slowed down because of either a lack of government funding or, in the applicants' submission, the roads and motorways authority's persistent failure to make use of the State and European Union funds allocated to the project.

66. On 22 December 2008 the above-mentioned extension to the A2 motorway was opened for use.

67. The extension proved to effectively reduce the traffic made up of heavy vehicles on the N14 road, especially in the area where the applicants' house was located. The applicants confirmed that the traffic had dropped to an acceptable level.

D. Health impact of the operation of the section of the A2 motorway

68. A privately commissioned report drawn up by psychologists on 15 September 2008 stated that the life of people living on Warszawska Street and on nearby streets had been very badly affected by the increased traffic on the N14 road.

69. Firstly, Warszawska Street was very difficult to cross.

70. Secondly, vehicles emitted a great deal of noise and exhaust fumes and caused vibrations and other disturbance. That nuisance persisted practically twenty-four hours a day. As a result, the residents could not open windows, and damage was caused to their houses. The residents lived with serious stress caused by the audible noise and (even more harmful) infrasound coming from trucks and other vehicles with large engines. This was compounded by the high concentration of exhaust fumes and vibrations.

71. The experts considered that severe and persistent noise could constitute a biological stress factor causing physiological changes in humans. Such biological stress would initially cause an alert reaction of the human body and, in the event of a strong stimulus (noise over 60 dB), could lead to death. Longer exposure to the stimulus caused insomnia, irreversible exhaustion, and also led to death. It was widely accepted among scientists that, because of the particularly strong neural pathways between the hearing apparatus and the brain, persistent audible noise caused not only hearing

loss but also mental discomfort, and nervous breakdowns and disorders in internal organs and brain functions, such as cardiological ailments, strokes, breathlessness, dizziness, high blood pressure and the risk of ulcers. Exposing children to noise could cause attention deficit disorders and hyperactivity, learning difficulties, aggression, withdrawal, apathy, insomnia, bed-wetting and night-time fears. Children living in a noisy environment were also very susceptible to drops in their overall immunity, allergies, arthrosis, skin disease, ulcers, nausea, panic attacks, constipation or diarrhoea. The symptoms among adults included problems with blood circulation and digestion, back pain, asthma, allergies, hair loss, depression, tobacco and alcohol addiction, aggression, depression and infertility.

72. Ultrasound, which mostly affected women and young people, caused, among other things, earache, hearing and speech impairments, stomach and heart pain, and breathing and hormone production disorders.

73. Vibrations could lead to the development of a so-called “vibrations syndrome”, which seriously affected various bodily functions.

74. The experts concluded that life for the residents of Warszawska Street in Stryków was dreadful, and they risked severe psychophysiological ailments, illnesses and perhaps even a decrease in their life expectancy. All residents complained of interrupted sleep because of unbearable noise, infrasound and vibrations. Some of them had developed autoimmune diseases linked to stress.

E. Civil proceedings against the national roads and motorways authority

75. On 1 April 2009 the applicants brought a civil action against the State Treasury and the national roads and motorways authority, seeking compensation for damage to their physical and mental health and the infringement of their right to a peaceful and undisturbed private and family life, home and feeling of security (case no. XXV C 408/09). They sought 15,000 Polish zlotys (PLN – approximately EUR 3,750) per person in compensation.

76. On 7 April 2009 the Warsaw Regional Court joined the applicants’ case to an action which had been lodged one year earlier by a certain B.W., whose house was located in the vicinity of the applicants’ plot, along the N14 road. That claimant sought compensation in the amount of PLN 60,000 (approximately EUR 15,000). B.W also applied for the respondent to be ordered to reorganise the traffic by barring 25-tonne vehicles from entering the town of Stryków He withdrew that claim on 20 February 2009.

77. On 22 November 2011 the Warsaw Regional Court dismissed the claimants’ action for compensation. In view of the unprecedented nature of the action, the applicants were not ordered to bear any costs of the proceedings.

78. The regional court based its rulings on the following pieces of evidence: various reports from experts in traffic engineering and acoustics, including the report of 30 November 2010 (described in paragraphs 79-87 below) and submissions made by the claimants and by specialists employed at the relevant time by the roads and motorways authority. The court rejected the report prepared by the Chief Inspectorate for Environmental Protection based on the results of the monitoring of air pollution in the area (see paragraph 43 above). The court considered that, even though it was common knowledge that increased traffic led to increased emissions of exhaust fumes, the exact cause of the air pollution in the area in question was unknown. The court also considered it unnecessary to examine the results of the noise monitoring report commissioned by the claimants (see paragraph 39 above), or to obtain expert evidence on the effects of the noise on the applicants' mental health.

79. The report drawn up on 30 November 2010 by the court-appointed expert in road traffic engineering was produced to answer the question of whether the roads and motorways authority had taken adequate and sufficient measures in the way that they had organised traffic in Stryków. The report contained the following observations and conclusions, in so far as relevant.

80. The A2 motorway and the N14 road were, at the material time, a preferred route for drivers. That section of the roads was toll-free and the technical specifications of these roads were better than those on the alternative roads, the N2 and N72.

81. Intensified traffic on the N14 road was likely to persist until: (i) the opening of the next part of the road, between the Stryków II and Stryków I junctions (the part which was to link the A2 motorway with the A1 motorway passing from the South to the North, just east of Stryków); (ii) the putting in place of *ad hoc* traffic restrictions; or (iii) the charging of tolls for use of the section of the A2 motorway between Konin and Stryków.

82. The traffic on the N14 road, after the A2 motorway had been connected to it, was estimated to have increased by 35% in comparison with 2005. Truck traffic on the N14 road had peaked in 2006 at 23% of the total traffic that year. That represented a 13% increase compared with previous years.

83. In line with the local master plan, the expansion of buildings with a commercial function (namely warehouses) had been noted in and around Stryków. That had, in all likelihood, generated the increased traffic made up of trucks and other delivery vehicles on the N14 road.

84. The extension to the motorway that had opened on 22 December 2008 was a temporary construction which did not meet the technical specifications of a motorway. It was also not equivalent to the ring road which had initially been planned to take the traffic out of the centre of Stryków. The court-appointed expert concluded that there was a high

probability that, despite the operation of that extension, Warszawska Street had remained the main transit route for traffic diverging from the A2 motorway, including trucks. That road was the shortest connection from the South to the North, and also the only road leading to the warehouses and large commercial buildings in Stryków. Moreover, the 2008 extension had had a tendency to become congested. Overall, however, the operation of that temporary extension had contributed to the decrease in traffic on Warszawska Street after December 2008.

85. Because of intensified traffic between 2006 and December 2008, Stryków residents had been likely to experience difficulties in crossing Warszawska Street on foot and driving onto that street from their individual plots. When traffic on that road congested, the local population had been exposed to high levels of noise and emissions from the exhaust fumes of vehicles immobilised in traffic jams. Local traffic had been greatly disturbed on such occasions, and aggression among road users had frequently been recorded.

86. The expert's overall conclusion was as follows.

The intensity of the traffic which had driven down Warszawska Street in Stryków after 26 July 2006 could not have been fully predicted prior to the opening of the section of the A2 motorway from Konin.

With the exception of the shortcomings in the 2006 project concerning *ad hoc* traffic restrictions (see paragraph 44 above), the roads and motorways authority had been diligent in responding to the problem of the increase in traffic. In particular, the authority had engaged in (i) regular traffic monitoring; (ii) the *ad hoc* reorganisation of traffic in December 2006, with the idea for that measure being presented two weeks after the section of the motorway had begun to operate; and (iii) the planning and construction of the motorway's extension through the Stryków I junction in December 2008.

87. The shortage of funds had made it impossible for the roads and motorways authority to construct a ring road around Stryków, as featured in the local master plan. In the light of that fact, the expert concluded that extending the motorway through the Stryków I junction offered an effective solution to the problem in the shortest possible time.

88. The regional court considered that the applicants' right to health and the peaceful enjoyment of their home had been infringed because the noise in their places of residence caused by traffic had gone above the statutory norms. The court held, however, that the authorities had been quick to acknowledge the problem brought to their attention by the area's residents and to implement an *ad hoc* measure whereby a portion of the traffic had been diverted to the capital *via* other roads. The authorities had also been swift to prepare and start implementing the plan for a long-term solution, namely the construction of a road extension outside of Stryków. As of December 2008 those measures had significantly reduced the traffic in the town. In view of these considerations, the court concluded that the

authorities had acted in accordance with the law, namely section 20 of the Act of 21 March 1985 on public roads (see below), and thus could not be held liable for the infringement of the applicants' personal rights. That element distinguished the case from the judgment of the Supreme Court (*Sąd Najwyższy*) of 23 February 2001 (II CKN 394/00, see below), in which it had been held that a local government's tolerance of noise levels which exceeded the national norms was unlawful and could constitute an infringement of personal rights. Lastly, the court observed that compensation could not be awarded under Article 417 of the Civil Code, because the applicants had not proved that the harm resulting from the increased traffic between 2006 and December 2008 had made them unfit for work.

89. On 19 December 2012 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed an appeal by the applicants without charging them any court fees.

90. The appellate court employed the following reasoning.

91. The construction of the A2 motorway had pursued a legitimate general interest of society and had received media attention. Because of that, it was understandable that the motorway could not simply have been cut off before reaching Stryków, and that traffic had had to be directed through the town. The increased traffic had indeed caused nuisance to the residents of the area, but it had been the only available solution which had been technically sound. The N14 road had been in operation prior to the motorway, and "nobody had promised ... that [the motorway's] construction [would] eliminate or reduce traffic on that road". The fact that traffic, especially truck traffic, had increased had been as a result of matters beyond the power of the roads and motorways authority. In particular, that authority had not been responsible for drivers' choices and could not predict which type of vehicles would use the N14 road instead of the alternative roads indicated from the city of Konin. It had also been impossible to predict the cars' impact on air pollution, namely how many cars driving down Warszawska Street would not be equipped with a catalytic converter or would have non-functioning exhaust pipes, and what their speed would be and how often they would use their brakes. The roads and motorways authority had acted in compliance with the law, in that it had taken firstly *ad hoc* and then long-term measures to alleviate the nuisance caused by the traffic.

92. The appellate judgment was served on the applicants on 24 May 2013. No cassation appeal was available to the applicants because the value of their claim was lower than the statutory threshold of PLN 50,000 (see paragraph 105 below). It appears that a cassation appeal lodged by B.W., with whom they had been joint claimants, was rejected on procedural grounds.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LIABILITY IN TORT

93. Article 23 of the Civil Code, which entered into force in 1964, contains a non-exhaustive list of so-called “personal rights” (*prawa osobiste*). This provision states:

“The personal rights of an individual, in particular health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, the inviolability of the home, scientific or artistic work, [as well as] inventions and improvements, shall be protected by the civil law, regardless of the protection laid down in other legal provisions.”

94. Article 24 paragraph 1 of the Civil Code provides:

“A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of an infringement, [the person concerned] may also require the party responsible for the infringement to take the necessary steps to remove [the infringement’s] consequences ... In compliance with the principles of this Code, [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest.”

95. Article 144 of the Civil Code provides as follows:

“In the exercise of his or her rights, an owner of immovable property shall refrain from actions which would infringe the enjoyment of adjacent immovable property beyond an average degree as defined by the socio-economic purpose of the immovable property and the local conditions.”

96. Under Article 222 § 2 of the Civil Code:

“The owner shall have the right to claim restitution of his lawful position and the cessation of infringements of the law against a person who infringes his ownership other than by depriving the owner of actual control of the property in question.”

97. There is no limitation period for claims under Article 222 of the Civil Code if they relate to immovable property (Article 223 of the Civil Code).

98. Under Article 415 of the Civil Code, which provides for liability in tort, anyone who through his or her fault causes damage to another is required to repair that damage.

99. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. The relevant part of that provision reads:

“The court may award an adequate sum as pecuniary compensation for non-pecuniary damage (*krzywda*) suffered by anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary to remove the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ...”

100. Furthermore, Article 77 § 1 of the 1997 Polish Constitution (*Konstytucja*), which entered into force on 17 October 1997, and Article 417 of the Polish Civil Code provide for the State's liability in tort. The latter provision reads as follows:

“The State Treasury, or [as the case may be] a local-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission connected to the exercise of public authority.”

101. Article 417¹ § 2 of the Civil Code reads as follows:

“Where damage has been caused by the delivery of a final ruling or a final decision, redress for such damage may be sought after the unlawfulness [of the ruling or decision] has been established in relevant proceedings, except where otherwise provided for by law.”

102. Article 417² of the Civil Code provides as follows:

“If any damage has been caused to a person through the lawful exercise of public authority, the victim shall claim full or partial redress and compensation, provided that the circumstances, in particular the victim's being unfit for work or his or her difficult financial situation, call for [a ruling on] an equitable basis.”

103. Article 445 § 1 of the Civil Code, which is applicable in the event that a person suffers a physical injury or health disorder as a result of an unlawful act or omission of a State agent, reads as follows:

“... [T]he court may award the injured person an adequate sum in pecuniary compensation for the damage suffered.”

104. On 23 February 2001 the Supreme Court ruled in a case concerning noise nuisance stemming from traffic on a high-speed road managed by a municipality (II CKN 394/00). The court held firstly that the obligations of local government, in the context of protecting the environment, came directly from the Act of 31 January 1980 on protecting and shaping the environment (*Ustawa o ochronie i kształtowaniu środowiska*), which was repealed on 26 October 2001. The provisions of that Act, in conjunction with the relevant civil-law provisions, therefore formed a sufficient basis for claims of a civil nature. Secondly, a local government's tolerance of noise levels which exceeded the national norms was unlawful and could constitute an infringement of personal rights. Moreover, seeking to remove the consequences of an infringement of those rights, by constructing anti-noise screens, fell within the scope of Article 24 § 1 of the Civil Code.

II. CASSATION APPEAL IN CIVIL PROCEEDINGS

105. Under Article 398² § 1 of the Civil Code, a cassation appeal is not available in respect of cases which concern pecuniary rights and in which the value of a claim is less than PLN 50,000.

III. ENVIRONMENTAL REGULATIONS

A. Constitutional protection of the environment

106. Article 5 of the Polish Constitution provides that Poland shall ensure the protection of the environment, being guided by the principle of sustainable development. Other relevant constitutional provisions read as follows:

Article 74

- “1. Public authorities shall pursue policies ensuring the ecological security of current and future generations.
2. Protection of the environment shall be the duty of public authorities.
3. Everyone shall have the right to be informed of the quality of the environment and its protection.
4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.”

Article 68 (4)

“Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.”

B. Noise

107. The duty to protect the environment from noise is set out, defined and further regulated in, *inter alia*, section 112, section 2.2(a), section 3.5 and section 3.26(a) of the Act of 27 April 2001 on the protection of the environment (*Prawo ochrony środowiska*, hereinafter “the Protection of the Environment Act”), which has been in force since 1 January 2002, and in the Minister for the Environment’s Ordinance on acceptable levels of noise in the environment (*Rozporządzenie w sprawie dopuszczalnych poziomów hałasu w środowisku*) in its version of: 13 May 1998, 29 July 2004 (in force from 13 August 2004 until 20 July 2007) and 14 June 2007 (in force since 20 July 2007), with further amendments.

108. The 1998 and 2004 versions of the above ordinance provided that in areas where multiple families lived, such as the one where the applicants live, the acceptable level of noise from roads was 60 dB(A) during the day and 50 dB(A) at night. The most recent version of the ordinance in question changed these parameters to 65 dB (L_{Aeq}) and 56 dB (L_{Aeq}) respectively.

109. Under the Act of 21 March 1985 on public roads (*Ustawa o drogach publicznych*), which has been in force since 1 October 1985, the administration of public roads and motorways is the responsibility of the Minister for Transport and the roads and motorways authority. This Act imposes various obligations on the latter authority, including an

obligation to prevent adverse transformations of the environment which may be caused by the construction or maintenance of roads (section 20(13)), and an obligation to limit or stop road traffic in the event of a direct threat to people's security (section 20(14)). Moreover, when planning a road, the authorities are duty-bound to assess the impact of the project on road security, including, *inter alia*, the impact on existing road networks and on the type and amount of traffic (section 24(i)(2)).

110. Poland is also bound by the European Parliament and the European Council's Directive 2002/49/EC relating to the assessment and management of environmental noise of 25 June 2002 ("the Noise Directive", transposed by Poland by means of an amendment to the Protection of the Environment Act dated 18 May 2005). The directive sets out noise indicators for reporting purposes which otherwise do not constitute legally binding EU-wide values or targets as regards noise limits.

111. On 17 May 2017 the European Commission sent a formal notice to Poland under Article 258 of the Treaty on the Functioning of the EU, urging it to adopt measures on environmental noise, namely to establish strategic noise maps and action plans as required under the EU rules to decrease noise pollution in the EU (no. 20172068). On 18 February 2021 the European Commission referred Poland to the European Court of Justice over the country's failure to comply with its obligations under the Noise Directive. The referral was accompanied by the following observations, in so far as relevant:

"... adopting action plans was necessary to combat noise that is detrimental to human health.

The Polish national law does not guarantee the establishment of action plans, which are required under the Directive regardless of whether noise limit values in the area are exceeded. Action plans for 20 major railway sections and for 290 major road sections are still missing, despite the deadline for adopting such action plans having passed.

Moreover, the national law does not require action plans to include all necessary elements that are provided for in the Directive, in particular a record of public consultations, measures to preserve quiet areas and long-term strategy. Through the public consultations over the action plans the public can verify and have their say on whether authorities take adequate measures to reduce noise levels where they may be harmful, or to prevent existing levels from becoming harmful. This is why, not only action plans need to be adopted, but the national law must require all elements to be included in those action plans..."

The infringement proceedings are currently ongoing.

C. Air pollution

112. The obligation to ensure the highest air quality is set out and further regulated in, *inter alia*, section 85 of the Protection of the Environment Act and in the Minister for the Environment's Ordinance on acceptable levels of

certain substances in the air ... (*Rozporządzenie w sprawie dopuszczalnych poziomów niektórych substancji w powietrzu, alarmowych poziomów niektórych substancji w powietrzu oraz marginesów tolerancji dla dopuszczalnych poziomów niektórych substancji*) in its version of 6 June 2002 (in force from 12 July 2002 until 3 April 2008) and 3 March 2008 (in force from 3 April 2008 until 3 October 2012).

113. The ordinance provided that at the material time, from August 2006 until December 2008, the absolute norm for the annual average concentration of sulphur dioxide in the air was 20 µg/m³, and the norm for nitrogen dioxide was 40 µg/m³, subject to a margin of tolerance. The margin of tolerance was fixed at 8-20% for 2006, at 6-15% for 2007, and at 4-10 % for 2008. Under the law, such levels of nitrogen dioxide were acceptable, taking into account the need to protect human health.

114. Poland is also bound by Directive 2008/50/EC of the European Parliament and the European Council of 21 May 2008 on ambient air quality and cleaner air for Europe (which entered into force on 11 June 2008 and was transposed by Poland by means of two Acts in 2009 and 2012 and seven ordinances in 2012). This directive establishes air quality objectives, including cost-effective targets for improving human health and environmental quality up to 2020. Limit values for the protection of human health are as follows: for sulphur dioxide, 125 µg/m³ in twenty-four hours, not to be exceeded more than three times a calendar year; and for nitrogen dioxide, 40 µg/m³ in a calendar year, as of 1 January 2010 (with a 50% margin of tolerance on 19 July 1999, decreasing on 1 January 2001 and every twelve months thereafter by equal annual percentages to reach 0% by 1 January 2010; see Annex XI). Alert and information thresholds are as follows: 500 µg/m³ for sulphur dioxide, and 400 µg/m³ for nitrogen dioxide (Annex XII).

115. The earlier Council Directive 1999/30/EC relating to limit values for, *inter alia*, sulphur dioxide and nitrogen dioxide in ambient air (“the First Daughter Directive”, in force from 19 July 1999 until 10 June 2010, transposed by Poland by means of, *inter alia*, the 2001 Act on Environmental Protection and the 2002 Ordinance on acceptable levels of certain substances in the air) set out the same daily limit values and alerts thresholds for both pollutants in question (Annexes I and II). In accordance with the directive, the daily limit value for sulphur dioxide for the protection of human health (125 µg/m³) was to be applicable as of 1 January 2005.

116. Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (which entered into force on 27 November 2001 and which was transposed by Poland by means of a series of Acts and ordinances) sets national emission ceilings on, *inter alia*, annual sulphur dioxide and nitrogen oxide emissions to be attained by 2010 at the latest and to be maintained from that year (Article 4). These ceilings, per calendar

year, are 1397 kilotons for sulphur dioxide and 879 kilotons for nitrogen oxide (Annex I).

117. On 25 February 2016 the European Commission sent a formal notice to Poland under Article 258 of the Treaty on the Functioning of the EU, urging it to take action to ensure good air quality and safeguard public health in relation to breaches of air pollution limits for nitrogen dioxide under the EU legislation on ambient air quality (Directive 2008/50/EC) (no. 20162010). The infringement proceedings are currently ongoing.

THE LAW

I. JOINDER OF THE APPLICATIONS

118. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

119. The applicants complained under Article 8 of the Convention that by routing heavy traffic from the A2 motorway *via* the N14 road, the authorities had breached their right to the peaceful enjoyment of their private and family life and their home, as their house was situated very near to the road.

120. Article 8 of the Convention reads as follows:

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

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. Admissibility

121. The Government raised a preliminary objection, arguing that the case was inadmissible for non-exhaustion of domestic remedies, as the applicants had not lodged a cassation appeal with the Supreme Court. In their view, the fact that B.W.’s cassation appeal had not been examined on the merits did not mean that the applicants’ own cassation appeal would not have had any prospects of success.

122. The applicants submitted that a cassation appeal had not been available in their cases, because the value of each of their claims had been below the statutory threshold.

123. The Court observes that in the civil proceedings in question, each applicant sought compensation of PLN 15,000 (see paragraph 74 above).

That amount was below the threshold of Article 398² of the Civil Code (see paragraph 104 above). It follows that a cassation appeal was clearly not available to any of these applicants. In these circumstances, the Government's argument relating to the cassation appeal lodged by B.W., who sought compensation in an amount higher than the statutory limit (see paragraph 75 above), has no relevance for the present case.

124. The Government's preliminary objection of non-exhaustion of domestic remedies must therefore be rejected.

125. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

126. The applicants complained under Article 8 of the Convention that by routing heavy traffic from the A2 motorway *via* the N14 road, which was not equipped for that purpose, the authorities had breached their right to the peaceful enjoyment of their private and family life and their home, as their house was situated very near to the road.

127. The applicants did not call into question the policy of expanding the road network in Poland. They argued, however, that any such development should be balanced, in that it should not put an excessive burden on the residents concerned. The increased traffic on the N14 road, especially at night, had, for a number of years, hampered the applicants' quiet enjoyment of their homes and disturbed their sleep. The vibrations from the road traffic had also caused cracks to appear in the walls of many Stryków buildings.

128. The applicants argued that the infringement of their Article 8 rights had been caused, firstly, by the authorities' negligent planning of the construction of the motorway, which had disregarded the obligation to ensure the protection of nearby residential areas.

129. In that regard, the applicants submitted that the authorities had already faced a similar situation when they had opened another section of the A2 motorway. They also argued that the lack of adequate planning had been deliberate, with the authorities wishing to curb expenditure. That said, the initial savings as regards investment had not been justified, because the State had not been facing any financial crisis, and because the State had ultimately incurred higher costs as a result of the subsequent *ex post facto* studies and reorganisation of the traffic.

130. In the applicants' opinion, the fact that the problem had resulted from the shortcomings in the original planning of the project was proven by

the authorities' ultimate success in greatly reducing truck traffic on the N14 road.

131. Secondly, the applicants argued that the infringement of their rights had been caused by the inadequate response to the resulting situation. The applicants essentially complained that the authorities had failed to take timely, adequate and sufficient traffic mitigation measures. In particular, they had not created good-quality alternative roads, and they had not effectively eliminated the heavy night-time traffic on the N14 road.

(b) The Government

132. The Government acknowledged that, in the circumstances of the case, the nuisance caused to the applicants by the operation of the motorway had reached the minimum level of seriousness and thus fell within the ambit of Article 8 of the Convention.

133. That said, the domestic authorities had complied with their positive obligations stemming from that provision.

134. In respect of the planning of the motorway, the Government submitted that the authorities had struck a fair balance between the competing interests of the individual applicants and the community as a whole.

135. The operation of the A2 motorway was legal and pursued an important public interest, namely the facilitation and acceleration of domestic road transport, as well as the bringing of economic and social development to the country.

136. Long before the opening of the A2 motorway, the N14 had been a public national road connecting major cities. Its so-called design speed limits, which in built-up areas had been 60 and 70 km, had remained the same when the motorway traffic had been redirected down it.

137. The traffic on the N14 after the motorway had been linked to it had been largely unpredictable. The authorities had only been able to monitor the situation and react to it *ex post facto*, which was what they had done.

138. The nuisance which the applicants had had to endure had only been temporary, lasting only two and a half years. In addition, the levels of noise disturbance had been reduced six months into the operation of the motorway, when the road traffic to Warsaw had been reorganised. As a result of those measures, the inconvenience caused by the traffic had been alleviated by December 2008. The authorities had thus reacted promptly and adequately to the situation in Stryków, of which they had become aware not only through the complaints of the population concerned, but also through their own monitoring. The authorities' reaction to the traffic problem had been positively assessed by the expert appointed by the court in the course of the applicants' civil proceedings.

139. In respect of the response to the traffic nuisance, the Government argued that the local authorities had taken all necessary measures aimed at eliminating the inconvenience caused by heavy traffic in Stryków.

140. As early as August 2006, the authorities had come up with a plan to connect the A2 and A1 motorways outside of Stryków. The connecting road (the 1.7-km extension) had become operational on 22 December 2008 and the traffic made up of heavy vehicles had dropped significantly.

141. Also in August 2006, the roads and motorways authority had drawn up a plan aimed at encouraging motorway users to make a detour around Stryków by taking alternative roads to Warsaw. That measure had been put in place in stages and had become fully operational in December 2006. The measure had reduced traffic levels through Stryków almost to those which had existed before the opening of the A2 motorway.

142. In October 2006 the surface of part of the N14 (namely Warszawska Street) in Stryków had been renovated.

143. The Government also submitted that the residents in the area concerned, who had been regularly informed of the mitigation measures in question, had been free to lodge complaints and applications in respect of the operation of the motorway or the initial investment. The applicants had not made use of that opportunity.

144. The Government also commented that the increase in traffic in Stryków might well have been caused by factors other than the A2 motorway. In particular, the Stryków Municipality, which was conveniently situated in Central Poland, had been developing rapidly. A number of warehouses and logistics centres had been erected in the area of Stryków and nearby Smolice. In 2017 Stryków had been ranked as the third-best developing district in a local sustainable development programme. In that regard, the Government relied on the observations made by the expert who had been appointed by the court in the course of the applicants' civil proceedings.

145. The Government noted that all the mitigation measures taken by the authorities had been assessed as adequate, reasonable and prompt. The applicants had not shown that the authorities had at some point refused to put in place any particular measures which might have been suggested by the population concerned.

146. The Government observed that the applicants had not documented the consequences of the impugned nuisance by medical certificates or independent reports. The psychological opinion submitted to the Court had been commissioned by the applicants, and as such was not impartial and credible.

147. Lastly, the Government submitted that the decision-making process had complied with the Convention requirements. In particular, the applicants had received a fair and fully adversarial examination of their civil case.

2. *The Court's assessment*

(a) **General principles**

148. The Court reiterates that Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be a place, a physically defined area, where private and family life goes on. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

149. The Court further reiterates that although there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously affected by severe environmental harm such as noise or other pollution, an issue may arise under Article 8 of the Convention (see *Hatton and Others*, cited above, § 96; *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C; *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 18, § 40; and *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008).

150. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, this may involve those authorities adopting measures designed to secure respect for private life even in the sphere of relations between individuals (see, among other authorities, *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 62, *Reports of Judgments and Decisions* 1996-IV, and *Surugiu v. Romania*, no. 48995/99, § 59, 20 April 2004). 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 an 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. 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 *Hatton and Others*, cited above, § 98).

151. Where noise disturbances or other nuisances go beyond the ordinary difficulties of living with neighbours, they may affect the peaceful enjoyment of one's home, whether they be caused by private individuals,

business activities or public agencies (see *Apanasewicz v. Poland*, no. 6854/07, § 98, 3 May 2011; *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 97, 25 November 2010; and *Udovičić v. Croatia*, no. 27310/09, § 148-149, 159, 24 April 2014).

152. Lastly, the Court reiterates that the Convention has a fundamentally subsidiary role and the national authorities are in principle better placed than an international court to evaluate local needs and conditions (see *Hatton and Others*, cited above, § 97). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the justification given by the State is relevant and sufficient remains subject to review by the Court (see *Fadeyeva*, cited above, § 102, with further references).

(b) Application of the above principles to the present case

153. The Court notes the finding of the domestic courts that the applicants' right to health and the peaceful enjoyment of their home had been infringed because the noise in their places of residence caused by traffic had gone beyond the statutory norms (see paragraph 88). In the light of the circumstances of the case, the adverse effects of the pollution (the noise, vibrations and exhaust fumes) emitted by the heavy traffic on Warszawska Street which affected the applicants' home have attained the necessary minimum level to bring the applicants' grievances within the scope of Article 8 of the Convention, taking into account their intensity, duration, physical and mental effects (see *Fadeyeva*, cited above, § 69).

154. The Court observes that although the applicants complained that the heavy road traffic which had followed the opening of the Konin-Stryków section of the A2 motorway had caused a nuisance, they did not argue against the national policy of road development or the local policy of commercial development of the area (see paragraphs 163 and 178 above). Incidentally, the implementation of these policies, as transposed into the local master plan, was to be accompanied by the construction of a ring road around Stryków (see paragraph 12 above).

155. The applicants complained instead that the problem in question could have been avoided if the authorities had been diligent in planning that section of the motorway (see paragraph 164 above). Moreover, the consequent nuisance could have been minimised if the authorities had employed timely, adequate and sufficient mitigation and adaptation measures (see paragraph 165 above).

156. As to the first part of the complaint, the Court rejects the applicants' argument that there was a pattern of bad planning as regards the sections of the A2 motorway, as there is no evidence to support that allegation.

157. The Court nevertheless observes that the administrative authorities, which were in charge of choosing the location and the technical

specifications of the motorway, did not examine the objection about the location of the motorway's temporary end point which had been lodged in 1996 by the mayor of Stryków (see paragraphs 16 and 22 above). The mayor had formulated a clear and detailed prediction as to the risk that ending the motorway at the point later known as the Stryków II junction without any alternative road connection would cause traffic on Warszawska Street which was too heavy and too burdensome (see paragraph 17 above).

158. The Court also takes note of the fact that all the environmental impact assessment reports and administrative decisions which were produced in the course of the impugned administrative proceedings, and which are in the Court's possession, were only concerned with the motorway *per se*, and were completely silent as to the traffic rerouting *via* the N14 road (see paragraphs 23, 26, 28 and 30 above).

159. Another important element in this context is that the authorities opted for that section of the motorway to be toll-free (see paragraph 9 above), even though that was clearly going to prompt the greater circulation of traffic on that road and on the N14, which was shorter and technically better than any alternative national or regional road in the vicinity (see paragraphs 79 and 80 above).

160. Lastly, the Court accepts that Stryków residents were affected by not only the transit traffic, but also the movement of vehicles serving various warehouses and logistics centres (see paragraphs 82, 83 and 178 above). However, no data are available to distinguish between these two types of traffic. The Court thus considers it reasonable to assume that the transit traffic constituted a significantly larger portion of the traffic in question, especially the traffic which circulated at night, that is, outside of the opening hours of the commercial establishments which developed in the Stryków area.

161. In the light of all these considerations, the Court cannot agree with the Government that the traffic on Warszawska Street was unpredictable (see paragraph 172 above). The Court thus concludes that the authorities, who had been alerted to the potential problem in 1996, knowingly ignored it and continued developing the motorway project with total disregard for the well-being of Stryków residents.

162. The Court stresses that, for the purpose of this case, the peaceful enjoyment of Stryków residents' homes was threatened and ultimately affected not by the development of the motorway as such, but rather the project rerouting the motorway's traffic through the middle of their town. In that regard, the general interest in having the motorway developed or constructed in sections (see paragraphs 22 and 170 above) must be distinguished from the general interest in having that particular section of the motorway end at the Stryków II junction, with the only option being to divert the motorway's uncontrolled traffic down the unadapted Warszawska Street.

163. The Court accepts that minimising investment expenses is a valid general interest for any State budget. It also takes note of the information indicating that the ring road around Stryków could not be constructed owing to the shortage of funds (see paragraph 86 above). However, the Court has serious doubts as to whether this is a sufficient counterbalancing factor.

164. The Court will now move on to the second part of the applicants' complaint and examine whether the authorities reacted promptly and adequately to the problem of heavy traffic which started affecting Stryków residents after the opening of the section of the motorway on 26 July 2006.

165. The authorities, who, on the one hand, carried out their own monitoring, and on the other hand, were alerted to the problem by the population concerned (see paragraphs 34, 35 and 38 above), did not adopt a passive attitude.

166. The very first plan to mitigate the situation was presented in August 2006. The plan featured two options: the ring road, and the 1.7-km extension to what later became known as the Stryków I junction (see paragraph 37 above).

167. The implementation of that plan, however, was marked by serious complications and delays. As already explained, the ring road option was abandoned (see paragraph 200 above). The second-best solution, that is, the opening of an extension to the motorway up to the new junction, took place only two and a half years later, on 22 December 2008 (see para 65 above).

168. It appears that the delay in question was not attributable to the administrative proceedings (the environmental impact assessment having been delivered in 2003, and the permits having been granted in 2006), but rather the works (see paragraph 64 above).

169. Extending the motorway to the Stryków I junction offered a direct connection to the A1 motorway and effectively reduced the traffic on the N14 road to an acceptable level (see paragraph 66, above)

170. While awaiting the above-described long-term solution, the authorities made serious, albeit hasty, attempts to reorganise the traffic by installing custom-made signs indicating that drivers should make possible detours *via* nearby national and regional roads (see paragraphs 44 and 46 above). To judge the effects of that measure, the Court can only rely on the expert report of 30 November 2010, which appears to contradict itself, as well as on the parties' submissions. It is thus the Court's understanding that the measure which was implemented in December 2006, even though it had some positive effect, did not eliminate the heavy and continuous traffic from a significant number of trucks (see paragraphs 45, 84 and 165 above).

171. In October 2006 the authorities also took the adaptation measure of renovating the surface of Warszawska Street (see paragraph 43 above). That apparently did not bring about any positive change (see paragraphs 44, 59 and 70 above). It appears that no other adaptation measures (like anti-noise screens) could be taken in Stryków.

172. The Court observes that the authorities faced a difficult task of mitigating the problem of very heavy traffic resulting from the rerouting of the A2 motorway down Warszawska Street. They also had a very limited choice of possible adaptation measures. The Court therefore accepts that the authorities made considerable efforts to respond to the problem. This, however, does not change the fact that these efforts remained largely inconsequential, because the combination of the A2 motorway and the N14 road was, for many reasons, the preferred route for drivers. As a result, the State put vehicle users in a privileged position compared with the residents affected by the traffic.

173. Even though the civil proceedings through which the applicants tried to seek *ex post facto* compensation for the nuisance suffered cannot be said to have been marked by unfairness, all the foregoing considerations are sufficient to enable the Court to conclude that a fair balance was not struck in the present case.

174. In sum, the rerouting of heavy traffic *via* the N14 road, a road which was unequipped for that purpose and very near to the applicants' homes, and the lack of a timely and adequate response by the domestic authorities to the problem affecting the inhabitants of Warszawska Street, enables the Court to conclude that the applicants' right to the peaceful enjoyment of their homes was breached in a way which affected their rights protected by Article 8.

175. There has accordingly been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

177. Each applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

178. The Government considered that amount excessive.

179. Regard being had to the reasons why the Court has found a violation of Article 8 of the Convention in the present case, it considers that the applicants must have suffered non-pecuniary damage which cannot be redressed by the mere finding of a violation. Ruling on an equitable basis, it awards each applicant EUR 10,000 in respect of non-pecuniary damage and dismisses the remainder of their claim.

B. Costs and expenses

180. The applicants also claimed EUR 5,000 for the costs and expenses incurred before the Court. No invoice to that effect was provided.

181. The Government argued that the applicants had not complied with the conditions required by the Court's case-law.

182. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the above criteria and the lack of any documents proving that the applicants incurred expenses, the Court considers it reasonable to award the sum of EUR 750 for the proceedings before the Court, plus any tax that may be chargeable.

C. Default interest

183. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zlotys (PLN) at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 750 (seven hundred and fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

KAPA AND OTHERS v. POLAND JUDGMENT

Done in English, and notified in writing on 14 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_1}

Renata Degener
Registrar

{signature_p_2}

Ksenija Turković
President

APPENDIX

List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of Birth	Represented by
1	75031/13	Kapa v. Poland	22/11/2013	Katarzyna KAPA 1984	Łukasz BRYDAK
2	75282/13	Jacek Juszczak v. Poland	22/11/2013	Jacek JUSZCZYK 1958	Łukasz BRYDAK
3	75286/13	Mateusz Juszczak v. Poland	22/11/2013	Mateusz JUSZCZYK 1991	Łukasz BRYDAK
4	75292/13	Barbara H. Juszczak v. Poland	22/11/2013	Barbara Halina JUSZCZYK 1959	Łukasz BRYDAK