

# BYPASSING COURTS AND LOCAL DEMOCRACY TO BUILD A GATED COMMUNITY FOR THE RICH

## RAZVOJ GOLF AND ELITECH VS CROATIA

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For the past 13 years, the citizens of Dubrovnik have opposed the construction of a luxury resort on the hill which overlooks their beautiful city. The unpopular project was put on hold by Croatian courts, which found that the required permits had been obtained illegally. But the company behind the project did not give up – subsequently the case has landed both in international arbitration, with the company suing Croatia for US\$500 million in compensation, and in national courts, with the criminalisation of civil society.





**T**he city of Dubrovnik was named after the oak trees (called dubrava by the locals) which cover the Srd hill, which is adjacent to the city. In 2010, the local initiative “Srd je naš” (“Srd is ours”) was created, consolidating local activists with national NGOs. Its aim was to protect the beautiful area in the heart of Dubrovnik from the construction of a gigantic gated community and tourist complex, housing two golf courses, two hotels, 240 villas, 408 suites, an amphitheatre, an equestrian club, parks, promenades and a water supply pipeline.<sup>1</sup>

The proposed development would have significantly changed the city. For example, the size of the project was huge, in comparison to the city proper – the area under development would have been 20 times the size of the old town, a UNESCO world heritage site. The project would also have deprived locals and tourists of a pristine site and excellent viewpoint, and would have required huge amounts of water and pesticides to maintain.<sup>2</sup> For locals this was too much for a city that is already heavily impacted by excessive tourism and an overburdened infrastructure.

## Not wanted, not legal

The people of Dubrovnik wanted to preserve the beauty of their city and its surroundings, to protect their water supply and the environment, but also to limit the impact of tourism on their livelihoods. Among the local community, the project was also tainted with suspicion of corruption.

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**The golf case is a textbook example of the worst possible corruption. The law on golf courses was written by the former government for several, already known investors. I tend to believe that the main investor on Srd was one of the investors for whom this whole law was written.**

**ZORISLAV ANTUN PETROVIC,  
TRANSPARENCY INTERNATIONAL CROATIA<sup>3</sup>**

Backed by NGOs, artists, architects, and other experts, “Srd je naš” used both democratic and legal means to voice their concerns. In a 2013 referendum organised by the campaign, 84 per cent of local residents who voted said they were against the plan.<sup>4</sup> The citizens’ initiative also challenged the project in the Croatian courts, which found that the investors’ location permits and environmental impact assessments were illegal.<sup>5</sup> This was a powerful example of local resistance and people’s empowerment.

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**In Croatia, golf is used as an excuse to go into untouched nature, next to the most beautiful towns and surroundings and build where you cannot build in any other legal way... it's not just about building golf terrains, developing sport or tourism or work opportunities for the locals, but it's rather a large-scale construction scheme of villas and apartments.**

**SRD JE NAŠ ACTIVIST<sup>6</sup>**

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This inspiring local struggle, for a respected environment and respectful tourism, led to local victories. But then... the company took to the courts itself. Notably, it did not take its case to the Croatian courts, but to a private, secret international arbitration court, where it is now trying to regain what people's power and domestic courts had refused it: exorbitant profits.

## **The golf club of ISDS can swing away democracy**

The luxury real estate project was backed by the Croatian company Razvoj Golf, which is owned by Aaron Frenkel, an Israeli investor. Through a Netherlands-based letterbox company (Elitech), Razvoj Golf is suing Croatia<sup>7</sup> under the Croatia-Netherlands investment treaty – an agreement which is arguably no longer legally in force (see box 5 on page 28). The investors claim to have spent €130 million on the project, yet they want US\$500 million dollars from the Croatian

state to compensate them the profits they claim they would have made had the construction gone forward.<sup>8</sup>

Just six weeks after the investors filed this ISDS claim, the Croatian government issued the developers with new permits, identical to the ones which had previously been overturned by the Croatian courts. Though nothing has materially changed regarding the project or the permits, they were re-issued. After another lawsuit by NGOs, a different judge decided that these new permits are now legal. NGOs are currently appealing this decision to the High Administrative Court of Croatia, a second instance court.<sup>9</sup> Thus the investors' multi-million dollar case already seems to be working on the government and persuading them to ignore and overrule citizens' concerns.

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**This is perceived as further humiliation for the citizens of Dubrovnik and as an injustice which we cannot and should not observe silently.**

**ĐURO CAPOR, THE COORDINATOR OF “SRD JE NAŠ”<sup>10</sup>**

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But the attack on democracy does not end here. The company behind the project also sued one of the key NGOs which backed “Srd je naš”: Zelena akcija or Friends of the Earth Croatia. The investor is demanding, via Croatian courts, €30,000 in compensation from this public interest group for alleged defamation, and even wants to ban the group from publicly speaking about the golf project.<sup>11</sup> It is trying to silence and kill the democratic community voices which helped to bring about an important debate about the proposed golf course project. These legitimate concerns of the people of the city related to livelihood, quality of life, environmental protection, and privatisation of





public space etc. Not only are such concerns not given space nor voice in ISDS cases, but in this instance the company is using its deep pockets to try to censor the community from even speaking out publicly about the controversial project, setting another dangerous precedent of companies using courts to silence citizen opposition.

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**We are being heavily targeted by the investor, and we are in peril of being shut down. We are afraid that, more and more, this is becoming a modus operandi against environmental defenders.**

**ENES ĆERIMAGIĆ, A LAWYER FOR FRIENDS OF THE EARTH CROATIA<sup>12</sup>**

BOX

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## **Suing via treaties which the European Court of Justice ruled illegal**

On 6 March 2018, the European Court of Justice, Europe's highest court, ruled that ISDS treaties between EU countries – such as the Croatia-Netherlands agreement used by Razvoj Golf company – were incompatible with EU law, because they sideline and undermine the powers of domestic courts.<sup>13</sup> Following this ruling, EU Member States agreed to terminate their intra-EU Bilateral Investment Treaties (BITs) in 2019.<sup>14</sup>

As a result, since March 2018, several EU Member States have tried to stop ongoing ISDS cases based on the now illegal intra-EU BITs. But so far, ISDS tribunals have rejected these interventions, ruling in favour of pursuing profit-making cases in spite of the significant judgement by the European Court of Justice.<sup>15</sup>

# References

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- 4 Friends of the Earth Croatia: [The company „Razvoj golf“ gets a permit for condoisation, Green Action gets a lawsuit!](#), 8 December 2017.
- 5 Friends of the Earth Croatia: [A big victory of citizens over the speculators – court annuls environmental permit for the Dubrovnik golf resort project](#), 3 September 2016.
- 6 Celine Motzfeldt Loades, University of Oslo: [Contested Places and Ambivalent Identities –Social Change and Development in UNESCO Enlisted Dubrovnik](#), January 2016.
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- 14 European Commission, [Declaration of the Member States of 15 January 2019 on the legal consequences of the Achmea judgment and on investment protection](#), 17 January 2019.
- 15 Damien Charlotin: [Tribunal rejects Achmea objection in ECT claim against Italy and sees no reason to terminate the proceedings even in light of recent EU member state's declaration](#), Investment Arbitration Reporter, 7 May 2019.

## Photo credits

p28: Nature Keepers, Luka Tomac

p25, 26, 27: Srd je naš

This case is part of the report *Red carpet courts: 10 stories of how the rich and powerful hijacked justice*, by Corporate Europe Observatory, the Transnational Institute and Friends of the Earth Europe/International, June 2019. [www.10isdstories.org](http://www.10isdstories.org)