Application of the European Convention on Human Rights for Protection of Environmental Rights and the Environment

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The manual constitutes the second edition of the analytical review of the practice of the European Court of Human Rights in cases relating to the environment. The authors analyse court judgments under specific articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, the content of which was creatively interpreted by the ECHR to include situations when unfavourable environmental factors caused violations of rights under the Convention, or when such rights were limited for the sake of environmental protection. The manual consists of two chapters. The first one is dedicated to the main principles of activities and the criteria for application to the ECHR in environmental matters as well as to the issues of the nature and value of the judgments of the ECHR for national legislation and practice in Ukraine. The second chapter directly analyses the case-law of the ECHR in the issues relating to the environment. Official texts of decisions as well as summaries or press releases prepared by the Secretariat of the ECHR are provided as annexes to the manual.

Meant for a wide range of practicing lawyers including judges as well as activists of the environmental movement in Ukraine.

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Introduction

Legal framework of Ukraine on the protection of the environment and a human right to a safe environment is quite a developed and detailed one. Nevertheless, in practice protection of the elements of the environment and environmental rights presents a difficult task t solved even for the national judicial system.

In such cases Environment-People-Law advises to turn to the international mechanisms and tools, including resorting to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its unique mechanism – the European Court of Human Rights (hereinafter referred to as the ECHR, the Court)[1].

[1] The Parliament of Ukraine ratified the European Convention on July 17, 1997 (the Convention took effect for Ukraine

The ECHR is a particularly interesting mechanism for protecting environmental rights of Ukrainians for three major reasons. First, the ECHR is, in fact, the only international court which procedure envisages the possibility of private persons to address it, and not just Member States of the Convention. It is mandated to confirm the infringement of rights protected under the Convention, to award payment of just satisfaction as well as to bind the governments to take measures to correct individual situations of applicants and systemic violations. Second, even though the Convention does not expressly guarantee the right to a sound and healthy environment, during last two decades the ECHR interpreted some of its provision to address cases of environmental degradation. Third, unlike some Western European countries which still keep arguing on the scope of application of the Convention in domestic litigation against the third parties, that is concerning the issue whether the Convention is binding for courts and not just the Parties to the Convention, in 2006 the Parliament of Ukraine recognized the jurisprudence of the ECHR as the source of law – binding precedents for Ukrainian courts to follow while adjudicating cases between individuals, legal entities and Ukrainian authorities.[2]

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention or Convention) was adopted in 1950 – at the times when environmental protection was not yet on the agenda for international regulation. Originally, the Convention was not meant for environmental protection, therefore its provisions do not secure the right to the environment safe for life and health. No wonder that the first environmental cases arguing the violation of rights under the Convention heard in the 60-70ies were considered to be manifestly ill-founded. Nevertheless, starting with the 90ies the ECHR has been very creative in interpreting the provisions of the Convention. In one of its judgments the ECHR indicated that the Convention is a "living instrument" and "must be interpreted in the light of present-day conditions".[3] Thus, for instance, the content of the right to life has evolved from negative obligation not to deprive intentionally a human being of their life to a positive obligation of a State to take appropriate measures to safeguard the lives of those within their jurisdiction in cases of risk caused by environmental pollution.[4] Article 8 of the Convention that was primarily directed at the protection of private and family life from state interference now creates a positive obligation for governments to respond in cases of people living in degrading or polluted environment, including in sanitary protection zones of industrial installations.[5]

Currently, protection of environmental rights and the environment has been reflected in the case-law of the ECHR, in particular, with regard to the violations of the right to life (Article 2), right to respect for private and family life (Article 8), right to peaceful enjoyment of possessions (Article 1 of Protocol 1), right to a fair trial (Article 6), right to an effective remedy (Article 13) and right to freedom of expression (Article 10). The scope of Article 8 of the Convention has undergone the most significant development in the direction of the right to safe environment.

In judgments in cases *Lopez Ostra v. Spain, Guerra v. Italy, Fadeyeva v. Russia* the ECHR established the violation of Article 8 of the Convention and awarded the applicants the just satisfaction as well as obliged the respondent-countries to take due measures to restore the right to respect for private and family life violated as the result of environmental pollution, and thus laid down the foundation for the protection of environmental rights in the Court. In case of Heathrow Airport, the ECHR striking the balance between economic and environmental interests, decided in favour of a public interest in economic welfare. One of the judges in his dissenting opinion however indicated that environmental rights had not been known back in 1950, but the

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on September 11, 1997) and thus acknowledged the jurisdiction of the ECHR in hearing cases submitted against Ukraine.

[2] Article 17 of the Law of Ukraine *On Enforcement of Judgments and Application of the Practice of the European Court of Human Rights*.

[3] Tyrer v. the United Kingdom, 25.04.1978, http://hudoc.ECHR.coe.int/ eng?i=001-57587

[4] Öneryıldız v. Turkey, 30.11.2004, http://hudoc.ECHR.coe.int/eng? i=001-67614

[5] Dubetska and others v. Ukraine, 10.02.2011p., http://zakon0.rada.gov.ua/laws/show/974_689

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ECHR is prone to think that Article 8 embraces the right to a healthy environment and, correspondingly, therefore to protection against pollution and nuisances caused by harmful chemicals, offensive smells, and noise; the Court should keep on developing environmental rights under the Convention[6]. Such approach of at some judges even if they do not yet constitute the majority gives hope for further expansion of the range of possibilities in protecting environmental rights under the Convention. Furthermore, even existing agreements related to the recognition and protection of the rights to a safe environment contribute a lot to filling up the gaps available in the environmental legislation and the practice of its application in Ukraine.

Acknowledging the practice of the ECHR as a binding source of law in Ukraine, the legislator has reshaped the legal system for the sake of inclusion of the European standards of human rights protection. To strengthen the rule of law principle, the Parliament of Ukraine has made all the judgments of the ECHR regarding any Member States of the Council of Europe binding for Ukrainian courts, that is to serve as legal precedents.

This manual consists of two chapters. The first one is dedicated to the main principles of activities and the criteria of resorting to the ECHR in environmental matters as well as to the issues of the nature and value of the ECHR case-law for national legislation and practice in Ukraine. The second chapter directly analyses the case-law of the ECHR in specific cases grouped according to the respective articles of the Convention.

Since the first edition of 2016, the number of judgments of the ECHR in cases relating to violation of human rights due to certain environmental factors has grown. To give the reader an opportunity to get better acquainted with the judgments, the manual includes full texts of the most prominent judgments against Ukraine, as well as official legal summaries and press releases issued by the Secretariat of the ECHR in cases related to other countries. Full texts of all decisions of the ECHR are available in the HUDOC database[7], and in cases relating to Ukraine they could also be found on the online official legislative database of Ukraine in Ukrainian language[8].

The authors of the manual hope that it will be of use for a wide range of practicing lawyers, including judges, as well as for the environmental activists of Ukraine and worldwide.

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[6] Hatton and Others v. the United Kingdom, 8.07.2003, joint dissenting opinion of Judges Costa, Ress, Turmen, Zupancic and Steiner, http://hudoc.ECHR.coe.int/eng?i=001-61188

[7] See: [Electronic resource]. – Access mode: http://hudoc.ECHR.coe.int/

[8] See: [Electronic resource]. – Access mode: https://zakon.rada.gov.ua/laws/main/index

Chapter 1

Some aspects of the work of the European Court of Human Rights

1.1. Conditions for application to the ECHR with environmental cases

Every year near 45 000 applications are lodged to the ECHR, in 2023 – a small decline was observed and 33 000 applications filed[9]. As of Nobember 30, 2023- 70,000 applications were pending before judicial formations of the ECHR. Small amount of applications are resulting in judgement (6000 judgements out of 34000 applications in 2023, 3800 from 37000 applications in 2022), while the majority are decided by the decision on inadmissibility or struck out of the list of cases (28000 applications in 2023 and 32000 in 2022). As of 31/12/23, half of pending cases relate to violations made by the following 2 countries : Russia and Turkey. Currently, about 12,5 % are cases against Ukraine[10], and Ukraine stopped to be the "leader" among defending states among which is the highest figure among all the member states of the Convention.

The time from lodging application to the final decision from judicial formation of the ECHR might take several years, thus in 2009 the Court adopted a Priority policy with a view to speeding up the processing and adjudication of the most important, serious and urgent cases. It established seven categories (table below) ranging from urgent cases concerning vulnerable applicants (Category I) to clearly inadmissible cases dealt with by a Single Judge (Category VII). It has conducted a review of that policy in 2017 and has made some amendments to the priority categories for more targeted and effective case-processing with the aim of streamlining the handling of both priority and "impact" cases (i.e. non-priority Chamber cases which address core issues of relevance for the State in question and/or for the Convention system generally).[11]

I.	**Urgent** applications (in particular risk to life or health of the applicant, the applicant deprived of liberty as a direct consequence of the alleged violation of his or her Convention rights, other circumstances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue, application of Rule 39 of the Rules of Court)
II.	Applications raising questions capable of having an **impact on the effectiveness of the Convention system** (in particular a structural or endemic situation that the Court has not yet examined, pilot-judgment procedure) or applications raising an **important question of general interest** (in particular a serious question capable of having major implications for domestic legal systems or for the European system)
III.	Applications which on their face raise as main complaints issues under **Articles 2, 3, 4 or 5 § 1** of the Convention ("core rights"), irrespective of whether they are repetitive, and which have given rise to direct threats to the physical integrity and dignity of human beings
IV.	Potentially well-founded applications based on other Articles
V.	Applications raising issues already dealt with in a pilot/leading judgment ("well-established case-law cases")
VI.	Applications identified as giving rise to a problem of admissibility
VII.	Applications which are manifestly inadmissible

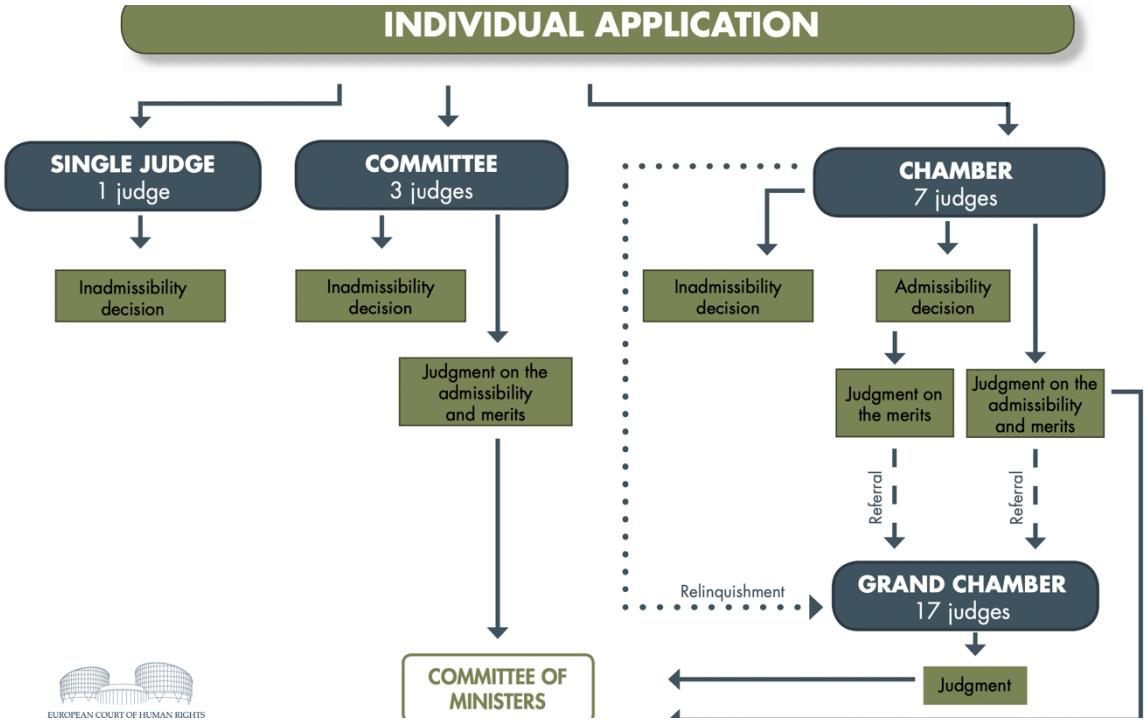
Categories of priorities. Source: https://www.echr.coe.int/documents/d/echr/Priority_policy_ENG

Cases falling under categories I-III are dealt with by the Court by way of judgments or decisions mainly taken by the Grand Chamber or Chambers of seven Judges. Repetitive cases and manifestly inadmissible cases under categories V-VII are processed speedily by the Court by way of various filtering mechanisms and new working methods. In category IV a small percentage of cases may raise very important issues of relevance for the State in question and/or the Convention system as a whole and justify more expeditious case-processing. These cases will be identified and marked as "impact" cases under a new category IV-High. So as a result, these new IV-High cases will be processed and adjudicated by the Court

[9] https://www.echr.coe.int/documents/d/echr/stats_month_2023_eng
[10] https://www.echr.coe.int/documents/d/echr/stats_pending_2023_bil
[11] https://www.echr.coe.int/documents/d/echr/Priority_policy_ENG

even more expeditiously. Non-impact category IV cases will be dealt with by the Court as efficiently as possible in Committees of three Judges.[12]

Case processing chart in ECHR looks as follows:



Source: https://www.echr.coe.int/documents/d/echr/Case_processing_Court_ENG

"Popularity" of the European Court of Human Rights among ordinary citizens brought about problems with ECHR's workload and, correspondingly, with long case hearing procedure with the ECHR. Therefore, over the last decade attempts have been made to make the procedure of filing cases with the ECHR more complicated, to narrow the admissibility criteria. For instance, Protocol No. 14,[13] that took effect on June 1, 2010, set a new admissibility criterion relating to significance of disadvantages caused to the applicant and aimed at reduction of the number of applications submitted by persons who suffered no significant disadvantages. Protocol No. 14 established the Single Judge formation, meaning that a Judge sitting alone, assisted by a Non-Judicial Rapporteur, could declare applications inadmissible, whereas previously three Judges had been required. The Filtering Section has been in operation since the beginning of 2011. Its principal function is to carry out a thorough, accurate and immediate sifting of cases to ensure that all applications are placed on the appropriate procedural track, whether submitted to a Single Judge for prompt decision or sent to await examination by a Committee of three judges or Chamber in accordance with the Court's priority policy.

Protocol No. 15 dated June 24, 2013 envisages reduction of the periods for application to the ECHR from **six to four** months from the date the final decision of the national court was taken. It is worth mentioning, that sending application shortly before the deadline for application to the ECHR might bring negative result in cases when your application is incomplete. For instance, on 9 September 2014, in *Malysh and Ivanin v. Ukraine* (nos. 40139/14 and 41418/14), a Chamber rejected two cases as out of time where the applicants failed to re- submit a full and complete application form within the six-month time-limit. It is therefore now established in the Court's case-law that the introduction date is that of the dispatch of the completed application form and that earlier incomplete submissions are not taken into account.

[12] https://www.echr.coe.int/documents/d/echr/Court_that_matters_ENG

[13] Law On Ratification of Protocols No.12 and No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms as of February 9, 2006 http://zakon3.rada.gov.ua/laws/show/3435-15

Protocol No15 has also introduced minor changes into the Preamble of the European Convention on Human Rights by including a reference to the subsidiarity principle to it as well as the doctrine of the limits of freedom of discretion. Protocol No. 16 dated October 2, 2013 allows the parties to address the ECHR with the request to give advisory opinion on questions of principle relating to interpretation or application of the rights and freedoms defined by the Convention and the protocols thereto. National courts or tribunals can request the ECHR to give advisory opinions to them only in relation to cases which are under hearing there. Protocols No. 15 and No. 16 have not been ratified by Ukraine and by a sufficient number of the parties to the Convention for it to take effect as yet.

On 1 January 2014, a revised version of Rule 47 of the Rules of Court[14] came into force. Under the amended Rule applicants must comply with strict requirements for their application before the Court to be valid. In brief, they must use the Court's new application form, take care to fill in all fields and append all necessary supporting documents. They also have to make sure that they provide a signed authority if they are represented and that the application form is duly signed by them. If an applicant fails to comply with Rule 47, the application will not be allocated to a Court formation for decision.[15]

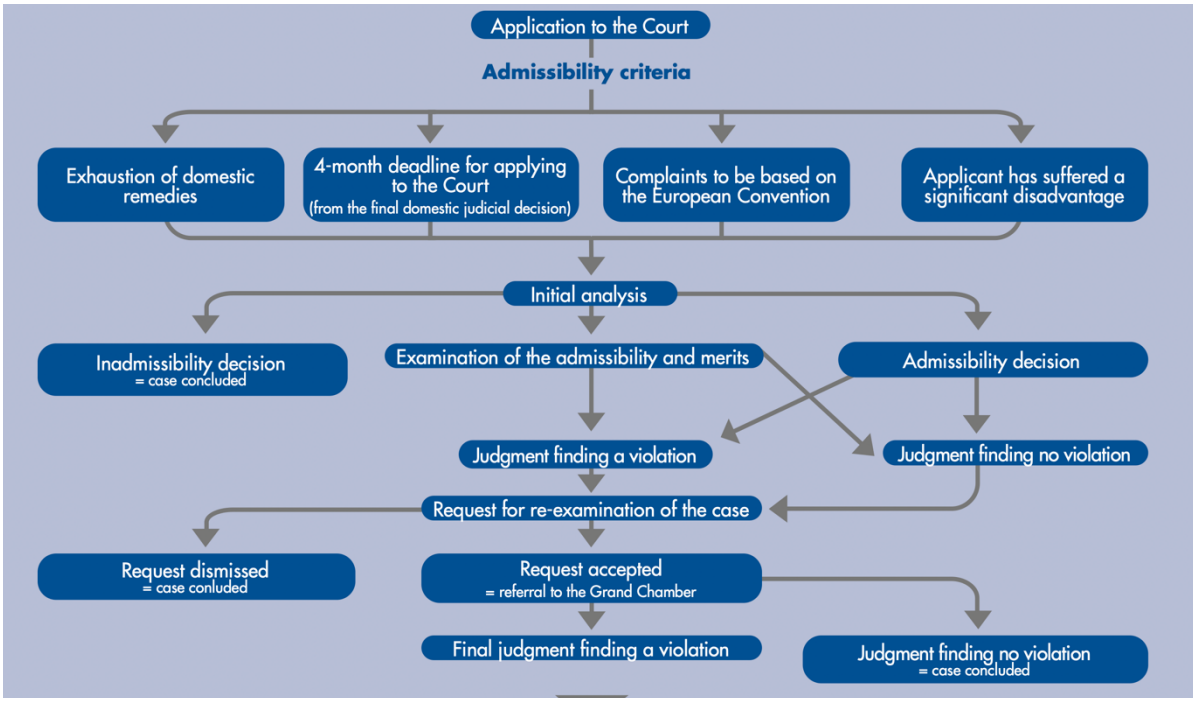
The ECHR tries to provide maximum assistance and promotion to prospective applicants in their applications to court, therefore detailed information on the application procedure and all the court procedures is provided on the ECHR's web- site in Ukrainian: https://www.echr.coe.int/apply-to-the-court-other-languages?filter_category_2348815=2035040&filter_category_3290069=1675246. Those available resources describe in a very detailed way all the requirements for applying to the ECHR relating to obvious cases of infringement of fundamental human rights and freedoms, still the practice of the ECHR confirms to the possibility of application to court and using provisions of the Convention for "non- standard" cases relating to environmental protection or influence of the environment, environmentally hazardous facilities on citizens as the result of

[14] https://www.echr.coe.int/documents/d/echr/Rules_Court_ENG
[15] https://www.echr.coe.int/documents/d/echr/Report_Rule_47_ENG

which the rights fixed in the Convention are violated or there is a risk of their violation.

We consider it expedient to describe the main requirements to be followed in applying to the ECHR in "environmental" cases relating to such environmental pollution or nuisance that poses a threat or directly affects life, health, private life of citizens, their housing or property as well as cases relating to violation of procedural rights envisaged by art.6, 13 of the Convention.

The process of assessment and consideration of the application by the ECHR is described in the chart below:



Source: https://www.echr.coe.int/documents/d/echr/Case_processing_ENG

1. Who can act as an applicant

Art.34 of the Convention

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.

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Thus, a person who considers that (s)he personally and directly has become the victim of the violations of the rights and guarantees set forth in the Convention or the Protocols thereto can apply to the ECHR. The terms "victim" in article 34 of the Convention stands for a person or persons who have directly or indirectly become victims as the result of the claimed violation. Thus, article 34 refers not only to an individual or individuals who have directly become victims as the result of the claimed violation, but also to any indirect victims to whom the violation has possible brought damages or who have a significant personal interest in its termination. The notion "victim" is interpreted autonomously and independently of the national norms relating to interest or capacity to file a claim, even if the ECHR has to take into account the fact that the applicant was a party in the national proceedings. This notion does not presuppose availability of damages.

The interpretation of the term"victim" is liable to evolve in the light of conditions in contemporary society and it must be applied without excessive formalism (ibid., §§ 30-33; *Gorraiz Lizarraga and Others v. Spain*, 2004, § 38; *Stukus and Others v. Poland*, 2008, § 35; *Ziętal v. Poland*, 2009, §§ 54-59). The Court

has held that the issue of victim status may be linked to the merits of the case (*Siliadin v. France*, 2005, § 63; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 111).[16]

The victim should prove that he or she was "directly affected" by the measure complained of. For instance, a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 92). However, in *Margulev v. Russia*, 2019, the Court considered the applicant to be a direct victim of defamation proceedings although he was only admitted as a third party to the proceedings. Since domestic law granted the status of third party to proceedings where "the judgment may affect the third party's rights and obligations vis-à-vis the claimant or defendant", the Court considered that the domestic courts had tacitly accepted that the applicant's rights might have been affected by the outcome of the defamation proceedings (§ 36; see also *Khural and Zeynalov v. Azerbaijan (no. 2)*, 2023, §§ 31-32). In *Mukhin v. Russia*, 2021, the Court recognised that the editor- in-chief of a newspaper could claim to be a victim of the domestic courts' decisions divesting that newspaper of its media-outlet status and annulling the document certifying its registration (§§ 158- 160).[17] Therefore, standing in domestic proceedings is not decisive, as the notion of "victim" is interpreted autonomously by the Court.

In cases related to the environmental pollution, the applicant should be directly and seriously affected by noise or other pollution, and in such cases an issue many arise under article 8 of the Convention.[18]

In case *Tribaut v.France* the Court took a decision on admissibility of the application on 14 June, 2022. The case concerned the opposition to a plan to replace the existing power line with a new 400kV double-circuit line, most of it overhead, at height of 70m over 30 km. The applicants argued that the construction of the projected extra-high-voltage power line would create the risk for persons living near it, on account of the resulting magnetic fields, and, in consequence, that it would create the risk for the health of person living near it, and in consequence, it would have an impact on their peaceful enjoyment of their homes. They criticized the fact that the company responsible for the project had rejected the option of putting the line underground, and applicants submitted that they could not escape the permanent anxiety caused by their exposure this risk by moving house since the proximity of this infrastructure would lover the value of their house or make it difficult to sell it.
The Court declared application inadmissible, finding that compliant under art.8 was manifestly ill-founded. The Court found, that the applicants, who were living 115m away from planed lines, had not produced the evidence to show that the project would expose them to electromagnetic fields exceeding domestic or international standards. It thus appeared that applicants had not demonstrated that the completion of the power line would expose them to an environmental danger such that their capacity to enjoy their private and family life or their home would be directly and seriously affected. https://hudoc.echr.coe.int/rus?i=002-12760

Applications can only be lodged by, or in the name of, individuals who are alive. However, particular considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 at the hands of the national authorities. Applications lodged by individuals or associations on behalf of the victim(s), even though no valid form of authority was presented, have thus been declared admissible.[19]

A legal entity, an association of citizens can act as an applicant in case the rights of these subjects are violated. There are exceptions when the ECHR takes for consideration applications submitted by non-governmental organizations who have

[16] Practical guide on admissibility criteria , p.11.
https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

[17] Ibid. p.12.
[18] Hatton v. the United Kingdom, §96, Kozul and others v. Bosnia and Herzegovina, §31.
[19] https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

not been victims of the violations.

The Court does not grant "victim" status to associations whose interests are not at stake, even if the interests of their members - or some of them - could be at stake. In addition, “victim” status is not granted to NGOs even if the associations have been founded for the sole purpose of defending the rights of the alleged victims (*Nencheva and Others v. Bulgaria*, 2013, § 90 and § 93 and the references cited therein; see also *Kalfagiannis and Pospert v. Greece* (dec.), 2020, §§ 49-51, concerning a federation of trade unions representing media employees; *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), 2021, §§ 42-44, concerning a non-governmental organisation created with a view to defending the residents of an area where a dam was being built.[20]

Also, residents who have not participated in the domestic proceedings seeking the annulment of administrative decisions or associations which have not been granted *locus standi* by the domestic courts cannot claim to be victims of an alleged violation of the right to enforcement of judicial decisions under Article 6 § 1 (*Bursa Barosu Başkanliği and Others v. Turkey*, 2018, §§ 114-116).[21]

Anapplicant who has been forced by adverse environmental conditions to abandon his home and subsequently to buy another house with his own funds does not cease to be a victim in respect of an alleged violation of his right to respect for his private life and his home under Article 8 of the Convention (*Yevgeniy Dmitriyev v. Russia*, 2020, §§ 37-38). [22]

In the case *Centre for legal resources on behalf of Valentin Campeanu v. Romania* the application was submitted by a non-governmental organization (NGO) on behalf of Valentin Campeanu who died in 2004 at the age of 18 in a mental health clinic. Court ruled that under the exceptional circumstances of the case and with due account of the serious nature of the applications, the NGO was entitled to act as a representative of Valentin Campeanu, though the very organization was not a victim of the violation envisaged by art. 2 and 13 of the Convention.
Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, 17.07.2014, http://hudoc.ECHR.coe.int/eng?i=001-145577

[20] Ibid, p.15
[21] Ibid, p.16;
[22] Ibid.p.19.

In its judgment in the case *Sdruženi Jihočeské Matky v. Czech Republic* the ECHR primarily pointed out that the applicant organization was a legal entity that could not be acknowledged a victim of violations of such personal rights as the right to life and health since only individuals can be the subjects of violation of such right. It also cannot refer to the right to respect for its "housing" in the sense of article 8 of the Convention solely on the grounds that its office is located not far from the station it criticizes since the result of encroachment of that right are the inconveniences and concern only individuals can have. Also, taking into account the fact that the applicant organization has not indicated whether it possesses or rents the property located close to Temelin Nuclear Power Plant, it may not bring claims to be entitled under the Czech legislation to protect its property from the influence of the plant. Correspondingly, the applicant organization has not proven either availability of sufficient interference into its personal "civil" right, or availability of a real serious contestation of the right to respect for its property. Still the ECHR acknowledges that with its actions the applicant organization tried to protect individual rights of its members fixed in the national legislation, therefore such organization-applicant can get the status of a victim in the sense of Article 34 of the Convention. Still, the ECHR did not consider it in the case in a detailed way.

Sdružení Jihočeské Matky c. la République tchèque, 10.07.2006, http://hudoc.ECHR.coe.int/eng?i=001-76707

The Court has also underlined that the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of a domestic law simply because they consider, without having been directly affected by it, that it may contravene the Convention.

Examples of cases heard by the ECHR involving individuals and legal entities as applicants in "environmental" cases are provided in Chapter 2.

For the application to be accepted by the ECHR, it must meet the admissibility criteria set out in Article 35 of the Convention.

Article 35 Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of

international law, and within a period of four months from the date on which the final decision was taken.

> The first requirement for the application is exhaustion of all the domestic legal remedies. Domestic remedies include accessible and efficient procedures determined by the legislation, which can ensure termination of violations or damage compensation. In Ukraine to challenge the decisions, actions, inactivity of the authorities one may first address a high-level administrative body (administrative review which is not obligatory) or address the court right away. Following the practice of the European Court of Human Rights non-judicial procedures, addresses to the parliament, president, government, ministers, prosecutor's officer or ombudsman are not regarded as remedies that have to be used prior to applying to the ECHR. It is also important to know that when domestic remedies are not available or inefficient, that is they cannot ensure final protection of violated rights, individuals may apply to the European Court of Human Rights without using them. That rule is also not applied in case it is proven that in the administrative practice actions incompatible with the Convention are repetitive, and official state authorities are tolerant about it, thus any proceedings become fruitless and inefficient. For instance, there is no point addressing the national court if the right of the applicant guaranteed by the Convention is violated as the result of effect of the law which cannot be challenged by him/her in court. One may also address the European Court of Human Rights in case of long delays with the court case hearing in national courts, without waiting for their judgment.
>
> Paragraph 1 of Article 35 refers only to *domestic* proceedings; it does not make it binding to exhaust all remedies available on the international level. The duty to submit the application within 4 months after the date the final judgment is taken on the national level requires clarification of the content of the term "final judgment" and beginning and expiry of the period. As a rule, final judgment stands for the judgment of the national court that took effect and is final. Normally, that is the judgment of the high specialized court that has heard the case upon the cassation appeal of the party (parties)).

Before the entry into force of Protocol No. 15 to the Convention (1 August 2021), Article 35 § 1 of the Convention referred to a period of six months. Article 4 of Protocol No. 15 has amended Article 35 § 1 to reduce the period from six to four months. According to the transitional provisions of the Protocol (Article 8 § 3), this amendment applies only after a period of six months following the entry into force of the Protocol (as from 1 February 2022), in order to allow potential applicants to become fully aware of the new deadline. Furthermore, the new time limit does not have a retroactive effect, since it does not apply to applications in respect of which the final decision within the meaning of Article 35 § 1 of the Convention was taken prior to the date of entry into force of the new rule. If the final decision within the meaning of Article 35 § 1 was taken before the entry into force of Protocol no. 15 but notified to the applicant after 1 August 2021, the applicable time-limit is still that of *six* months; however, it starts to run from the day following the notification of the final decision (*Orhan v. Türkiye* (dec.), 2022, §§ 23-47).[23]

Concerning the exhaustion rule, the Court have frequently underlined the need to apply the rule with some degree of flexibility and without excessive formalism, given the context of protecting human rights (*Ringeisen v. Austria*, 1971, § 89; *Lehtinen v. Finland* (dec.), 1999; *Gherghina v. Romania* (dec.) [GC], 2015, § 87). For instance, the Court accepts that the last stage of domestic remedies may be reached after the application has been lodged but before its admissibility has been determined (*Molla Sali v. Greece* [GC], § 90).The rule of exhaustion is neither absolute nor capable of being applied automatically (*Kozacıoğlu v. Turkey* [GC], 2009, § 40). Although in principle it would be conceivable to accept public interest litigation by an NGO - explicitly provided for by domestic law as a means of defending the interests of a larger group of people - as a form of exhausting domestic remedies, public interest litigation cannot exonerate an individual applicant from bringing his/her own domestic proceedings if that litigation did not correspond

[23] Practical guide on admissibility criteria , p.41
https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

exactly to his or her individual situation and specific complaints (*Kósa v. Hungary* (dec.), 2017, §§ 55-63, concerning an alleged discrimination against Roma children). In *Beizaras and Levickas v. Lithuania*, 2020, §§ 78-81, the Court held that a non-governmental organization, although not an applicant before the Strasbourg Court, could have acted as a representative of the applicants' interests in the domestic criminal proceedings, because the NGO had been set up so that persons who had suffered discrimination could be defended, including in court. The Court also took into account that the NGO's representation of the applicants' interests before the prosecutors and domestic courts (two instances) had never been questioned or challenged in any way (see also *Gorraiz Lizarraga and Others v. Spain*, 2004, §§ 37-39).[24]

It is not necessary for the Convention right to be explicitly raised in domestic proceedings provided that the complaint is raised "at least in substance" (*Castells v. Spain*, 1992, § 32; *Ahmet Sadik v. Greece*, 1996, § 33; *Fressoz and Roire v. France* [GC], 1999, § 38. This means that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (*Gäfgen v. Germany* [GC], 2010, §§ 142, 144 and 146; *Radomilja and Others v. Croatia* [GC], 2018, § 117; *Karapanagiotou and Others v. Greece*, 2010, § 29. It is not sufficient that the applicant may have exercised a remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies" (*Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 75; *Nicklinson and Lamb v. the United Kingdom* (dec.), 2015, § 90).

In sum, the mere fact that an applicant has submitted his or her case to the relevant court does not of itself constitute compliance with the requirements of Article 35 § 1. Even in those jurisdictions where the domestic courts are able, or even obliged, to examine the case of their own motion (that is, to apply the principle of *jura novit curia*), applicants are not dispensed from raising before them a complaint which they may intend to subsequently make to the Court (see, among other authorities, *Kandarakis v. Greece*, 2020, § 77), it being understood that for the purposes of exhaustion of domestic remedies the Court must take into account not only the facts but also the legal arguments presented domestically (see *Radomilja and Others v. Croatia* [GC], 2018, § 117.[25]

Discretionary or extraordinary remedies need not be used, for example requesting a court to review its decision (*Çınar v. Turkey* (dec.), 2003; *Prystavska v. Ukraine* (dec.), 2002). A complaint to the Ministry amounts to a hierarchical complaint and is not considered an effective remedy (*Polyakh and Others v. Ukraine,* 2019, § 135. Where an applicant has tried a remedy which the Court considers inappropriate, the time taken to do so will not stop the four-month period from running, which may lead to the application being rejected as out of time (*Rezgui v. France* (dec.), 2000; *Prystavska v. Ukraine* (dec.), 2002). [26]

The 4-month-period starts with the date when the applicant and/or his/her representative has been sufficiently made acquainted with the final national court

[24] Practical guide on admissibility criteria , p.28-29.
https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng
[25] Ibid. page 30.
[26] Ibid. page 31-32.

decision.[27] If the applicant was not present when the final court decision was announced or did not know about it, or did not have a chance to get acquainted with it right after it was announced, the six-month-period starts with the date (s)he comes to know of the judgment. The four- month period runs from the date on which the applicant's lawyer became aware of the decision completing the exhaustion of the domestic remedies, notwithstanding the fact that the applicant only became aware of the decision later. (*Çelik v. Turkey* (dec.), 2004).[28]

If it is understandable right from the beginning that the applicant does not have any effective remedy, the 4-month-period starts from the date of claimed actions or from the date when the applicant comes to know about them or starts witnessing their negative consequences or harm. The terms "ongoing conditions" stands for the condition resulting from long-term actions taken by state or on behalf of the state from which the applicants suffer. The fact that the event causes serious long- term consequences does not mean that it creates the "ongoing condition".

The primary purpose of the 4-month rule is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (*Mocanu and Others v. Romania* [GC], 2014, § 258; *Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 129). It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised and facilitates the establishment of facts in a case, since with the passage of time, any fair examination of the issues raised is rendered problematic (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 99-101; *Sabri Güneş v. Turkey* [GC], 2012, § 39).[29]

Rule 47 of the Rules of the ECHR that came into effect on January 1, 2014 determines that under paragraph 1 of Article 35 of the Convention the application is considered to have been submitted starting with the date when the application form filled out following the requirements set out in the Rule is sent to the ECHR. The application must contain all the data indicated in its corresponding parts and be accompanied by copies of the necessary supporting documents. But for cases envisaged by Rule 47 of the Regulations, when only the filled out application form suspends the run of the 4-month-period

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[27] T. Ihnateko in the article: *Judgments of the ECHR as the grounds for reconsidering a specific case of the Supreme Court of Ukraine: restoration of the infringed right or formality?* indicates: In the above decisions the European Court states that "cassation appeal in the Supreme Court of Ukraine can be treated as an efficient remedy of the infringed right, therefore judgments of that instance constitute the beginning of counting the period of applying to the European Court. Exceptions here were administrative cases in relation to which the European Court has indicated that the High Administrative Court of Ukraine is the final instance and there is no need to address the Supreme Court of Ukraine in order to exhaust domestic remedies. Taking into account the fact that currently the Supreme Court of Ukraine already is not a cassation (final) instance, but it only reconsiders court judgments in cases set by the procedural law of Ukraine, one can tell that after judgment of the High Specialized Court of Ukraine is received, there are all the grounds to apply to the European Court of Human Rights simultaneously with applying to the Supreme Court of Ukraine if there are legal grounds for that. The source: http://radako.com.ua/news/rishennya-iespl-yak-pidstava-dlya- pereglyadu-konkretnoyi-spravi-vsu-vidnovlennya-porushenogo

[28] Ibid, page 43.

[29] Practical guide on admissibility criteria , p.40.
https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

Besides, the applicant should follow the rules and procedures of national laws. If complaint could not have been decided by the national courts because applicant failed to lodge it within the time-limit prescribed by national law, then such complaint before the Strasbourg Court may be declared inadmissible. When the applicant is complaining before national courts, he(she) must raise at least the substance of the Convention violation he(she) is alleging before the ECHR.

Only remedies which are normal and effective can be taken into account as an applicant cannot extend the strict time-limit imposed by the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (*Lopes de Sousa Fernandes v.Portugal* [GC], 2017, §132; *Fernie v.the United Kingdom* (dec.), 2006). However, in the case of *Červenka v. the Czech Republic*, 2016, where the applicant waited for the Constitutional Court's decision even though he had doubts about the effectiveness of the remedy, the Court stated that the applicant should not be blamed for having tried to exhaust this remedy (§§ 90 and 113-121). Equally, in *Polyakh and Others v. Ukraine*, 2019, the Court held that, even though the length of the proceedings in the applicants' cases had not been "reasonable" in violation of Article 6 § 1, it did not find that the applicants ought to have been aware that the remedy in question was ineffective (because of the excessive delay), so as to trigger the running of the four-month period at any point prior to the delivery of the final judgment (§§ 213-216).

In cases where proceedings are reopened or a final decision is reviewed, the running of the four- month period in respect of the initial set of proceedings or the final decision will be interrupted only in relation to those Convention issues which served as a ground for such a review or reopening and were the subject of examination before the extraordinary appeal body.[30]

Where it is clear from the outset that the applicant has no effective remedy, the four-month period runs from the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such an act or had knowledge of its adverse effects (*Dennis and Others v. the United Kingdom* (dec.), 2002; *Varnava and Others v. Turkey* [GC], 2009, § 157; *Aydarov and Others v. Bulgaria* (dec.), 2018, § 90). Where the alleged violation constitutes a continuing situation against which no domestic remedy is available, it is only when the situation ends that the four-month period starts to run (*Sabri Güneş v. Turkey* [GC], 2012, § 54; *Varnava and Others v. Turkey* [GC], 2009, § 159; *Ülke v. Turkey* (dec.), 2004). As long as the situation continues, the four-month rule is not applicable (*Iordache v. Romania*, 2008, § 50; *Oliari and Others v. Italy*, 2015, §§ 96-97).[31]

Time starts to run on the day following the date on which the final decision has been pronounced in public, or on which the applicant or his/her representative was informed of it, and expires four calendar months later, regardless of the actual duration of those calendar months (*Otto v. Germany* (dec.), 2009; *Ataykaya v. Turkey*, 2014, § 40).

Article 35 Admissibility criteria

2. The Court shall not deal with any application submitted under Article 34 that: a) is anonymous; or b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or b) the applicant has not suffered a significant disadvantage, unless respect

[30] Ibid. page 42.
[31] Ibid, page 44.

> *for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.*

The most frequent reason for application rejection by the ECHR is the fact that the application is manifestly ill-founded. In fact, usage of the term "manifestly" in article 35, paragraph 3 a) can lead to some confusion: in its literal sense it may mean that the application can be considered inadmissible for those grounds only in case it is obvious for the reader right away that it is speculative and has no grounds. That may happen in case the application discloses no appearance of a violation or if there is settled or abundant case-law in similar or identical situations also finding no violation.

Manifestly ill-founded complaints can be divided into four categories[32]:

-"fourth-instance" complaints (stem from a misapprehension on the part of the applicants as to the Court's role and the nature of the judicial machinery established by the Convention; it is not the task of ECHR to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. It may not itself assess the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (*García Ruiz v. Spain* [GC], 1999, § 28; *De Tommaso v. Italy* [GC], 2017, § 170). Most fourth-instance complaints are made under Article 6 § 1 of the Convention concerning the right to a "fair hearing" in civil and criminal proceedings. It should be borne in mind - since this is a very common source of misunderstandings on the part of applicants - that the "fairness" required by Article 6 § 1 is not "substantive" fairness (a concept which is part-legal, part- ethical and can only be applied by the trial judge), but "procedural" fairness;

- complaints where there has clearly or apparently been no violation (Court can and should satisfy itself that the decision-making process resulting in the act complained of by the applicant was fair and was not arbitrary (the process in question may be administrative or judicial, or both, depending on the case). Consequently, the Court may declare manifestly ill-founded a complaint which was examined in substance by the competent national courts in the course of proceedings which fulfilled, *a priori*, the necessary conditions – e.g. sufficient reasons of decisions, by empowered bodies, in accordance with procedural requirements, arguments and evidence were presented, etc.);

- unsubstantiated complaints (the application can be manifestly ill-founded if the applicant failed to provide sufficient evidence to support the facts and the legal arguments which are raised);

- confused or far-fetched complaints (Application may be declared inadmissible if it is so confused that it is objectively impossible for the Court to make sense of the complaints made. The same applies to far-fetched complaints and to those that have clearly been invented or that are manifestly contrary to common sence.

[32] Ibid, page 79-80.

In case Calancea and others v.the Republic of Moldova concerning the presence of a high voltage power line crossing the land of applicants, a married couple and their neighbour, the court took a decision on the admissibility on 6 February 2018. It declared the application inadmissible as being manifestly ill-founded.
Relying on Article 6 § 1 (right to a fair hearing), the applicants complained of the District Court's refusal to order an expert report, of the fact that their case had been examined by the Court of Appeal in the absence of their lawyer and of a lack of reasons for the domestic courts' decisions. Under Article 8 (right to respect for private and family life and the home), they alleged that the State authorities had failed to fulfil their positive obligations. Lastly, relying on Article 1 of Protocol No. 1 (protection of property), they contended that the presence of a high-voltage line above their land infringed their right to the peaceful enjoyment of their possessions. It considered in particular that it had not been demonstrated that they strength of the electromagnetic field created by the high-voltage line had attained a level capable of having a harmful effect on the applicants' private and family sphere. It held that in the present case the minimum threshold of severity required in order to find a violation of article 8 of the Convention had not been attained. Secondly, it found no appearance of a violation of the right to a fair hearing. Lastly, it observed that the applicants must have been aware of the presence of the high-voltage line when they had purchased the land and subsequently built their houses on it.

For instance, in case Kozul and others v. Bosnia and Herzegovina, the court stated: *It has not been established that the pollution levels complained of were so serious as to reach the high threshold established in the Court`s case-law. It follows that this compliant is manifestly ill-founded within the meaning of art.35 §3 of the Convention and must be rejected pursuant to art. 35 §4.*[34]

Paragraph 3 b) of Article 35 contains three different elements. That, primarily, is the very admissibility criterion: the ECHR can announce any application inadmissible if the applicant has not indicated any significant disadvantage. Then go two subparagraphs of safeguard clauses. First, the ECHR cannot announce the application inadmissible if respect for human rights requires considering the application on the merits. Secondly, no application can be rejected because of the new criterion if it has not been properly considered by the domestic tribunals.

The new admissibility criterion was added to the criteria fixed in article 35 when Protocol No. 14 took effect on June 1, 2010. Introduction of the new criterion was considered necessary due to ongoing increasing workload of the ECHR. That criterion provides the ECHR with an additional means of focusing on cases requiring hearing on the merits. In other words, it provides the ECHR with the opportunity to reject cases considered "of minor importance", following the principle under which judges do not have to hear such cases.

The main element of the new criterion is identification of whether the applicant has suffered a "significant disadvantage". That notion is based on the idea that violation of the right, no matter how real it was from a purely legal point of view, should reach the minimum level of gravity for its consideration by the international court to be justified. Violations of purely technical nature or minor ones, regardless of their formal nature, do not deserve being controlled by the European Court of Human Rights. Determination of the minimum level is relative and depends on the circumstances of the case in general. Seriousness of the violation is determined both by the subjective opinion of the applicant and objective importance of the case. Violation of the Convention can be related to important matters of principle and, thus, cause significant disadvantages, regardless of material interests.

To determine the minimum disadvantages justifying hearing of the case by the ECHR, the court takes into account the nature of the right to violation of which the application refers, seriousness of the claimed violation and/or potential consequences of this violation for the applicant's personal life. To assess the circumstances, the ECHR should, in particular, determine the importance or the results of the domestic proceedings. In many cases significance of the disadvantages is determined judging by the financial dimensions of the issue under consideration and importance of the case for the applicant. Financial dimension is assessed not only from the point of view of moral disadvantages to which the applicant refers.

If the ECHR, being guided by the above principles, has established absence of significant disadvantages, it still has to check whether one of the two paragraphs of the safeguard clause set out in paragraph 3 b) of article 35 makes its binding to still consider the claim on the merits. The second element is paragraph-safeguard clause due to which the

[33] http://www.echr.coe.int/Documents/COURtalks_Inad_Talk_ENG.PDF
[34] Case Kozul and Others v.Bosnia and Herzegovina, application 38695/13, §38.

application will not be announced inadmissible in case respect for human rights guaranteed by the Convention and the Protocols thereto requires hearing of the case on the merits. As it is indicated in paragraph 39 of the explanatory report to Protocol No. 14, the goal of application of the new admissibility criterion is the striving to avoid rejection of cases which, in spite of their mundane nature, raise serious issues of application or interpretation of the Convention or important issues relating to the national law.

Finally, paragraph 3 b) of Article 35 does not allow to dismiss the application due to inadmissibility if the case that has not been duly heard by the domestic court. The aim of the rule which is called by the authors of the Convention as the "second safeguard paragraph" is the guarantee of the need for each case to be heard by the court instance either on the national or international levels. As it has already been noted above, this second paragraph of the safeguard clause will be removed when Protocol No. 15 containing an amendment to the Convention takes effect. The second paragraph of the safeguard clause also aims to avoid rejection of the application for justice. This paragraph coordinates well with the principle of subsidiarity under Article 13 of the Convention that requires availability of the right to an effective remedy for violations made by the national authority.[35]

Normally, the ECHR applies a hierarchical approach to checking admissibility criteria following the sequence, but there are some exceptions. For instance, in the case of *Finger v. Bulgaria*[36], the court refused to consider whether the applicant had suffered a significant disadvantage in case of a claimed too long court proceedings since the court was of the opinion that safeguard clauses two and three were present in the case.

Due to the changes in court proceedings, at present, in most cases which pass the admissibility test, the admissibility and merits are examined at the same time, which simplifies and speeds up the procedure.[37]

Thus, applying to the ECHR is not quite an easy task, and even a very serious environmental case can be rejected by the ECHR due to non-observance of the requirements for applying and admissibility criteria.

In case: **Ahunbay and Others v. Turkey filed by citizen alleging violation of art.8 (**Respect for private life) due to dam construction threatening important archaeological site, the Court declared the application inadmissible. In 2006 work had begun on the construction of the Ilısu dam on the Tigris river. The project had entailed flooding dozens of sites of major cultural and historical interest (some of them contained ancient Mesopotamian remains), not all of which had been excavated. The applicants – private individuals involved in the local archaeological projects – regarded this as a violation of the right to knowledge of the cultural heritage and the right to transmit cultural values to future generations.

The Court stated that clearly, the gradual emergence of cultural heritage conservation values has been accompanied by a growing international body of legislation on the protection of access to the cultural heritage. Thus the present case might be considered as relating to an evolving field. In that regard and in the light of the international instruments and the common denominators of international legal standards, whether binding or not, the Court did not, a priori, rule out the existence of a joint European and international stance on the need to protect access to the cultural heritage.

In each case the Court decides on the start of the termination period on individual basis as there are cases when exhaustion of domestic remedies is impossible. In cases of violation of article 6 of the Convention by non-execution of the court decision, the Court considers all the legal options for challenging

[35] Practical manual on admissibility of applications, Council of Europe\European Court of Human Rights, 2014.
[36] Case of *Finger v. Bulgaria* , decision 10.5.2011, https://hudoc.echr.coe.int/fre?i=002-544
[37] https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

non-execution of the court decisions available to the applicant. For instance, in Turkey the government established Compensation Commission to deal with applications concerning, inter alia, non-execution of judgements. Thus, the issue of exhaustion of domestic remedies in Turkey will be dependent on the fact whether applicant applied to the Compensation Commission for the compensation in cases of non-execution of judgements of national courts. On the other hand, the Commission offers compensation for non-execution of judgements, but this will keep the violation of article 6 ongoing. On the contrary, in case *Erol Cicek and others v.Turkey*, in the decision on admissibility from 27/02/2020 the court stated: *In the particular circumstances of the case, the Court notes that the implementation of the Bursa Administrative Court decision is objectively impossible having regard to the fact that Plant ceased its operation in 2010 and moved elsewhere. For this reason the Court considers that the Compensation Commission can provide redress in response to the applicants` complaints and therefore the Government's objection on non-execution of domestic remedies must be upheld. Thus, the application should be rejected under article 35 §§1 and 4 of the Convention for failure to exhaust domestic remedies*.[38]

In another case against Turkey concerning non-execution of court decisions the Court pronounced: *The Court notes that Turkish national Assembly enacted Law no 6384 on the resolution, by means of compensation, of applications lodged with the Court concerning length of judicial proceedings and non-enforcement or delayed enforcement of judicial decisions. Law n o6384 provided for establishment of a Compensation Commission empowered to award compensation to individuals to deal with the Convention complaints falling within its scope. The Court considers that the applicants could claim compensation from the Compensation Commission, set up by the Law no 6384. However, in the circumstances of present case, the award of compensation would no be a sufficient redress for the applicants Convention grievances since their compliant pertains to the non-enforcement of binding final judicial decisions to stop the operation of Ovacik gold mine. Besides, the Turkish Government did not submit any decision showing that resource to the Compensation Commission had led to the cessation of the activities of a gold mine or a similar mining or industrial activities in respect of which national courts had annulled operation permits. Against this background, the Court finds that applicants were not required to apply to the Compensation Commission set up by Law no6384.*[39] Thus, the Court have not supported the position of the government of Turkey that applicants failed to exhaust the domestic remedies in case of alleged violation of art.6 and art.8 of the Convention by Turkey.

1.2. Nature of the ECHR's case-law and its application by national courts

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) has undergone significant changes since the date of its signing in 1950. Sixteen protocols have been adopted since the date the first text of the Convention came into effect. Those protocols have not only expanded the rights guaranteed by the Convention but also significantly changed and improved the efficiency of the mechanism of the Convention enforcement. As the result of such changes, the ECHR has become a permanent body open for direct access of Europeans, citizens of 47 countries-signatories of the Convention (including Ukraine) as well as non-governmental organizations. Under Article 19 of the Convention amended by Protocol 11, to ensure following by the high contractual parties of their commitments under the Convention and the Protocols thereto the ECHR is set up to function on a permanent basis. Procedural provisions on the nature and legal effect of judgments of the ECHR have been left unchanged. Under Article 44 of the Convention, judgments of the ECHR are final. Under Article 46 high contractual parties shall abide by the final judgments of the ECHR in any cases to which they are parties. It is worth noting that neither the primary text of the Convention, nor its current one contains any provision that would make it binding for the parties to follow the ECHR case-law while adjudicating cases in domestic courts. Along with that, the content of concise provisions of the Convention is disclosed in specific judgments of the court. Interpretation of the provisions of the Convention set out in the ECHR case-law discloses the content of obligations under the

[38] *Erol Cicek and others v.Turkey*, application no4483/07 decision on admissibility from 27/02/2020. https://hudoc.echr.coe.int/eng?i=001-188957

[39] Genc and Demirgan v.Turkey, application 34327/06 and 45165/06, judgement dated 10/10/2017, §41.

Convention, which is difficult to see looking merely at the text of the Convention.[40]

Courts of some European countries apply the ECHR case-law (in cases against those countries) when cases are heard by national courts as a judicial precedent – the source of law obligatory for application. For example, the Supreme Court of Sweden considers judgments of the ECHR court to be precedents that are of higher legal effect than its own previous judgments, and therefore acknowledges the court case-law and, correspondingly, the European Convention as norms of direct effect in the system of Swedish national legislation.[41] The Federal Constitutional Court of Germany expands the effect of Article 46 of the Convention not only to the state government, but national courts as well. In one of its judgments the Federal Constitutional Court of Germany has established that the ECHR case-law reflects the current condition of the Convention law: "since the legal effects of Strasbourg judgments are binding on the state party as a whole, and in accordance with the rule of law principle enshrined in the Basic Law, such judgments are binding on all the state authorities of Germany, including the courts. The Federal Constitutional Court of Germany has found that the decision of the […. Appellate] Court has violated the rule of law principle because the appellate judges had not taken proper account of the ECHR judgment, despite being constitutionally obliged to do so"[42].

Although supreme courts of Sweden and Germany recognized the court practice of the ECHR in relation to those countries as the source of law, they said nothing about the great number of judgments of the ECHR made in cases filed against other European countries. Nevertheless, while the ECHR case-law as such is not binding on the countries that were not parties to the case, in fact judgments relating to other countries sooner or later stimulate counties to change their legislation or practice.[43]

Interestingly, unlike countries of the Western Europe, some Eastern European countries like Ukraine and Georgia have recognized and officially enshrined universal application of the ECHR case-law. In Georgia, for example, courts must apply not just the Convention, but the ECHR case-law, that is all judgments interpreting provisions of the Convention and contributing to its correct application.[44]

2. Application of the ECHR's case-law in Ukraine

The Parliament of Ukraine ratified the European Convention in 1997. Under the 2004 Law of Ukraine *on International Treaties of Ukraine*, current international treaties of Ukraine, the consent to the binding nature of which has been granted by the Parliament of Ukraine, constitute a part of the national legislation and are applied following the procedure envisaged for the norms of the national legislation. If an international treaty of Ukraine that has come into effect following the procedure set determines other rules than the ones envisaged in the corresponding legislative act of Ukraine, rules of the international treaty shall apply.[45] Thus, according to the Ukrainian legislation, the European Convention on the scale of hierarchy of laws is ranked between the Ukrainian Constitution and the laws of Ukraine, that is only the Constitution is of higher legal effect than the Convention. In Ukraine the European Convention creates duties not just for the government, but for all the parties of the corresponding legal relations. Still application of the

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[40] Polakiewicz, The Execution of Judgments of the European Court of Human Rights, in: Fundamental Rights in Europe: The European Convention on Human Rights and its Member States (1950-2000), Blackburn/Polakiewicz (Eds.), 2001, ст. 72-73.

[41] The application of the European Convention on Human rights in domestic Scandinavian law by Søren Stendererup Jensen, p. 94-95, www.cenneth.com/sisl/pdf/35-3.pdf

[42] Frank Hoffmeister, Germany: Status of European Convention on Human Rights in domestic law — *Germany-Oxford Journals, Journal of Constitutional Law, Volume 4, Number 4,* ст. 722-731, http://icon.oxfordjournals.org/cgi/reprint/4/4/722

[43] Iain Cameron, An introduction to the European Convention on Human Rights, 4th Ed. 2002, ст. 47.

[44] Georgia State's Positive Obligation in Securing Protection of Human Rights/Georgian Law Review 5'2002-2'3 at http://www.geplac.org/publicat/law/glr02n2-3e./p_405e.pdf

[45] Article 19 of the Law of Ukraine *On International Treaties*.

Convention in isolation of the ECHR judgments that give content to its provisions is senseless from the practical point of view.

The issue of application of the ECHR case-law and its place in the hierarchy of the sources of law is a bit more complicated, though not impossible to settle. What source of law should prevail – judgment of the ECHR or a certain law of Ukraine if there is a collision between them – is a tough question for Ukrainian lawyers. Ukraine is among countries of the continental system of law, and the national system is not used to recognizing court precedents as the source of law, therefore lawyers-researchers are still discussing the legal effect of court precedent as compared to other sources of law.

We keep to the standpoint of domestic specialists who express their ideas that the Convention guarantees the highest values of mankind; that fundamental rights and freedoms interpreted by the ECHR constitute the essence of both international and national law; that Convention enshrines the highest values of mankind: fundamental human rights and freedoms interpreted by the ECHR definitely constitute a nucleus of both supranational and national law, therefore common values in question here are not creation of a certain culture changing from epoch to epoch, or subjective views of some individuals, but constitute a general civilization, general cultural values, regardless of nations, ideologies, religions. It is this circumstance that is considered to be the ground for acknowledging the priority of the norms of the Convention and the ECHR case-law over the norms of national legislation. And implementation of the Convention and ECHR case-law is viewed as a long-awaited way of resolving conflicts in law in disputes dealing with the rights guaranteed by the Convention and preventing violations of the Convention by Ukraine in the future[46].

Such views do not in any way run counter to provisions of the national legislation. In particular, 1997 Law *on Ratification of the European Convention*, envisages that "Ukraine completely recognizes on its territory [...] without conclusion of a special agreement the jurisdiction of the ECHR in all the issues relating to the interpretation and application of the Convention".

In 2006 a special Law of Ukraine *on Enforcement of Judgments and Application of the Case-Law of the European Court of Human Rights* was adopted. In its preamble the legislator confirms the need to introduce European human rights standards into the Ukrainian judicial and administrative practices as well as to create preconditions for reducing the number of applications submitted to the ECHR against Ukraine. Under the Law Ukraine has not just undertaken the commitment to enforce judgments made with its participation, but also additional commitments relating to the whole ECHR case-law. Under Article 17, while hearing cases, Ukrainian courts should apply the Convention and the ECHR case-law as the source of law. In other words, under the provisions of the above law, judgments made against other countries are binding and must be applied by Ukrainian national courts. All judgments made by the ECHR against Great Britain, France, Poland or any other country of the Council of Europe constitute an obligatory source of law for Ukrainian courts.

The Law also sets the procedure of translation, dissemination, and reference for the judgments of the ECHR. Thus, to take measures of general nature the state ensures translation and publication of full texts of judgments made against Ukraine in Ukrainian in legal editions specializing in the issues of judicial practice. The edition should be popular in the professional legal environment (Art. 6.1.).

Provision of judges with a published translation of full texts of judgments is the duty of the state authority responsible for organizational and material support of the courts (Art. 6.4.). Under Article 18, in case there is no translation of a court judgment – that is if it is necessary to make a

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[46] Some issues of application of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Practice of the European Court of Human Rights in Ukraine. — The leading specialists of expert and methodology unit of the Secretariat of the Governmental Ombudsman for the matters relating to the European Court of Human Rights — I. Ilchenko, at http://www.minjust.gov.ua/0/14103

reference to the judgment in a case against any other member state of the Convention – the court uses original text of the judgment (in English or French).

As it has been noted above, Ukraine belongs to the continental law system. Court judgments in Ukraine do not create legal norms and are binding only on the parties of the proceedings in question. Following the adoption of the Law of Ukraine o*n Enforcement of Judgments and Application of the Practice of the ECHR*, the High Commercial Court of Ukraine published an information letter indicating that commercial courts must apply all the decisions and judgments of the ECHR while settling commercial cases.[47] Formally, provisions of the law have a direct effect and should be enforced. Nevertheless, such methodological indication of the high court aimed to draw attention to such provision of the law of judges of commercial courts who rather rarely face the issues of human rights in their cases.

As of today, all judicial proceedings in Ukraine – economic judicial proceedings, administrative judicial proceedings, civil proceedings and criminal proceedings – envisage application of the practice of the ECHR while administering justice. All procedural codes of Ukraine[48] require the application of the ECHR case-law and link it to the rule of law principle, by which humans, their rights and freedoms are recognized as the highest values and determine the content and direction of state activities.

The Supreme Court of Ukraine in its decisions also consistently pays attention to application of the ECHR case-law. Thus, in decision of the Plenum of the Supreme Court of Ukraine as of February 27, 2009 No. 1 *On Court Practice in Cases Relating to Protection of Dignity and Honour of an Individual as well as Business Reputation of an Individual and Legal Entity* it is indicated that taking into account provisions of Article 9 of the Constitution and with due account of the ratification of the Convention and adoption of Law No. 3477-IV, courts must apply the Convention and judgments of the European Court of Human Rights as the source of law. Also, decision of the Plenum of the Supreme Court of Ukraine as of December 18, 2009, No. 14 *on Court Judgments in Civil Cases* indicates that in the reasons for each judgment there must be references to the Convention and judgments of the European Court of Human Rights which constitute the source of law under Law No. 3477-IV and are subject to application.

The authors of a methodological manual for judges[49] also indicate that Law No. 3477-IV envisages application of the Convention and the ECHR case-law by courts as the source of law, but there are no provisions which would prevent from application of judgments or decisions of the ECHR made in relation to other countries, therefore the use of judgments against Ukraine in the manual is caused only by the considerations of accessibility and convenience for readers who, in case it is necessary to address the full text may face certain difficulties, since they do not have a command of the official languages of the Council of Europe.

In 2015 the Ukrainian Helsinki Human Rights Union published the results of the research "Precedent UA – 2015" on the application of judgments of the ECHR by Ukrainian courts[50]. The study has shown that as of 2015 judges of all instances do not just know, but also actively use the ECHR case-law in their activities. The 2019 study shows that 10% of the Supreme Court rulings (2018 and 1st quarter of 2019) have a reference to the ECHR case-law. Moreover, since 2019 the Supreme Court routinely prepares and posts on its website monthly and thematical overviews of

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[47] Information Letter of the High Commercial Court of Ukraine *On Amending the Information Letter of the High Commercial Court of Ukraine as of November* 18, *2003 No. 01-8/1427 On the Convention for the Protection of Human Rights and Fundamental Freedoms of the Year 1950 and Jurisdiction of the European Court of Human Rights"*.

[48] The Code of Administrative Procedure of Ukraine, the Code of Criminal Procedure of Ukraine, the Civil Procedure Code of Ukraine and the Economic Procedure Code of Ukraine.

[49] Fuley T.I. Application of the Practice of the European Court of Human Rights in Administrative Judicial Procedure: Research and Methodological Manual for Judges. 2nd ed. cor., add. – K., 2015. – 128 p.

[50] "Precedent UA – 2015" / Arkadiy Bushchenko, Olena Sapozhnikova, Oleh Shynkarenko. – K. : KVITs, 2015. – 412 p.

the ECHR case-law in Ukrainian language[51].

Thus, as of today it is safe to say that it is highly advised to use the ECHR case-law while preparing statements of claim and other procedural documents submitted to the domestic courts since their application as the source of law in Ukraine has firmly rooted in the contemporary practice of justice administration.

[51] https://supreme.court.gov.ua/supreme/pokazniki-diyalnosti/mign_standart/

Chapter 2.

Human Rights and Environment in the ECHR's case-law

2.1. General overview of environmental aspects in cases of the ECHR

Even though the European Convention on Human Rights does not directly establishes the right to a safe environment, the jurisprudence of the European Court of Human Rights could not avoid issues relating to the environment, because the realization of the rights under the Convention can be undermined due to environmental damage and the availability of environmental risks.

The issue of the environment and the impact of environmental factors on humans is increasingly becoming the subject of review by the ECHR, thus, currently ECHR decisions cover many environmental issues. It is worth mentioning that in recent years, there were three cases against Ukraine, which are directly related to environmental pollution and environmental safety. In particular, these are the following cases: Dubetska and others v. Ukraine (2011),[52] *Grimkovska against Ukraine (2011)*[53] *and Dzemyuk against Ukraine (2014).*[54]

Among others, the ECHR reviewed cases[55], related to the folowing environmental aspects:

Right to life (Article 2 of the Convention)

- Hazardous industrial activities

- *Case of Öneryıldız v. Turkey*[56] - methane explosion at a rubbish tip

- Industrial emissions and health

- *Case of Smaltini v. Italy*[57] - impact of emissions of steel production factory and leukemia
- *Case of Locascia and Others v. Italy*[58] – impact of waste disposal plants

- Natural disasters

- *Case of Budayeva and Others v. Russia*[59] - mudflow

[52] Case *Dubetska and others v. Ukraine,* decision 10.02.2011, http://zakon5.rada.gov.ua/laws/show/974_689

[53] Case *Grimkovska v. Ukraine, decision* 21.07.2011. https://zakon.rada.gov.ua/laws/show/974_729#Text

[54] Dzemyuk v. Ukraine, decision 4.09.2014, https://zakon.rada.gov.ua/laws/show/974_a51#Texthttp://zakon5.rada.gov.ua/laws/show/974_a51

[55] For more details see Factsheet – Environment and the ECHR : https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG

[56] Case of Öneryıldız v. Turkey, 30.11.2004, http://hudoc.echr.coe.int/eng? i=001-67614

[57] Case of Smaltini v. Italy, decision 24.03.2015, https://hudoc.echr.coe.int/rus?i=001-127699

[58] *Case of Locascia and Others v. Italy* , decision 19.10.2023, https://hudoc.echr.coe.int/eng?i=001-228155

[59] *Case of Budayeva and Others v. Russia, decision 20.03.2008, https://hudoc.echr.coe.int/fre?i=001-85436*

- *Case of Özel and Others v. Turkey*[60] – earthquake

Right to a fair trial (Articel 6 of the Convention)

- Access to court in the context of challenging permits for environmentally hazardous activities

- *Case of L'Erablière A.S.B.L. v. Belgium*[61] - challenging by a non-profit-making association of the planning permission to expand a waste collection site
- *Case of Athanassoglou and Others v. Switzerland*[62] - challenging the decision on extension of operating license for the nuclear power plant
- *Case of* L'Erablière A.S.B.L. v. Belgique[63] – lack of access to court for environmental NGO on procedural grounds
- *Case of* Howald Moor and Others v. Switzerland [64] *- short limitation period for cases concerning harm to health due to asbestos impact of workers*
- *Case of Karin Anderson and others v.Sweden* [65] *- lack of access to court to review governmental decision concerning construction of railway*
- *Case of Stichting Landgoed Steenbergen and Others v. the Netherlands*[66]*- electronic means of notification about the decision of the authorities do not constitute the violation of the right of access to court*

- Failure to implement final court decisions on termination of environmentally hazardous activities

- *Case of Apanasewicz v. Poland*[67] - failure to implement the decision on closing the illegally constructed plant

- Case of Barosu Bursa Barosu Baskanligi and Others v.Turkey[68] -failure to enforce judicial decisions authorizing factory construction

Right to respect for private and family life (Article 8 of the Convention)

- Environmental risks and access to information

- *Case of Guerra and Others v. Italy*[69] – damage caused by a chemical facility producing mineral fertilizers and failure to release information for assessment of the risk

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[60] *Case of Özel and Others v. Turkey, decision* 17.11.2015, http://hudoc.echr.coe.int/eng-press?i=003-5224921-6478918

[61] *Case of L'Erablière A.S.B.L. v. Belgium, decision* 24.02.2009, http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2643683-2889423

[62] *Case of Athanassoglou and Others v. Switzerland, decision* 6.02.2000 (Grand Chamber), http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-68467-68935

[63] Case of L'Erablière A.S.B.L. v. Belgique, decision 24.02.09, https://hudoc.echr.coe.int/rus?i=002-1657

[64] Case of Howald Moor and Others v. Switzerland, decision 11.03.2014, https://hudoc.echr.coe.int/eng?i=001-141952

[65] Case of *Karin Anderson and others v.Sweden, decision 25.09.2014,* https://hudoc.echr.coe.int/rus?i=001-146399

[66] Case of Stichting Landgoed Steenbergen and Others v. the Netherlands, decision 16.02.21, https://hudoc.echr.coe.int/eng?i=002-13137

[67] Case of Apanasewicz v. Poland, decision 3.05.2011, https://hudoc.echr.coe.int/eng?i=001-124654

[68] Case of Barosu Bursa Barosu Baskanligi and Others v.Turkey, decision 19.06.2018, https://hudoc.echr.coe.int/eng?i=001-184293

[69] Case of Guerra and Others v. Italy, decision 19.02.1998, https://hudoc.echr.coe.int/eng?i=001-58135

- *Case of Brincat and Others v. Malta*[70] - exposure to asbestos in the course of ships repairing at a ship producing facility

• Industrial pollution

- *Case of Lopez Ostra v. Spain*[71] - emissions of the liquid and solid waste treatment facility at tanneries

• High-voltage power line

- *Case of Calancea and others v. the Republic of Moldova*[72] *- impact of high-voltage power line*

[70] Case of Brincat and Others v. Malta, decision 24.07.2014, https://hudoc.echr.coe.int/fre?i=002-9688
[71] Case of Lopez Ostra v. Spain, decision 09.12.1994. http://hudoc.echr.coe.int/eng? i=001-57905
[72] Case of Calancea and others v. the Republic of Moldova, decision 6.02.2018, https://hudoc.echr.coe.int/rus?i=003-6020311-7722913

- *Case of Bacila v. Romania*[73]- emissions of the lead and zinc producing plant
- *Case of Taşkın and Others v. Turkey*[74] - granting the mine an operating permit for use of cyanidation process
- *Case of Ockan and others v. Turkey*[75] - operating permits for gold mining
  Case of Fadeyeva v. Russia[76], *Case of Ledyayeva and others v. Russia*[77] – residing in a sanitary-protective zone of a metallurgic plant
  Case of Giacomelli v. Italy[78] – residing in the vicinity of the plant for the storage and treatment of "special waste" classified as either hazardous or non-hazardous
- *Case of Tătar v. Romania*[79] - use of cyanide in gold mining
- *Dubetska and others v. Ukraine*[80] *- water and air pollution as a result of operation of mining enterprises*

• Mobile communication towers

- *Case of Luginbühl v. Switzerland*[81] – potential impact of installation of mobile communication towers

• Noise pollution

- *Case of Powell and Rayner v. the United Kingdom*[82], *Case of Hatton and others v. the United Kingdom*[83], *Case of Flamenbaum et Autres c. France*[84] - air movement and noise disturbance caused by planes

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[73] *Case of Bacila v. Romania, decision* 30.03.2010, http://hudoc.echr.coe.int/eng-press? i=003-3084920-3417430

[74] *Case of Taşkın and Others v. Turkey, decision* 10.11.2004, http://hudoc.echr.coe.int/eng?i=001-67401

[75] Case of Ockan and others v.Turkey, decision 28.03.2006, http://hudoc.echr.coe.int/eng?i=001-125726

[76] Case of Fadeyeva v. Russia, decision 09.06.2005, http://hudoc.echr.coe.int/eng?i=001-69315

[77] Case of Ledyayeva and others v. Russia, decision 26.10.2006, http://hudoc.echr.coe.int/eng?i=001-77688

[78] Case of Giacomelli v. Italy, decision 2.11.2006, http://hudoc.echr.coe.int/eng?i=001-126090

[79] Case of *Tătar v. Romania, decision 27.01.2009. http://hudoc.echr.coe.int/eng?i=001-117147*

[80] Case of Dubetska and others v. Ukraine, decision 10.02.2011, http://zakon5.rada.gov.ua/laws/show/974_689

[81] Case of Luginbühl v. Switzerland, decision 17.01.2006, http://hudoc.echr.coe.int/eng?i=001-72459

[82] Case of Powell and Rayner v. the United Kingdom, decision 21.02.1990, http://hudoc.echr.coe.int/eng?i=001-57622

[83] Case of Hatton and others v. the United Kingdom, decision 8.07.2003, http://hudoc.echr.coe.int/eng?i=001-61188

[84] Case of Flamenbaum et Autres c. France, decision 13.12.2013, http://hudoc.echr.coe.int/eng?i=001-115143

- *Case of Moreno Gomez v. Spain*[85]*, Case of Mileva and Others v. Bulgaria*[86] – noise caused by night and computer clubs located in the vicinity
- *Case of Dees v.Hungary*[87]*, Grimkovska v. Ukraine*[88] - noise and other adverse impact caused by roads and transportation
- *Case of Fägerskiöld v.Sweden*[89]*, Case of Vecbaštika and Others v. Latvia*[90] - noise and vibration caused by wind turbines and wind parks
- *Case of Martinez Martinez and Pino Manzano v. Spain*[91] – noise and other impact caused by a stone quarry
- *Case of Bor v.Hungary*[92] – railway noise

• Impact of municipal construction

- *Case of Kyrtatos v. Greece*[93]- house construction and impact on protected species and their habitats

• Waste management

- *Case of Brânduse v. Romania*[94]- offensive smells coming from a refuse tip
- *Case of Di Sarno and Others v. Italy*[95] - improper system of household waste collection, processing and disposal
- *Case of Locascia and Others v. Italy*[96] – impact of a private waste disposal plant

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[85] Case of Moreno Gomez v. Spain, decision 16.11.2004, http://hudoc.echr.coe.int/eng?i=001-67478,
[86] Case of Mileva and Others v. Bulgaria, decision 25.11.2010, http://hudoc.echr.coe.int/eng-press?i=003-3348485-3747598
[87] Case of Dees v.Hungary, decision 9.11.2010, http://hudoc.echr.coe.int/eng?i=001-101647
[88] Case of *Grimkovska v. Ukraine, decision* 21.07.2011, https://hudoc.echr.coe.int/fre?i=001-105746
[89] Case of Fägerskiöld v.Sweden, decision 26.02.2008, https://hudoc.echr.coe.int/eng?i=001-85411
[90] Case of Vecbaštika and Others v. Latvia, decision 19.11.2019, https://hudoc.echr.coe.int/eng?i=001-116293
[91] Case of Martinez Martinez and Pino Manzano v. Spain, decision 3.07.2012. http:// hudoc.echr.coe.int/eng?i=001-112455
[92] Case of Bor v.Hungary, decision 18.06.2013, https://hudoc.echr.coe.int/eng?i=001-120959
[93] Case of Kyrtatos v. Greece, decision 22.05.2003, http://hudoc.echr.coe.int/eng?i=001-61099
[94] Case of Brânduse v. Romania, decision 7.04.2009, http://hudoc.echr.coe.int/eng-press?i=003-2698080-2947397
[95] Case of *Di Sarno and Others v. Italy, decision 10.01.2012,* https://hudoc.echr.coe.int/eng-press?i=003-2698080-2947397
[96] Case of Locascia and Others v. Italy, decision 19.10.23, https://hudoc.echr.coe.int/eng?i=001-228155

- Contamination of drinking water

- *Case of Dzemyuk v. Ukraine*[97] - contamination of water in a well as a result of a cemetery operation, and noise caused by burial ceremonies

Freedom of expression (Article 10 of the Convention)

- Pressure on environmental non-governmental organizations

- *Case of Steel and Morris v. the United Kingdom*[98] - award of damages for dissemination of the fact sheet about McDonald's
- *Affaire Vides Aizsardzības Klubs c. Lettonie*[99] - accusation of slander for protests against illegal construction works in a coastal area

Right to an effective remedy (Article 13 of the Convention)

- Warning on emergencies

- *Case of Kolyadenko and others v. Russia*[100] - release of water from reservoir dam without a warning because of negligence regarding river bed maintenance

Protection of property (Article 1 of Protocol № 1 of the Convention)

- Revocation of construction licences and permits, illegal construction

- *Case of Fredin v. Sweden*[101] - the revocation of the permit to exploit gravel pit on the land parcel of the applicant on the basis of the law on environmental protection
- *Case of Pine Valley Developments Ltd and Others v. Ireland*[102] - prohibition of construction works on the land parcel purchased to be used for construction
- *Case of Valico S.R.L. v. Italy*[103] - fine for construction works performed with violations of norms on landscape and environment protection

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[97] Case of Dzemyuk v. Ukraine, decision 4.09.2014, https://hudoc.echr.coe.int/fre?i=002-10019
[98] Case of Steel and Morris v. the United Kingdom, decision 15.02.2005, http://hudoc.echr.coe.int/eng?i=001-68224
[99] Case of Affaire Vides Aizsardzības Klubs c. Lettonie, decision 27.05.2004, http://hudoc.echr.coe.int/eng?i=001-66349
[100] Case of Kolyadenko and others v. Russia, decision 28.02.2012, http://hudoc.echr.coe.int/eng?i=001-109283
[101] Case of Fredin v. Sweden, decision 18.02.1991, http://hudoc.echr.coe.int/eng?i=001-57651
[102] Case of Pine Valley Developments Ltd and Others v. Ireland, 29.11.1991, http://hudoc.echr.coe.int/eng?i=001-57711
[103] Case of Valico S.R.L. v. Italy, decision 21.03.2006, https://hudoc.echr.coe.int/eng?i=001-110210

- *Case of Hamer v. Belgium*[104] - returning a forest lot used for construction of a house to the previous state, including by demolition of the house at the expense of the applicant
- *Case of Depalle v. France*[105] – demolition of houses built on lands of coastal zone and lands belonging to the community

• Property right to a land lot

- *Case of Papastavrou and Others v. Greece*[106] - forestation of private land lots without compensation
- *Case of Turgut and Others v. Turkey*[107] - deprivation of property right to legally acquired lands covered with forests without proper compensation

Later in this chapter, these and other cases will be discussed in detail in the context of the application of specific articles of the European Convention on Human Rights and Fundamental Freedoms.

Besides the cases mentioned above, the motives of environmental protection and caused environmental damage were taken into account and applied by the ECHR in other cases that were not directly related to "environmental" disputes. An interesting and indicative in this context can be the *Case of Mangouras v. Spain*[108] focused on protection of liberty and security of person (Article 5 of the Convention). Mangouras was a captain of the ship *Prestige,* which in November 2002 produced a leak of 70 tonnes of fuel oil into the Atlantic ocean. The spillage caused an environmental disaster, effects of which on marine flora and fauna lasted for several months and spread as far as the French coast. Following results of this incident, a criminal proceeding was started and the applicant was taken in custody with set bail at 3,000,000 EUR. Mr. Mangouras remained in custody for 83 days and was provisionally released after his insurance company paid the bail. Referring to p. 3 Article 5 of the Convention the applicant stated that the amount of bail in his case was unreasonably high and did not take into account specific circumstances and conditions of his personal life. In the decision made on 28 September 2010 in the case *Mangouras v. Spain* the European Court of Human Rights ruled that there had been no violation of para 3 Article 5 of the Convention.

[104] Case of Hamer v. Belgium, decision 27.11.2007, http://hudoc.echr.coe.int/eng?i=001-83537
[105] Case of Depalle v. France, decision 29.03.2010, http://hudoc.echr.coe.int/eng?i=001-97978
[106] Case of Papastavrou and Others v. Greece, decision 10.04.2003, http://hudoc.echr.coe.int/eng?i=001-61019
[107] Case of Turgut and Others v. Turkey, decision 8.07.2008, http://hudoc.echr.coe.int/eng?i=001-87441
[108] Case of Mangouras v. Spain, decision 28.09.2010, http://hudoc.echr.coe.int/eng?i=001-100686

The Court confirmed that according to para 3 Article 5 of the Convention, bail may be requested only if there exist legal grounds for detention of a person and that the authorities must give to determination of the amount of bail as much attention as to deciding on the need for further detention of the accused person in custody. Moreover, even if the amount of bail is determined based on the individual characteristics of the accused person and his financial situation, in certain circumstances it is reasonable to take into account also the amount of damages of causing which the person is accused.

Mr. Mangouras was deprived of his liberty for 83 days and was released after providing a bank guarantee for the amount of three million EUR. In determining the amount of bail, Spanish courts took into account the risk that the applicant may avoid punishment. In addition to the circumstances of Mr. Mangouras' private life, the account was also taken of seriousness of the crime of which he was accused, impact of the catastrophe on the public and "professional surrounding" of the applicant, in particular on the sphere of oil products transportation by water transport.

In interpreting the provisions of para 3 Article 5 of the Convention, account should be taken of new realities, including growing and justified both in Europe and internationally concerns about environmental crimes and a tendency to use criminal law as a means of enforcement of environmental obligations laid by European and international law. The Court considers that providing a higher standard of protection of human rights requires more rigor assessment of violations of the fundamental values of a democratic society. Thus, professional environment, which creates conditions for activities in the field of transportation of oil by water, should be also taken into account in determining the amount of bail to ensure its effectiveness as a means of preventing evasion of legal responsibility.

Due to the special nature of Mr. Mangouras' case and enormous damage caused to the environment by pollution of marine waters in the scale, which until now rarely occurred, it is not surprising that the national courts in determining the amount of bail that would provide confidence that a guilty person will not escape justice, mainly referred to the responsibility of the accused person, the severity of the offense and the amount of the damage caused. In addition, there was no certainty that the bail, amount of which will be determined only in proportion to the property situation of Mr. Mangouras', will ensure the presence of the applicant at the trial proceedings against him. Moreover, the payment of the bail by the insurer of the shipowner serves as confirmation that Spanish courts were right, when determining the amount of the bail they took into account "professional environment" of the applicant. This payment allows you to assess the links between Mr. Mangouras and persons who were required to ensure the safety of transportation.

When making a decision in the analyzed case, the Spanish courts also took into account the applicant's personal situation, including the fact that he was an employee of the ship owner, his purely professional relationship with those who had to ensure the safety of transportation, citizenship and place of residence, and lack of ties with Spain and his age. Taking into account the specific circumstances

of the case and the disastrous environmental and economic consequences caused by this act, the authorities – in the Court's opinion - appointed justified bail in the amount of 3 million EUR. Moreover, they made a correct thing when in the course of adopting the court decision they took into consideration the severity of the crime and the amount of damage, of causing which Mr. Mangouras was accused.[109]

2.2. Article 2. Right to life

The right to life is the first material right provided for by the Convention. At first sight, its text is not related to the environment or environmental rights.

Article 2 Right to Life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

a) in defence of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of quelling a riot or insurrection.

At first glance, the aim of Article 2 of the Convention is to grant everyone the right not to be deprived of one's life involuntarily.

Indeed, in its case-law within the context of Article 2 ECHR established the duty of the State, represented by its agents, to refrain from deprivation of life, that is the duty to regulate on the basis of the national legislation acceptable use of mortal force by the State agents.[110] In particular, it includes 1) an obligation to refrain from illegitimate deprivation of life, in other words, "obligation of subordination, control and training of staff", that ensures that those who deprive of life (for instance, police) are always well-trained and controlled; 2) doing full, open and transparent investigation of the deprivation of life by the state bodies.

At the same time, there is also one fundamental element in the first sentence of Article 2 - a general duty of the state to protect right to life "by law", that means that the State should have laws that would, in different contexts, protect this right to such an extent and in such a way that reflect the standards of Article 2 of the Convention.[111] In its judgments the Court found that Article 2 does not solely concern deaths resulting directly from the actions of the agents of the State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction[112].

This is how "a positive obligation doctrine" emerged, suggesting that in some situations Article 2 may impose on state bodies an obligation to take measures to guarantee the right to life when it is

[109] Ibid.
[110] McCann and Others v. the United Kingdom, 05.09.1995, http://hudoc.echr.coe.int/ eng?i=001-57943, the case is based on an application of relatives of three people shot by a special unit of the British Army in Gibraltar.
[111] McCann and Others v. the United Kingdom, 05.09.1995, http://hudoc.echr.coe.int/ eng?i=001-57943, p. 151-155.
[112] L.C.B v. the United Kingdom, 09.06.1998, http://hudoc.echr.coe.int/eng?i=001- 58176, p. 36.

threatened by persons or activities not directly connected to the State.[113] Thus, the right to life, according to the Convention, evolved from a negative obligation not to deprive a person of life intentionally to a positive obligation of a state to take due measures to protect lives of people within its jurisdiction in case of risk caused by environmental pollution.[114]

In the judgment in the case *Öneryıldız v. Turkey* – the first judgment where the Court found violation of Article 2 in the context of environmental factors – the ECHR Great Chamber interpreted Article 2 as a "right to the protection of life". This interpretation is a bold and unequivocal clarification of the scope of protection provided for by Article 2 which, therefore, implies that the corresponding scope of the State's liability encompasses, at least in certain contexts, negligent failures to protect human life[115]. Practically in all the applications where applicants claimed violation of Article 2 within the context of environmental factors, they referred to violation of a positive obligation of a State to protect their life.

In its practice the Court established that positive obligation of the State can be used within the context of dangerous activities, such as nuclear tests (L.C.B. v. United Kingdom), landfills (Öneryıldız v. Turkey), or operation of chemical factories with toxic emissions (Guerra and Others v. Italy), asbestos operations (Brincat and others v. Malta), directly carried out by the State or private companies. In general, the scope of State's obligations depends on such factors as the degree of activity-related danger and predictability of risks to life.

The issue of violation of right to life due to negative environmental factors was raised for the first time in the case *Guerra and Others v. Italy*[116] *(*application № 14967/89, judgement from 19.02.1998). The applicants in the case lived at one- kilometre distance from a factory producing mineral fertilizers. For the time of factory operation there were a number of accidents, the largest of which caused serious emission of pollutants into the atmosphere causing one hundred and fifty people being hospitalized with serious arsenic poisoning. The applicants claimed that lack of practical actions on reducing the pollution level and high accident risk, related to factory operations violated their right to life and physical integrity (Articles 2 and 8). They also complained that the corresponding public authorities did not inform the public on the risks and action procedure in case of serious accident that violated their right to freedom of expression (Article 10). Considering the facts in this case the Court did not find violations of Articles 2 and 10 but concluded on violation of Article 8 (for more details see the corresponding sections of the Manual).

It should be noted that in this case several judges expressed their dissenting opinions stating that there was indeed a violation of Article 2. In his dissenting opinion[117] Judge Jambrek is quoting this part of Article 2 "*Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save for..."* In his opinion, protection of health and physical integrity is in the same way closely related to the "right to life" as to the "respect to private and family life". It is possible to make an analogy with Court's practice regarding Article 3 on "predicted consequences"; i.e. if there are serious grounds to consider that there exists a real risk that a person will be exposed to circumstances threatening his/her life and physical integrity, one can talk about serious threat to the person's right to life protected by law. If the information on the circumstances that presuppose a real risk of danger for health and physical integrity is withheld by the State, such a situation can be protected by Article 2 of the Convention: "*No one shall be deprived of his life*".

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[113] Manual on human rights and the environment. Principles emerging from the case-law of the European Court of Human Rights. Council of Europe, 2006.

[114] Öneryıldız v. Turkey, 30.11.2004, http://hudoc.echr.coe.int/eng?i=001- 67614, para. 65.

[115] Dimitris Xenos**,** *Asserting the Right to Life (Article 2, ECHR) in the Context of Industry,* German Law Journal, Vol. 08, No. 03, http://www.germanlawjournal.com/pdf/Vol08No03/PDF_Vol_08_No_03_231-254_Articles_Xenos.pdf at 235.

[116] Guerra and Others v. Italy, 19.02.1998, http://hudoc.echr.coe.int/eng?i=001-58135

[117] Concurring opinion of Judge Jambrek, http://hudoc.echr.coe.int/eng?i=001-58135

In 1998 the Court considered another case where the applicant raised the issue of applying Article 2 within the context of unfavourable environmental factors. In the case *L.C.B v. the United Kingdom*[118] (application № 23413/94, judgement from 09.06.1998) the applicant claimed that radiation exposure of her father during the nuclear arms tests in 1957 and 1958 in Christmas Island in the Pacific region became a probable cause of her being diagnosed with leukaemia in her childhood. She stated that lack of information given to her parents by the Government regarding potential risks for her health that might have appeared due to her father's exposure to radiation during the nuclear tests together with previous inactivity on the part of the State regarding the level of radiation doses her father was exposed to constitute violation of Article 2 of the Convention.

Resolving the case in question the Court did not come to conclusion that there was a violation of Article 2, as there was no causal link between the fact that her father was exposed to radiation and leukaemia in a child who was conceived after this exposure. The Court stressed that radiation measurements done at the island directly after the nuclear tests showed that radiation did not reach dangerous level in places where common military men, to whom applicant's father belonged, were located. This circumstance became the ground for the Court to consider that as of before 1970, when the applicant was diagnosed with leukaemia, the state bodies were confident that applicant's father was not exposed to dangerous radiation doses. Moreover, the Court studied expert conclusions, including the judgement of the British Supreme Court from 1993 in a case on the relationship between the increased level of child leukaemia and parents' exposure to radiation before the conception, that did not establish causal link between these factors. Furthermore, the Court did not find it established that, given the information available to the State at the end of 1960s concerning the likelihood of the applicant's father having been exposed to dangerous levels of radiation and of this having created a risk to her health, it could have been expected to act of its own motion to notify her parents of these matters or to take any other special action in relation to her.

The first "environmental" case where the Court found violation of the right to life was the case of *Öneryıldız v. Turkey*[119] (application № 48939/99, judgment of the Great Chamber 30.11.2004). Having considered this case the Court for the first time concluded that positive obligations of the State in relation to Article 2 extend to public and non-public activities and, in particular, to industrial activity which is dangerous in its nature. The judgment lays down general principles related to the obligation of the State to take efforts to prevent death caused by a dangerous activity.

In the case of *Öneryıldız v. Turkey* the applicant's house was built without a corresponding permit near a landfill. Due to a methane explosion occurred at the rubbish tip on 28 April 1993 the refuse erupting from the pile of waste engulfed several houses situated below it, including the one belonging to the applicant, who lost nine close relatives. The applicant complained that there were no measures taken to prevent the explosion irrespective of the fact that the Government knew about the necessity of such measures.

In this case ECHR ruled that there was violation of Article 2 of the Convention due to lack of corresponding measures to prevent the death of applicant's nine relatives. The Court also ruled that there was a violation of Article 2 of the Convention due to lack of adequate protection "by law" safeguarding the right to life. The Court stated that Turkish government had not provided the residents of the slums with the information on the risks related to living in such a place. And even if it were the case, the Government would be held responsible anyway as it failed to take necessary practical means to prevent danger. The Court came to conclusion that the regulatory framework had proved defective as the tip had been allowed to open and operate without a coherent supervisory system. Also, in its opinion the Court held that urban planning policy of the State was erroneous that also played its role in the sequence of the events that resulted in the

[118] L.C.B v. the United Kingdom, 09.06.1998, http://hudoc.echr.coe.int/eng?i=001- 58176
[119] Öneryıldız v. Turkey, 30.11.2004, http://hudoc.echr.coe.int/eng?i=001-67614

disaster.

In the case of *Brincat and Others v. Malta*[120] (application № 60908/11, 62110/11, 62129/11 etc., judgment from 24.7.2014) the Court considered the complaint of the applicants (and their relatives), who had been working at the state shipyard from 1968 to 2003. The applicants claimed that they (or their relatives) continuously and intensively were exposed to asbestos in the process of repairing ship mechanisms isolated with asbestos, that was highly detrimental to their health, and in case of one of the applicants this detrimental effect resulted in his death from asbestos-related cancer.

In this case the Court confirmed that the state has positive obligation to take all reasonable measures necessary to ensure applicants' right with respect to Articles 2 and 8 of the Convention. In the contexts of dangerous activities, the fields of positive obligations with respect to Articles 2 and 8 significantly overlap. Indeed, positive obligation with respect to Article 8 requires the national authorities to take the same practical measures that are expected from them within the context of their positive obligations regarding Article 2.

The Court came to conclusion that Maltian government was aware of the danger related to asbestos impact since early 1970s, and nevertheless the applicants were left without due protections means and were not provided the information on the potential risks up till the beginning of the 2000s. Legislation adopted in 1987 provided undue regulation of asbestos-related activity not envisaging any practical measures to protect the workers. In fact, there was no due information provided or made available for applicants throughout the corresponding period of their working in the shipyard. Having considered the facts the Court concluded that there was a violation on the part of the State of the right to life regarding the worker who died, and the right to respect for private and family life in relation to the other applicants.

Article 2 of the Convention imposes on States an obligation to take the necessary measures for the protection of the lives of individuals within their jurisdiction, even in the event of natural catastrophes that requires from the State having corresponding mechanisms of notification and protection at hand.

To the category of "environmental" cases also belong cases related to death of people from the consequences of natural disasters. Even though natural phenomena are not controlled by the State, the Court repeatedly in similar situations found the states guilty in violating its citizens' right to life.

In the case of *Budayeva and Others v. Russia*[121] (application № 15339/02, judgement from 20.03.2008) a mudslide in the mountainous town Tyrnauz not far from Mount Elbrus in Cabardine and Balkarian Republic (Russia) caused death of one of the applicants' husband. Because of natural disaster, one applicant got bodily injuries, psychological trauma and suffered the loss of their property. The applicants claimed that the Russian authorities failed to mitigate the disaster consequences and conduct due investigation of the accident.

Resolving the case the Court stated that the scope of the State's positive obligations in the sphere of emergency relief depends on the origin of the threat and the extent to which the risk was susceptible to mitigation. A relevant factor here was whether the circumstances of the case pointed to the imminence of clearly identifiable natural hazards, such as a recurring calamity affecting a distinct area developed for human habitation or use.

The authorities had received several warnings in 1999 that should have alerted them to the increasing risks of a large-scale mudslide. Indeed, they were aware that any mudslide, regardless of its scale, would cause devastating consequences because of the damage to the protective infrastructure. Although the need for urgent repairs had been made quite clear, no funds had been

[120] Brincat and Others v. Malta, 24.07.2014, http://hudoc.echr.coe.int/eng?i=001- 145790
[121] Budayeva and Others v. Russia, decision 20.03.2008, http://hudoc.echr.coe.int/eng?i=001- 117225

allocated. Essential practical measures to ensure the safety of the local population were not taken: no warning had been given and no evacuation order issued, publicized or enforced; the mountain institute's persistent requests for temporary observation posts to be set up were ignored; there was no evidence of any regulatory framework, land-planning policies or specific safety measures having been put in place; and the mud-retention equipment had not been adequately maintained. In sum, the authorities had not taken any measures before the disaster.

The Court ruled that there had been no justification for their failure to implement land-planning and emergency-relief policies in view of the foreseeable risk of loss of life. The serious administrative flaws which had prevented the implementation of these policies had caused the death of people. The authorities had therefore failed in their duty to establish a legislative and administrative framework to provide effective protection of the right to life.

The Court also established violation of Article 2 in relation with the fact that the issue on the responsibility of the State for the disaster has never been researched and investigated by any court or administrative bodies either on their own initiative or on the basis of applicants appeals.

In the case of *Kolyadenko and others v. Russi*a[122] (application № 17423/05, judgment from 28 February 2012) the applicants brought a case claiming a failure of their government to protect their lives and property from a dangerous flood.

On the 7th of August 2001, due to heavy rainstorm and the sudden release of water from the reservoir, a nearby area was immediately flooded including the applicants' homes. There was no local emergency warning in place and the water rose quickly to a level of 1.50 metres. The applicants suffered damages to their properties and possessions. It was widely known that the floodplain of the Pionerskaya river was subject to periodic flooding during heavy rains. In the years preceding the flood various authorities knew that the river channel was blocked and in need of being emptied to avoid dangerous flooding, yet no significant measures seem to be taken.

In their case, the applicants claimed that the authorities had put their lives at risk by failing to warn them of the release of water and by failing to maintain the river channel. In regard the applicants who were present at their homes when the flood occurred the Court reiterated that Article 2 confers a positive obligation on States to take appropriate measures to safeguard lives. The Court accepted that, due to the risk of the dam breaking, expelling water from the reservoir was appropriate, but given the nature and location of such activity, the authorities had a positive obligation to assess all risks in the reservoir's operation, taking measures where necessary to protect lives. The Court asserted that there was a failure in implementing town planning restrictions to prevent the area from being inhabited and to safeguard the lives of those living downstream of the reservoir.

The Court also noted that, although the authorities were aware of the blocked state of the river channel for several years prior to the flood, no recommended measures were taken, and the residents of the area had not even been warned about residing in an area at risk from heavy flooding. Furthermore, the Court found that there was a lack of communication and cooperation between relevant administrative authorities to ensure that lives were not put at risk. Even after the flood, no preventative measures had been put in place, leaving the residents of the area still at risk at the time of the judgment. The Court thus found there had been both substantive and procedural violations of Article 2 of the ECHR.

Another similar case *Özel and Others v. Turkey*[123] (applications № 14350/05, 15245/05 and 16051/05, judgment from 17.11.2015) related to the death of the applicant's family members who were buried alive under the buildings destroyed in the town of Çınarcık by the earthquake on August 17, 1999 - one of the most destructive and mortal earthquakes registered in Turkey. In this

[122] Kolyadenko and others v. Russia, https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-109283%22]}
[123] Özel and others v. Turkey, decision 17.11.2015, http://hudoc.echr.coe.int/eng-press? i=003-5224921-6478918

case the Court found in particular that the national authorities had not acted promptly in determining the responsibilities and circumstances of the collapse of the buildings which had caused the deaths.

As regards the obligation of the states to prevent disasters and protect their citizens, the Court explained that this obligation consisted mainly in the adoption of measures to strengthen the authorities' capacity to respond to lethal and unexpected natural phenomena such as earthquakes. In the present case the Court noted that the national authorities had been fully aware of the risks to which the disaster zone was subject. The local authorities, with their responsibility to issue building permits, thus had a role and responsibility of primary importance in the prevention of risks related to the effects of an earthquake. However, the Court found that this part of the complaint was out of time and rejected it pursuant to Article 35 paragraph 1 (admissibility criteria) of the Convention.

In the light of the case file, the Court notes that the criminal proceedings had lasted for more than 12 years. Even though the case was a complex one, only five individuals were prosecuted, and the experts' reports were ready at an early stage. Two of the defendants were convicted, while the proceedings were time-barred in the case of the three others. The Court concluded that the length of the proceedings did not satisfy the requirement of promptness. It took the view that the importance of the investigation should have made the authorities deal with it promptly in order to determine the responsibilities and the circumstances in which the buildings collapsed, and thus to avoid any appearance of tolerance of illegal acts or of collusion in such acts.

As the Court caselaw shows, violations of the right to life in "environmental" cases are established in cases related to activities dangerous in their nature and in cases of natural disasters. However, these violations are established predominantly in the cases, which involved actual deaths of people. In circumstances of negative environmental factors that did not result in lethal accidents the Court tends to apply Article 8 (right to respect to private and family life). Nevertheless, there are Court judgments related to Article 2 that found violations without the fact of loss of life, for instance, in situations when a person has obviously been exposed to a real and imminent threat to their life[124].

The ECHR judgments in this category of cases show that to safeguard the right to life the state authorities are obliged to take measures on preventing violations of right to life arising from dangerous activity or foreseeable natural disaster. Primarily this obligation means the duty of the State to implement legislative and administrative frameworks that include:

1) putting in place a legislative and administrative framework designed to provide effective deterrence against threats to the right of life;

2) in the particular context of dangerous activities, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives;

3) such preventive regulations should govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks;

4) preventive regulations must, in particular, guarantee the public's right to information;

5) regulations geared to protecting people's lives must not only exist and be appropriate, but the authorities must also actually comply with them;

6) nevertheless, the Court allows States a wide margin of appreciation in difficult social and technical spheres as this one, and even if the State has failed to apply one particular

[124] Kolyadenko and others v. Russia, https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-109283%22]}

measure provided by domestic law, it may still fulfil its positive duty by other means;

7) where lives have been lost the States have to ensure, by all means at their disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished.

Chapter 2.3.

Article 6 Right to a fair trial and Article 13 Right to an effective remedy

Article 6 paragraph 1

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal that will resolve the case regarding his civil rights and obligations.

Applicability of paragraph 1 Article 6 to environmental disputes

In determination of the applicability of Article 6 paragraph 1 to civil disputes there should be a dispute on civil rights that at least should be recognized by the national legislation. The dispute should 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: poor relation or remote consequences are insufficient for Article 6 application.[125]

Thus, in the case *Athanassoglou and Others v. Switzerland*[126] there were 12 applicants residing in zone 1 near unit II of a nuclear power plant in Beznau. They complained about lack of access to court on the basis of paragraph 1 of Article 6 to appeal the decision of the Federal Council from 1994 regarding an extension of nuclear power plant Beznau II operating license and unjust procedures of the Federal Council. Referring to Article 13 of the Convention the applicants also complained about lack of effective legal remedy to appeal violation of their right to life, respect of physical integrity as guaranteed by Articles 2 and 8 of the Convention. Para 1 of Article 6 states that persons have access to court in cases when they have a grounded dispute that there was an illegal interference with one of their civil rights recognized by the national legislation. In its judgment the Court found that in this case Article 6 was not applicable, the connection between the Federal Council's decision and the rights envisaged by the national legislation, invoked by the applicants (right to life, physical integrity, right to property) was too tenuous and remote. Moreover, the result of review procedure by the Federal Council was decisive for the general issue regarding an extension of nuclear power plant operating license, but not for identification of any civil rights such as right to life, physical integrity, right to property granted individually to applicants by the Swiss laws. That is why Article 6 para1 was not applicable. Indeed, the applicants in their pleadings before the Court appear to accept that they were alleging not so much a specific and imminent danger in their personal regard as a general danger in relation to all nuclear power plants; and many of the grounds they relied on related to safety, environmental and technical features inherent in the use of nuclear energy. Regarding the fact that the applicants were seeking to derive from Article 6 § 1 of the Convention a tool to contest the very principle of the use of nuclear energy, or at the least a means for transferring from the government to the courts the responsibility for taking, on the basis of the technical evidence, the ultimate decision on the operation of individual nuclear power plants, the Court

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[125] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.echr.coe.int/eng?i=001-67401

[126] Case of Athanassoglou and Others v. Switzerland, decision 6.06.2000, http://hudoc.echr.coe.int/eng?i=001-58560

found that decision on finding the better way to regulate the use of nuclear power is a policy decision for each Contracting State to take according to its democratic processes. The Court also found that Article 13 is not applicable in this case either as, in the opinion of the Court, the connection between the decision of the Federal Council and the domestic-law rights to protection of life, physical integrity and property invoked by the applicants was too tenuous and remote to attract the application of Article 6 § 1. Therefore, in relation to the Federal Council's decision no arguable claim of violation of Article 2 or Article 8 of the Convention and, consequently, no entitlement to a remedy under Article 13 have been made out by the applicant.

The Court came to similar conclusions in the case of *Balmer- Schafroth and Others v. Switzerland*[127], recognizing that the proceedings on review of the legitimaticy of nuclear power plant operating license extension as such are not part of Article 6 para1, as the link between the operating license extension and their right to life, protection of their physical integrity and right to property was too «*insignificant and unrelated*», and the applicants failed to prove imminent danger to their life.

In the case of *Sdruzeni Jihoceske Matky v. the Czech Republic*[128] the Court noted that the results of administrative proceedings against a Construction Department, where an applicant organization failed to participate, were not directly decisive for «civil rights» – which are the right to life, to health, to healthy environment and respect to property – which were granted to an applicant organization and its members by the Czech law. Correspondingly, paragraph 1 of Article 6 cannot be applied in this case.[129]

Applicability of Article 6 to environmental disputes was recognized by the Court in the following environmental cases: in the case of dam construction that could flood the applicants' settlement (*Case of Gorraiz Lizarraga and Others v. Spain*[130]*)* and in the case of a license to operate a gold extracting mine using cyaniding near the settlements of the applicants (*Case of Taskın and Others v. Turkey*[131]*)*; as well as in the case on extending license to operate a waste management facility (case *Zander v. Sweden*[132]).

In the case of *Gorraiz Lizarraga and Others v. Spain*[133]*,* the Court was addressed by 5 individuals and non-government organization (NGO) that referred to violation of paragraph 1 of Article 6, as they alleged that in the judicial proceedings brought by them to halt construction of the dam, they had not had a fair trial that they had

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[127] Case of Balmer-Schafroth and Others v. Switzerland, decision 13.09.2001, http://hudoc.echr.coe.int/eng?i=001-58084

[128] Case of Sdruzeni Jihoceske Matky v. the Czech Republic, decision 10.07.2006, http://hudoc.echr.coe.int/eng?i=001-76707

[129] http://medialaw.org.ua/userimages/book_files/Book_WEB_European_Court_Coe_MLI.pdf

[130] Case of Gorraiz Lizarraga and Others v. Spain, decision 27.04.2004, http://hudoc.echr.coe.int/eng? i=001-61731

[131] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.echr.coe.int/eng?i=001- 67401

[132] Case of Zander v. Sweden, decision 25.11.93, http://hudoc.echr.coe.int/eng?i=001-57862

[133] Case of Gorraiz Lizarraga and Others v. Spain, decision 27.04.2004, http://hudoc.echr.coe.int/eng? i=001-61731

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 had been intended to prevent the execution of a Supreme Court judgment that had become final that means violation of their right to a fair trail as guaranteed by Article 6 § 1 of the Convention and, for the applicants who are individuals - violation of their right to a respect for their private and family lives and their homes as guaranteed by Article 8, as well as their right to the peaceful enjoyment of their possessions, guaranteed by Article 1 of Protocol No. 1. Regarding applicability of Article 6 to this case, the court noted that in addition to defence of the public interest, the proceedings 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 emphasized that only the decision of the Constitutional Court on unconstitutionality could have had the result of protecting both the environment and their homes and other immovable property. 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 consequences of the dam's construction on their lifestyles and properties. Without a doubt, this aspect of the appeals had an “economic” and civil dimension. 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 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. The Court therefore finds that the proceedings as a whole may be considered to concern the civil rights of the applicants as members of the association, accordingly, Article 6 § 1 of the Convention is applicable. However, taking into account peculiarities of the preliminary ruling on the constitutionality, the Court did not establish violation of equality of arms principle, guaranteed by paragraph 1Article 6 of the Convention, as such a process do not provide for either an exchange of memorials or for a public hearing for the participants. The Court also did not establish violation of Article 6, as the interference by the legislature in the outcome of the dispute did not make the proceedings unfair. In this case adoption of a disputable law was not intended to remove jurisdiction from the Spanish courts which had to establish whether the dam project was legal. Moreover, the disputed law concerned all of Navarre's protected areas reserves and natural sites, and not only the area affected by construction of the dam, and it did not have retrospective effect, therefore it could not influence the courts’ judgments in the applicant’ s case. Thus, there was no violation of Article 6.

In the case of *Taşkın and Others v. Turkey*[134] (more information on a case is provided in Chapter 2.3.), the applicants lived near gold mine in the vicinity of Bergama and complained about the operating permit with the use of cyaniding procedure given by the authorities. In the administrative courts the applicants referred to violations of their right to having adequate protection of their physical integrity from the risks that will arise in the process of gold mine operation. This right is recognized in the Turkish legislation and is different from the right to life in healthy and balanced environment. Regarding "civil" character of such right, in the opinion of the Court, the risks from cyaniding process at the gold mine are quite serious, therefore, the disputed right of the applicants is under threat. The decisions of the administrative courts can be considered as related to the "civil" rights of the applicants, that is why Article 6 can be applicable. There was a decision of the Supreme Administrative Court to annul the mine operation permit issued by the Ministry of the Environment, which was not enforced in due time, while resuming of gold mine operation by the Ministerial decision without any legal grounds was aimed at avoiding the decision of the court. It resulted in the violation of the principle of law-bound state based on the rule of law and the principle of legal certainty and violation of paragraph 1 of Article 6 of the Convention.

In the case of *Zander v. Sweden*[135], a couple of applicants got a land plot that was adjacent to the land on which a company treated household and industrial waste. In 1986 the applicant addressed the National Licensing Board for Protection of the Environment that was in charge of considering the request of the company for permit renewal, with a request to grant the permit only under condition of free drinking water supply to the land owners concerned, as the activity in question entailed a risk of polluting their ground water. The Licensing Board granted company's request and dismissed the applicants' claim on the ground that there was no likely water connection between the dump and the wells of the applicants. The applicant appealed this decision to the Government challenging the conditions for the permit, however, the Government, as the final instance of appeal upheld it and dismissed the appeal. While evaluating whether the applicants rights are "civil", the Court indicated that the applicants' ability to use the water in their wells for drinking purposes was one of the aspects of their right as landowners, and the property right is clearly a "civil right" within the meaning of Article 6. As the Government's decision, upholding the Licensing Board's decision on granting permit, cannot be reviewed in court, there has been a violation of Article 6 paragraph 1 of the Convention.

A new step was made by the Court in a case of *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France*[136], where the Court supported, that Article 6 paragraph 1 should be applied to the procedures, initiated by the Associations for Environmental Protection, which do not identify itself as association of local community that intend to protect the rights and interest of its members. The Court established that the aim of such contested

[134] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.echr.coe.int/eng?i=001-67401
[135] Case of Zander v. Sweden, decision 25.11.1993, http://hudoc.echr.coe.int/eng?i=001-57862
[136] Case of Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France. Decision 12.06.2007, http://hudoc.echr.coe.int/eng?i=001-81006

procedures is protection of public interests, and the process initiated by the applicant-association has sufficient relation to the right it has as a legal person (for instance, the right to information, the right to participation and decision-making) to apply Article 6.

In the case of *L'Erablière A.S.B.L. v. Belgium*[137], the applicant-organization contested court decision on inadmissibility of the appeal due to the lack of the statement of the facts by the plaintiff. The applicant was a non-profit organization that protected the environment in the region Marche-Nassogne. The applicant-association lodged an application for judicial review of the planning permission for landfill site extension and requested the *Conseil d'Etat (the highest body of administrative justice)* to cancel the decision. The latter dismissed the request for the impugned decision to be cancelled on the ground that the request did not include thorough and accurate statement of the facts regarding factual circumstances of the dispute, and later recognized the applicant's request on judicial review as inadmissible, as it did not contain statement of the facts that would provide any additional information but just provided reference to the contested decision. The court did not find in the organization's claim the process *actio popularis* from the viewpoint of the circumstances of the case and, in particular, the nature of the impugned measure, the status of the applicant-association and its founders and the fact that the aim of its activity was limited in space and in substance. Thus, Article 6 could be applied. The Court found that there was violation of the applicant's right to justice, as limitation of the applicant's right to access to justice was disproportionate to the requirements of legal certainty and due administration of justice, therefore, there was violation of the para 1 Article 6.

Thus, guarantees of Article 6 para1 are extended to the organizations-associations in cases when they claim recognition of right or interest of their members or even rights granted to them as legal persons (such as the right of *«citizens»* to information and participation in the decision-making on environment), or when the association's suit is not considered as *actio popularis*. As it is seen from the aforementioned court judgments, the court position focuses on inapplicability of Article 6 of the Convention to cases of *actio popularis.* The reason why the Convention does not allow any *actio popularis* is because it wants to escape Court cases brought by individuals who complaint about the very existence of the law that is applicable to any citizen of the country, or about the decision of the court they were not a party to.[138]

In the case of *Karin Andersson and others v.Sweden*[139], the Court found violation of art.6 of the Convention. The applicants owned a property close to Umea in northern Sweden. In 2003 the Government took a decision permitting the construction of 10 km long railway in or close to their properties. The Government stated, inter alia, that the activity could be permitted, despite its harmful effect on the environment in a Natura 2000 area, if there were no alternative solutions and the railway had to be constructed for reasons of public interest. Judicial review before the Supreme Administrative Court of that Decsion of the Government was not successful: the Supreme court issued a decision of 1 December 2004 to dismiss the petition for judicial review. Thus, the applicants complained under Article 6 of the Convention that they had been denied a fair trial with regard to their civil rights, as they had been refused a full legal review of the Government's decision to permit the construction of the railway, which was situated on or close to their properties. The latter decision had significantly affected the applicants' property as well as the environment in the area concerned. The Court concluded that the applicants had civil rights, at least in relation to the enjoyment of their property, which they wished to invoke in the domestic proceedings. As has been mentioned above, the Government's decision of 12 June 2003 to permit construction of the railway in the specified "corridor", as soon as it was final, acquired binding

[137] Case of L'Erablière A.S.B.L. v. Belgium, decision 24.02.2009, http://hudoc.echr.coe.int/eng?i=001-91492
[138] Ibid.
[139] Case of Karin Andersson and others v.Sweden, decision 25.09.2014, https://hudoc.echr.coe.int/rus?i=001-146399

force on the further examinations relating to the railway. Thus, the Supreme Administrative Court's judicial review of the Government's decision would have been the natural point in time for the rights of the local property owners to be determined. However, the court, on 1 December 2004, denied the petitioners locus standi and stated that the parties sufficiently affected by the future railway could have a judicial review of the later Government decision on the railway plan. It is true that certain details of the railway project could be determined in the subsequent proceedings and that several applicants have received some form of compensation for the effects of the railway construction. The fact remains, however, that the applicants were not able, at any time of the domestic proceedings, to obtain a full judicial review of the authorities' decisions, including the question whether the location of the railway infringed their rights as property owners. Thus, notwithstanding that the applicants were accepted as parties before the Supreme Administrative Court in 2008, they did not have access to a court for the determination of their civil rights in the case. There has therefore been a violation of Article 6 § 1 of the Convention.

The Court is not in position to question the expert reports and declare violation of art.6 of the Convention in cases when national courts take into account or ignore the reliable expert decisions concerning the impact on the environment, health or property of applicants. In case of *Dimitar Yordanov v.Bulgaria*[140], the applicant lived very close (160-180m) to opencast coalmine and his property suffered damage. The applicant brought the case against mining company seeking compensation for the damage caused to his property because of the extraction of the coal by blasting. The courts heard the case and commissioned expert reports, establishing that serious damage had been caused to his property and detonations nearby had been carried out inside the 500m buffer area, in breach of domestic law. However, the courts concluded that there was no proof of a link between the mining activities and the damage. The Court held that there have been a violation of art.1 of Protocol 1 and there have been no violation of art.6 of the Convention, finding that decisions of the national courts, in particular their conclusion contested by the applicant as to the existence of a casual link between the detonation works at the mine and the damage to his property, had not reached the threshold of arbitrariness and manifest unreasonableness or amounted to a denial of justice.

Access to a fair trial: limitation period

In a case of *Howald Moor and Others v. Switzerland*[141] a widow and her two daughters continued the case of the father, who was a mechanic, who died in 2005 from the disease caused by asbestos impact. The relatives of the diseased continued a lawsuit against the employer and claimed non-pecuniary damages in the court. The subject of the case in ECHR was the beginning of the limitation of action period for the victims of asbestos impact established by the Swiss law. Taking into

[140] Case of Dimitar Yordanov v.Bulgaria, decision 6.09.2018, https://hudoc.echr.coe.int/eng?i=002-12038

[141] Case of Howald Moor and Others v. Switzerland, decision 11.03.2014, http://hudoc.echr.coe.int/eng?i=002-9395

account the fact that latency for the asbestos-caused diseases can last for decades, establishment of a limitation period of 10 years with the beginning of the period when the person was influenced by asbestos dust, means fast expiration of the period. Thus, initiation of the proceedings regarding damages can be unsuccessful from the very beginning, as the limitation period will expire at the time the potential claimant knows about the right to sue. The Court indicated that applicability of limitation period limited the applicants' right to justice and even weakened the very substance of their right.

The Court also gave its opinion on the use of electronic tools and electronic means of notification and participation during decision-making by authorities. In the case of *Stichting Landgoed Steenbergen and Others v. the Netherlands*[142] the Court considered a case of expiration of fixed time-limit for appealing of local exectutive`s decision by applicants and applicability of art.6 to this case. The applicants` premises were located in close proximity to a motocross track. The Provincial Executive decided to extend the opening hours of this track and published the notification on the draft of its decision and decision itself on its web-site. The applicants failed to notice this notification on the web-site and as soon as they have learned about the decision to extent the working hours, they appealed the decision of Executive. Their claim was dismissed by the court due to expiration of time-limit for appealing. They complained that giving notice of the draft decision and decision itself online only, their right of access to court was impinged. The Court found that there had been no violation of art.6 of the Convention. In the present case, the Provincial Executive's use of electronic means for publishing notifications had been sufficiently coherent and clear for the purpose of allowing third parties to become aware of decisions that could potentially directly affect them. The system of electronic publication used by the Provincial Executive had therefore constituted a coherent system that had struck a fair balance between the interests of the community as a whole in having a more modern and efficient administration. There was no indication that the applicants had not been afforded a clear, practical and effective opportunity to comment on the draft decision and to challenge the decision given by the Provincial Executive. In light of all the circumstances and the safeguards identified, the national authorities had not exceeded the margin of appreciation afforded to the State and the applicants had not suffered a disproportionate restriction of their right to access of court.

Guarantee of providing legal aid and equality of arms

Article 6 para 1 does not state that the State has to provide free legal aid in every dispute regarding "*civil" rights*. The fact whether Article 6 provides for legal aid depends on different factors namely: importance of what was at stake for the applicant in the proceedings; the complexity of the relevant law and procedure; the applicant's capacity to represent him or herself effectively; existence of the obligatory requirement to have a representative in court. The state is allowed to put requirements on the conditions of provision of legal aid, apart from the aforementioned, on such conditions as financial condition of a party in a case, expectations of a party regarding winning the case.[143]

An exemplary case regarding application of para 1 of Article 6 with respect to absence of legal aid was the case of *Steel and Morris v. the United Kingdom*[144], where the applicants – two representatives of non-governmental organization Greenpeace London were deprived of the right to free legal aid. They were defendants in a libel case brought by McDonald's claiming damages for libel caused by a leaflet distributed by the organization Greenpeace London with participation of Steel and Morris. The trial on refuting all the information mentioned in the leaflet lasted 313

[142] Stichting Landgoed Steenbergen and Others v. the Netherlands, decision 16.02.2021, https://hudoc.echr.coe.int/eng?i=002-13137
[143] Handbook on Article 6. Right to a fair trial. Civil part. Council of Europe/ European Court for Human Court, 2013.p.19. http://www.echr.coe.int/Documents/Guide_Art_6_UKR.pdf
[144] Case of *Steel and Morris v.the United Kingdom, decision 15.02.2005,* http://hudoc.echr.coe.int/eng?i=001-68224

court days and the applicants were refused free legal aid, therefore, they represented themselves in a very complicated and long trial with 100 000 pounds being at stake as damages claim. After the national courts ruling against the applicants they submitted an application to the court on violation of Article 6 and Article 10 by the United Kingdom (more details about the case are presented in Chapter 2.4.). The applicants contested refusal of access to a fair trial due to lack of free legal aid and violations on the part of the judge during the trial. Having evaluated all the circumstances of the case the Court established that the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the courts and contributed to an unacceptable inequality of arms with McDonald's. There had, therefore, been a violation of Article 6 § 1.

Trial within a reasonable time

In Case of *Dees v. Hungary*[145] the applicant complained about heavy traffic on his street adjacent to toll motorway. The applicant states that due to noise, emissions and bad smell, caused by heavy traffic on his street, his home became unsuitable

[145] Case of Dees v.Hungary, decision 9.11.2010, http://hudoc.echr.coe.int/eng?i=001-101647

for living. He also complained about excessive duration of court proceedings initiated by him in this matter. Indeed, the trial commenced on February 23, 1999 and was over on November 15, 2005, lasting for 6 years 9 months on two levels of courts of the same jurisdiction. ECHR acknowledged that the duration of proceedings exceeded reasonable limits, thus violating Article 6 paragraph 1.

In case of *Bor v. Hungary*[146] the applicant lived across the railway station and complained about intense noise pollution by trains and inaction of the authorities as to timely and efficiently bringing of the railways to responsibility for exceeding noise levels. The applicant complained about violation of Article 6 of the Convention (trial within a reasonable time) and Article 8 of the Convention (see more on Article 8 in Chapter 2.3.) The applicant first initiated court proceedings in 1992 and the trial was over in 2008. Thus, the case remained in courts of the same jurisdiction on two levels for 15 years and 7 months. ECHR took into account behaviour of the applicant who at certain stages of proceedings initiated their termination. And still the ECHR acknowledged that the duration of proceedings exceeded reasonable time which constituted a violation of para 1 Article 6.

Failure to enforce court decision

Court practice shows that the right to a fair trial which includes the right of access to the courts, i.e. the right to initiate trial before the court on civil matters, will be illusionary if national laws allow for the final, binding decision of the court not to be enforced. Enforcement of any court decision must be considered an integral part of the notion of "court proceedings" for the purposes of Article 6 of the Convention. If administrative bodies refuse to enforce, fail to enforce or postpone enforcement of court decision, the guarantees of Article 6 given to the parties in court, loose any purpose.[147]

Efficient defence of the party to a case and thus restoration of justice foresees the duty of administrative bodies to enforce court decisions. Thus, in the case of *Kyrtatos v. Greece*[148] the applicants accused authorities of failure to enforce the decisions of Supreme Administrative Court on cancellation of construction permits. The government not only allowed for the houses, built on the ground of cancelled permits, not to be demolished, but also continued issuing construction permits for territory included into settlement as a result of illegal establishment of its boundaries. The applicants who received legal aid complained of the duration of trial. Greek authorities who refrained from enforcing two court decisions, deprived the provision of para 1 Article 6 of its useful effect which resulted in violation of the Article 6.

In case of *Apanasewicz v. Poland*[149] the applicant, who had a land plot next to which a plant was built without a construction permit, filed a motion with the court for closing down the plant in 1989 and complained about damage caused to her by such illegal action (pollution, health problems, non-edible crops). In 2001 civil court made a decision on closing the plant yet no enforcement measures resulted in close-down of the plant which was operating even at the time when the ECHR passed its judgement. The applicant complained of non-enforcement of the courts decision to close the plant, the duration of court proceedings. ECHR acknowledged violation of Article 6 of the Convention, taking into account the general duration of court proceedings, lack of due attention on the part of authorities and insufficient use of enforcement measures to ensure efficient protection of applicant's rights. The Court also confirmed violation of Article 8 of the Convention due to the fact that actions taken by the authorities turned out to be inefficient for protection of the applicant's right to respect of private and family life.

[146] Case of Bor v. Hungary, decision 18.06.2013, http://hudoc.echr.coe.int/eng?i=001-120959

[147] Case of Kyrtatos v. Greece, decision 22.05.2003, http://hudoc.echr.coe.int/eng?i=001-61099

[148] Ibid.

[149] Case of Apanasewicz v. Poland, decision 3.05.2011, http://hudoc.echr.coe.int/eng?i=001-124654

In case of *Dzemyuk v. Ukraine*[150] the applicant appealed decision of the court and actions of Tatariv village council as to location of a cemetery 38 m away from his land plot and house. Decisions of the court to close the cemetery were not enforced by Tatariv village council over a significant period of time. Enforcement proceedings lasting for 2 years were unsuccessful. Yet, the ECHR decided not to consider the matter of compliance of government with provisions of Article 6 of the Convention since violation of Article 8 had already been established by the court.

In the case of *Bursa Barosu Baskanligi and Others v. Turkey*, [151] the Court held, unanimously, that there had been a violation of Article 6 § 1 of the Convention. The case concerned the failure to enforce numerous judicial rulings setting aside administrative decisions authorising the construction and operation of a starch factory on farmland in Orhangazi (a district of Bursa) by a US company (Cargill).

The Court found in particular that, by refraining for several years from taking the necessary measures to comply with a number of final and enforceable judicial decisions, the national authorities had deprived the applicants of effective judicial protection. The applicants are Bursa Barosu Başkanlığı (Bursa Bar Association) and the Association for the Protection of Nature and the Environment (based in Bursa, Turkey), together with 21 individuals, Turkish nationals who live in Bursa.

The company Cargill obtained an investment authorisation in 1997, then in June 1998 a building permit for the construction of a starch factory on farmland. In parallel the authorities amended the land-use plan on a number of occasions to allow the factory to be built. Other building permits were issued, together with an authorisation for waste production and management which was cancelled in 2004.

Between 1998 and 2000 the starch factory was built, in spite of the annulment by the Bursa Administrative Court and the Supreme Administrative Court of the numerous amendments to the land-use plan, as well as the suspension and/or annulment of various building permits issued by the Council of Ministers. Those decisions, which followed appeals by some of the applicants, were not enforced by the authorities. Currently the factory, which started production in 2000, is still operating.

The Court found that the application was admissible in respect of six applicants, who had participated actively in the domestic proceedings seeking the annulment of the impugned administrative decisions and could claim to be victims, within the meaning of Article 34 (right of individual application) of the Convention, of the alleged violations of the Convention. The Court declared inadmissible the application of other applicants. The Court took the view that Article 6 was applicable in the present case, as the dispute raised by the applicants had a sufficient connection with a "civil right" which they were entitled to claim. They had relied, among other things, on arguments concerning the harmful effects of the factory in question for the environment and the Court of Cassation, in its judgment of 26 May 2008, had acknowledged that they had a civil right.

In view of the aforementioned decisions of the ECHR as to interpretation of Article 6 of the Convention, the following conclusions as to rights covered and guaranteed by this article can be made. This article guarantees:

1. The right of person to have a final decision made which will be enforced and respected by all public bodies.
2. The rights of environmental organizations, which according to the law have the right to file motions for protection of rights of

[150] Case of Dzemyuk v. Ukraine, decision 4.09.2014, http://zakon5.rada.gov.ua/laws/show/974_a51/page

[151] Case of Bursa Barosu Baskanligi and Others v. Turkey, decision 19.06.2018, https://hudoc.echr.coe.int/eng?i=003-6120029-7901755

their members, have the right to access the courts for protection of economic interests of their members and in case of seeking court action for protection of public interest – access to the courts pursuant to Article 6, cannot always be guaranteed.

3. Citizens who believe their interests were not taken into account in the process of decision-making concerning environment, which may limit the right to life or the right to respect for private and family life, have the right to access the courts.

Article 13 Right to an effective remedy

'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority not withstanding that the violation has been committed by persons acting in an official capacity'

Article 13 of the Convention guarantees "an effective remedy available in the domestic system" to everyone whose rights and freedoms, as set forth in the Convention, have been violated. Article 13 applies to all substantiated claims on violation of rights and freedoms guaranteed by the Convention. A person, who files a motion with the court on violation of rights and freedoms guaranteed by the Convention, presenting their arguments, is at the same time supposed to have remedies before a national authority for the matter to be settled and for reimbursement to be received if such is awarded. According to Article 13, national authority, responsible for providing obligatory effective remedy, must not necessarily be court. A petition filed with an administrative body may suffice. The notion of "effective remedy" includes, apart from payment of reimbursement where it is due, a detailed and efficient investigation which is called to reinstate the actual state of affairs as well as punish those responsible. A remedy also includes an effective opportunity to contest investigation procedures.[152]

In the case of *Hatton and others v. the United Kingdom*[153] the applicants, residents of London, complained of government policy with respect to night flights at Heathrow Airport, which resulted in violation of their rights foreseen by Article 8 of the Convention (for more details see the next subchapter) and also complained that they were denied an effective remedy for their case which is a violation of Article 13. The Court usually interprets Article 13 as such which requires availability of remedies with respect to violations which may be deemed as such which require proof. In this case the ECHR did not establish violation of Article 8 of the Convention, yet the ECHR established its admissibility under Article 8 of the Convention. Thus, the petition filed under Article 8 is subject to proof. Consequently, it is necessary to consider the issue of Article 13 violation as well. This article does not guarantee a possibility to contest the laws of member-states of the Convention before national authorities as to their compliance with the requirements of the Convention. Nor does it guarantee a possibility to appeal policy as such. In case a applicant has a disputable claim on violation of rights foreseen by the Convention, which can be proven, national legal system should give access to effective remedies. In this case the Court acknowledged that in the course of appeal it could have been established that the 1993 night flight scheme, approved by the

[152] Methodic recommendations for central executive bodies as to implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms in their law- making activities as approved by the Decree of the panel of the Ministry of Justice of Ukraine No. 40 dated November 21, 2000

[153] Case of Hatton and others v. the United Kingdom, decision 8.07.2003, http://hudoc.echr.coe.int/eng?i=001- 61188

government, was illegal due to a significant gap between government policy and practice. At the same time scope of review by the domestic courts was limited to the classic English public-law concepts, such as irrationality, unlawfulness and patent unreasonableness, and did not at the time allow consideration of whether the claimed increase in night flights under the 1993 Scheme represented a justifiable limitation on the right to respect for the private and family lives or the homes of those who live in the vicinity of Heathrow Airport. In these circumstances, the Court considers that the scope of review by the domestic courts in the present case was not sufficient to comply with Article 13 and thus this Article was violated in this case.

In case of *Di Sarno and Others v. Italy*[154] the applicants complained about violation of their rights during the state of emergency when household wastes was not taken away (5 months) and were piling up in the streets of Campania polluting the

[154] Case of *Di Sarno and Others v. Italy, decision 10.01.2012.* http://hudoc.echr.coe.int/eng?i=001-108480

environment and creating a serious threat to life and health of the applicants. They referred to violation of Article 8 of the Convention (for more details see subchapter 2.3) and Article 13 of the Convention in connection with absence in the national legislation of effective remedies for reimbursement of damages suffered by the applicants as a result of problems with wastes.

In case of *Kolyadenko and others v. Russia*[155] the applicants who lived near the river and reservoir of Pionersk suffered damage from sudden flood in 2001 in Vladovistok. All the applicants complained that authorities put their lives under threat when they drained the water without warning, and also complained about improper maintenance of the river bed and absence of proper court procedures in response. They also complained about serious damage to their property and houses and absence of effective court remedies to address their complaints. The applicants claimed of violations of Articles 2, 8, 13 of the Convention and Article 1 Protocol 1. The Court acknowledged violation of Article 8 of the Convention and Article 1 Protocol 1. Concerning Article 13 of the Convention, in connection with Article 8 of the Convention and Article 1 Protocol 1, there was no violation since Russian laws grant applicants a possibility to initiate civil proceedings to receive reimbursement and the courts are given all the instruments for considering matters on liability of the state for incurring damages in civil proceedings. The issue of liability for the events may become a subject of criminal proceedings. The very fact that the trial was not successful for the applicants, since in the end their claims were dismissed, cannot be considered an indication of absence of effective remedies required by Article 13 of the Convention.

In case of *Öneryıldız v. Turkey*[156] the applicant who lost 9 relatives and his house due to methane explosion near rubbish tips close to his barrack and the barracks of his relatives, claimed violation of Article 2 of the Convention (see more about the case in subchapter 2.1), Article 1 Protocol 1 and Article 13 of the Convention. The ECHR acknowledged violation of Article 2 (violation of procedural and material obligations by Turkey). As to violation of Article 13 the Court established that in case of violation of rights foreseen by Article 2, reimbursement of pecuniary and non-pecuniary damage must be available on national level. On the other hand, neither Article 13 of the Convention nor other provisions guarantee a applicant the right to criminal persecution and sentencing of a third party or the "right to a private action in response". The ECHR established that with respect to fatalities caused by dangerous activities which should be regulated by the state, Article 2 demands that public bodies themselves conduct investigation to determine causes of death, which has to comply with minimum requirements. Without investigation the victim will not be able to use all the remedies to receive reimbursement since knowledge of facts pertaining to the case is usually available to public servants or public authorities. In connection with these conclusions, the task of ECHR within the limits of Article 13 of the Convention in this case lies in determining whether the applicant's possibility to use the right to effective remedy was destroyed by the form in which public bodies performed their procedural duties according to the requirements of Article 2 of the Convention. In this case the Court established that the applicant had an opportunity to use remedies offered by the law in order to

[155] Case of Kolyadenko and others v. Russia, 28.02.2012, http://hudoc.echr.coe.int/eng?i=001-109283
[156] Case of Öneryıldız v. Turkey, 30.11.2004, http://hudoc.echr.coe.int/eng?i=001-67614

receive satisfaction. The applicant used the remedies and filed a motion with administrative court for reimbursement of pecuniary and non-pecuniary damage caused by death of his close relatives and loss of dwelling and property. Efficiency of this process did not depend on the results of ongoing criminal investigation. Administrative courts hearing this case had authority as to assessment of facts and bringing the guilty party to responsibility for events which had happened to the applicant and had the authority necessary to pass a mandatory decision. It remains to be established to what extent this remedy was efficient in practice. Non-pecuniary damage reimbursements awarded to the applicant for the loss of close relatives was never paid out to the applicant. Timely payment of compensation for the suffered negative emotions must become an integral element of remedy foreseen by Article 13 of the Convention. Court proceedings lasted 4 years 11 months which is improper realization of justice by national courts. This is why the ECHR came to a conclusion that administrative procedures did not provide the applicant with effective remedies for appealing inaction of the state as to protection of the lives of applicant's close relatives. Thus, the court established violation of the Article 13 of the Convention with respect to petition in the part on violation of Article 2 of the Convention. Also, as a result of court proceedings the applicant was granted a judgment on reimbursement of damage for destroying of household goods, which was never paid out. Consequently, the ECHR confirmed that the applicant was deprived of effective remedies as foreseen by Article 1 Protocol 1.

As it appears from the practice of ECHR, Article 13 of the Convention foresees the duty of state to create effective and efficient mechanisms for reviewing actions or inactions which resulted in violation of rights foreseen by the Convention, damage to property or health of citizens. These can be judicial or executive bodies having the authority to determine the guilty party and award reimbursement for damage caused to citizens by action or inaction of public bodies as to regulation, limitation or prevention of harmful environmental factors. Absence of positive results in national or administrative courts is not always indicative of violations of Article 13 of the Convention. Article 13 of the Convention demands that countries ensure a possibility to contest results of investigation, decisions of court and other bodies as to reimbursements of damage etc.

2.4. Article 8. Right to respect for private and family life

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

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 wellbeing 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.

In today's world, according to the ECHR, environmental protection is an increasingly important factor. However, Article 8 of the Convention does not apply to every case of deterioration of the environment. The Convention and its Protocols do not contain the right to protect the environment or right to safe and healthy environment. Therefore, in 1999 the Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe

adopted the Recommendation # 1431 (1999) entitled "Future action to be taken by the Council of Europe in the field of environment protection." Provision 8 of this recommendation states: "In the light of changing living conditions and growing recognition of the importance of environmental issues, it considers that the Convention could include the right to a healthy and viable environment as a basic human right." On 27 June 2003 the Parliamentary Assembly adopted the Recommendation # 1614 (2003) entitled "Environment and human rights", Provision 3 of which states: "The Assembly believes that in view of developments in international law on both the environment and human rights as well as in European case-law, especially that of the European Court of Human Rights, the time has now come to consider legal ways in which the human rights protection system can contribute to the protection of the environment."

In the Resolution[157] of the Parliamentary Assembly 2545(2024) the Assembly notes with dismay that the Council of Europe is now the only regional human rights system which has not yet formally recognized the right to a healthy environment. Thus, the Assembly calls on the Council of Europe and their member states to step up their efforts to promote the legitimacy and added value of the Council of Europe playing a leading role indrawing up a binding legal instrument recognizing an autonomous right to a healthy environment.

Thus, the development of the legal instrument recognizing the right to safe and healthy environment on the level of Council of Europe is decided, but certain timelines and organizational arrangements have to be determined on the level of the Council of Europe.

Article 8 Para 1

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

The ECHR under this right "in the light of environmental issues" understands the following:

1. In case of violation of this article environmental factors must directly and seriously affect private and family life, applicants' home. The seriousness of the impact is determined by the level and duration of exposure, physical and psychological consequences for people and the general environmental condition.

In the light of Article 8 of the Convention home is a place, physically designated area for the family and private life. A person has the right to respect for his home, which means not just the right to the actual physical space, but also to the quiet use of this space within reasonable limits. Violation of the right to respect home is not only limited by specific violations such as illegal entry into a person's house, but can include the actions that are scattered, like noise, emissions, odors and other similar forms of intervention. The right of a person to respect for his home could be seriously affected if he is prevented from using the parts of his home .[158] Although the Convention does not provide the right to a clean and quiet environment, in the event of negative impact of noise and pollution on a person, Article 8 can be

157 https://pace.coe.int/pdf/af69ba1b5bfe8ec6644e3da010b6d7f862beafeb883aafc178809a580dba6d9d/res.%202545.pdf

158 Case of Moreno Gomez v. Spain, 16.11.2004, http://hudoc.echr.coe.int/eng?i=001-67478, Case of Dees v.Hungary, 9.11.2010, http://hudoc.echr.coe.int/eng?i=001-101647, Case of Ivan Atanasov v. Bulgaria, 2.12.2010. http://hudoc.echr.coe.int/eng?i=001-101958.

applicable.[159]

Complaints under Article 8 of the Convention were filed in different occasions when concerns about the environmental pollution or interference were stated. However, in order to raise the issue under Article 8 of the Convention the interference, in respect of which the applicant complained, should have a direct impact on its home, private or family life and should reach a minimum level for the complaint to come within the purview of Article 8 of the Convention. Therefore, the primary decision is whether the pollution an applicant complained of is considered to have a sufficiently negative impact on the use of his home amenities and the quality of his private and family life, even without creating serious health hazards.[160]

The assessment of this minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of exposure and adverse physical or psychological effects. The overall context of the environment should also be taken into account. The ECHR had reminded that there can not be a substantiated complaint under Article 8 of the Convention if the damage, with reference to which the complaint is filed, is insignificant as compared to the environmental risks inherent to life in every modern city.[161]

With regard to health deterioration, it is difficult to distinguish the impact of environmental risks from the effects of other relevant factors, such as age, profession or personal life. Regarding the overall context of the environment, there is no doubt that the severe pollution of water and soil can affect public health in general and worsen the quality of a person's life, but its actual impact in each case is impossible to define in quantitative terms. "Quality of life" actually is a subjective characteristic that cannot be defined precisely.[162]

Considering the difficulty of proof, the ECHR considers the findings of national courts and other competent authorities to establish factual circumstances, but sometimes they are disregarded and ignored. As a basis for analysis the ECHR can use, for instance, provisions of national legislation, which determine dangerous levels of pollution, and environmental studies undertaken by the competent authorities. The ECHR pays special attention to individual decision of the authorities on the specific situation of the applicant, such as the obligation to revoke polluters' permit for industrial activities or to resettle the inhabitants from the contaminated area. However, the ECHR can not blindly rely on decisions of national authorities, especially when they are clearly inconsistent or contradictory. In this situation, the Court must assess the evidence in their entirety. Other sources of evidence, besides the course of events outlined by the applicant, are, for instance, his medical certificates and relevant reports, statements or research undertaken by private institutions.[163]

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[159] Case of Hatton and others v. the United Kingdom, decision 8.07.2003, http://hudoc.echr.coe.int/eng?i=001-61188

[160] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.echr.coe.int/eng?i=001- 67401.

[161] Case of Hardy and Maile v. the United Kingdom, decision 14.02.2012, http://hudoc.echr.coe.int/eng?i=001-109072

[162] Case of Ledyayeva and Others v. Russia, decision 26.10.2006, http://hudoc.echr.coe.int/eng?i=001- 77688.

[163] Case of Dubetska and others v. Ukraine, decision 10.02.2011, http://zakon2.rada.gov.ua/laws/show/ 974_689

For instance, in the case *Dzemyuk v. Ukraine*[164] the applicant complained about a breach of his right to respect for his home and private life on account of the construction of a cemetery near his home, and of the authorities' failure to enforce a judgment by which the construction of the cemetery in the vicinity of his house had been prohibited. The ECHR agreed that the applicant and his family could experience the negative impact of the water pollution. However, in the absence of direct evidence of actual impact on the applicant's health the ECHR must determine whether the potential threats to the environment caused by the location of the cemetery were related to the applicant's private life and home to the extent that adversely affect the quality of his life and bring into force the application of the provisions of Article 8 of the Convention. Similar decision on the violation of art.8 of the Convention by location of cemetery nearby of applicant`s house was taken by Court in case of *Solyanik v.Russia*[165].

In its decision on the eligibility of application of *Zbigniew Koceniak v. Poland*[166] which concerned the construction of a midden, a slaughterhouse and a meat-processing plant on the land adjacent to the applicant's plot by the applicant's neighbors, the ECHR pointed out that the non-compliance of these buildings to building norms was not sufficient for the affirmation that there was interference with the applicant's right under Article 8. The ECHR must assess the materials of the case and determine whether the alleged interference was serious enough to have a negative impact on the use of facilities of the applicant's home and the quality of his private and family life. The ECHR found that the applicant could be affected by unpleasant odor and emissions from meat processing enterprise, however, it must be determined whether such interference has reached the minimum level required to constitute a breach of Article 8 of the Convention. The ECHR noted that the applicant did not provide public authorities with such evidence as medical or environmental reports and other evidence of damage or interference of the enterprise in the vicinity of his property, and therefore it was not reliably established that the operation of the business caused environmental hazard, or the pollution level exceeded acceptable safe levels as defined by law. The applicant also did not provide the ECHR with evidence of health injury that was caused or may have been caused by the noise and pollution. It was not proved that the pollution which the applicant complained of reached the level or characteristics that caused any harmful effects on the health of the applicant or his family. Therefore, the ECHR declared the application ill-founded.

In another recent case of *Thibaut v.France*[167] concerning alleged violation of art.8 by France, the applicants (members of association) complained against the plan to construct extra-high-voltage power line due to the risk to health for people living near such power line generating magnetic fields. In its decision on admissibility from 7 July 2022 the Court declared the application of applicants who live near the site of a planned extra-high voltage power line (400,000 volts) inadmissible, as it is manifestly ill-founded. Applicants had not produced any evidence to show that the project would expose them to electromagnetic fields exceeding domestic or international standards.

The applicants had not demonstrated that the completion of the power line would expose them to an environmental danger such that their capacity to enjoy their private and family life, or their home, as protected by Article 8 of the Convention, would be directly and seriously affected.

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[164] Case of Dzemyuk v. Ukraine, decision 4.09.2014, http://zakon3.rada.gov.ua/laws/show/974_a51?nreg=974_a51&find=1&text=%EC%B3%F1%F2%B3&x=0&y=0#w11

[165] Case of Solyanik v.Russia, decision 10.05. 2022, https://hudoc.echr.coe.int/eng-press?i=003-7330448-10004367

[166] Case of Zbigniew Koceniak v. Poland, decision 17.06.2014, http://hudoc.echr.coe.int/eng?i=001- 145668,

[167] Case of Thibaut v.France, decision 07.07.2022, https://hudoc.echr.coe.int/rus?i=002-12760

The same decision was issued by Court in the case of *Calancea and others v.Republic of Moldova*[168], where the applicants (married couple and their neighbour) lived in the vicinity of high-voltage powerline. The Court declared the application inadmissible as being manifestly ill-founded. It had not being demonstrated that the strength of the electromagnetic field created by high-voltage power line had attained a level capable of having a harmful effect on the applicants private and family sphere. The minimum threshold of severity required to find a violation of art.8 had not being attained in this case too.

The decision on admissibility of the application of *Fägerskiöld v.Sweden*[169], where the applicant complained of the noise from the wind turbines erected 400 meters from the applicant's house, the ECHR declared the application inadmissible for lack of evidence from physicians regarding the confirmation of negative health effects of noise from wind turbines. The applicants unreasonably criticized noise tests conducted by the government, as their results showed a small level of excess. The noise level in this case was not so serious to reach the threshold which is set in environmental cases considered by the ECHR.

In the case *Martinez Martinez and Pino Manzano v. Spain*[170], the ECHR found no violation of Article 8 of the Convention in respect of applicants living in an industrial area near the stone quarry despite the applicants' arguments about psychological disorders because of the noise from the facility. The ECHR came to that conclusion because of the available evidence of noise measurement which showed the normal range or a small excess of the norm, and also because of the fact that the applicants lived in the area which was not intended for residence.

In the case *Kyrtatos v. Greece*[171] the ECHR found no violation of Article 8 of the Convention with regard to the applicants complaining that urban development plans destroyed their physical environment and negatively influenced their private life. The ECHR explained that on the one hand, the intervention in the living conditions of the animals in the swamp, which belonged to the applicants, was an encroachment on private or family life of the applicants. Even presuming that environmental damage was caused by urban development plans, the applicants did not prove that the alleged harm to birds and other protected species that lived in the swamp was of such a nature that directly affected their own rights under Article 8 of the Convention. On the other hand, the ECHR pointed out that the impact of urban facilities in the vicinity of the applicant's property (noise, light) did not reached the limits of sufficient seriousness to be decisive for the purposes of Article 8 of the Convention.

The Court reached the same conclusion in the case of *Ivan Atanasov v. Bulgaria*.[172] The applicant stated that recultivation scheme of tailings pond for the flotation plant of a former copper-ore mine had a negative impact on his private and family life and home, as well as violated the peaceful possession of his property. In this case the ECHR had no doubt that placing sludge in the pond for the waste created unpleasant situation in the neighborhood, however, it was not convinced that the pollution adversely affected the private sphere of the applicant to such an extend that was necessary for the application of Article 8 for these reasons. Firstly, the

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[168] Case of Calancea and others v.Republic of Moldova, decision from 6.02.2018, https://hudoc.echr.coe.int/rus?i=003-6020311-7722913

[169] Case of Fägerskiöld v.Sweden, decision 26.02.2008, http://hudoc.echr.coe.int/eng?i=001-85411

[170] Case of Martinez Martinez and Pino Manzano v. Spain, decision 3.07.2012, http://hudoc.echr.coe.int/eng?i=001-112455

[171] Case of Kyrtatos v. Greece, decision 22.05.2003, http://hudoc.echr.coe.int/eng?i=001-61099

[172] Case of Ivan Atanasov v. Bulgaria, decision 2.12.2010, http://hudoc.echr.coe.int/eng?i=001-101958

applicant's house and land are located far from the sources of pollution (1 km from the house and 4 km from the land for cultivation). Secondly, the pollution caused by the pond is not the result of active production process which could result in a sudden release of large amounts of toxic gases or substances (unlike in the Cases of Lopez Ostra v.Spain, Guerra and others v.Italy, Fadeyeva v.Russia). This means that in this situation there is less risk for sudden deterioration of the situation (unlike the Case of Tatar and Tartar v.Romania). Thirdly, there was no evidence of accidents with negative consequences for the health of people living in Elshitsa. The case files lack data proving that the pollution around the pond caused the increase in mortality of Elshitsa residents or had a negative impact on the applicant's possession of the amenities of his homes, the quality of private or family life. In fact, the applicant admitted that he cannot prove any actual damage to his health or the availability of short-term health risks, but he is afraid of negative consequences in the long term. The applicant did not provide evidence that the degree of interference around his home was one that

significantly adversely affected his private and family life. The applicant did not suffer obvious harm, and therefore the ECHR had doubts that Article 8 of the Convention was applicable.

In case of *Pavlov and others v.Russia*[173] the Court assessed the applicability of article 8 to the case of the applicants living several km from sites of large industrial undertakings in Lipetsk and stated that in the present case it does not appear from the case material that the applicants in question lived or live in the immediate vicinity of any factory or plant. However, in the Court's opinion, this fact, by itself, is not sufficient to exclude their complaint from application of Article 8. The Court examined the evidence of excessive pollution in Lipetsk and mentioned that the causal link between the excessive level of pollution and the harmful effects on the applicants' health cannot however be automatically presumed in every case. It is conceivable that, despite the excessive pollution and its proven negative effects on the population of Lipetsk as a whole, the applicants did not suffer any special and extraordinary damage. The Court noted, in this regard, that the applicants did not, however, produce any medical evidence which could point to any conditions that they had allegedly developed as a result of air pollution in Lipetsk. The Court also reiterated that severe environmental pollution may affect individuals' well-being in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. The Court concluded that the authorities in the present case were in a position to evaluate the pollution hazards and take adequate measures to prevent or reduce them. The combination of these factors shows a sufficient link between the pollutant emissions and the State to raise an issue of the State's positive obligation under Article 8 of the Convention. The Court studied all the documents presented to national courts, evidence of pollution and actions from the side of local authorities to curb this pollution and considered that despite some improvements in air quality, the industrial air pollution in Lipetsk had not been sufficiently curbed, so as to prevent that the residents of the city be exposed to related health risks. The domestic authorities therefore failed to strike a fair balance in carrying out their positive obligations to secure the applicants' right to respect for their private life. The Court accordingly found that there has been a violation Article 8 of the Convention in respect of all applicants.

In cases where domestic courts also have found violation of the right foreseen by art.8 of the Convention, the Court relied on the conclusions of domestic courts concerning the fact of violation of art.8 right, but reconsidered the issue of just satisfaction to the victim of violation. In case of *Otgon v. the Republic of Moldova*[174] the Court noted that the parties did not dispute the domestic court`s findings concerning the violation of the applicant`s right by state-owned company. In assessing whether the Moldovan authorities discharged their positive obligation under that provision, the Court noted that domestic courts provided a remedy in the form of establishing the company`s responsibility and awarding compensation (648 Euro for non-pecuniary damage). The only issue which remains to be determined is the amount of compensation. As it was too low for her sufferings (applicant spent near 2 weeks in the hospital after drinking contaminated water from the tap) and minimum of award generally awarded by Moldavian courts, the Court said that the applicant still claim to be a victim of a violation of art.8. The Court awarded the applicant 4000 Euro for non-pecuniary damage. In the dissenting opinion of the Judge Lemmens concerning the fact of violation of art.8 by the Republic of Moldova, the judge mentioned that the Court gave very generous interpretation of the notion of private life (in present case there has been only one incident of drinking of polluted water and it has not been demonstrated that the illness has affected the applicants quality of private life, except the period spent in the hospital), thus this case has been upgraded from an ordinary tort case to a case raising an issue under art.8.

The case of *Kapa and Others v. Poland*[175] also represents the Court`s deliberations on application of the principle of fair balance between state or public interests and rights envisaged

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[173] Case of Pavlov and Others v.Russia §64,68, 69, 92, 93, decision 11 October, 2022, https://hudoc.echr.coe.int/rus?i=001-219640

[174] Case of Otgon v. the Republic of Moldova, decision 25.10.2016, https://hudoc.echr.coe.int/rus?i=001-167797

[175] Case of Kapa and Others v. Poland, decision 14.10.2021, https://hudoc.echr.coe.int/fre?i=001-212138

by the Convention. In this case the applicants -residents of town Stryków in Poland, complained for violation of their right to respect of their home by the State authorities which allowed extremely heavy day and night motorway traffic *via* a road unequipped for such a purpose, which ran through the middle of a town Stryków in very close vicinity to the applicants' home. By this the applicants were exposed to severe nuisance: noise (exceeding domestic and international norms), vibrations and exhaust fumes. The Court observed 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 accepted 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. The Court concluded that a fair balance was not struck in the present case. (§172, 173) 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, enabled 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, thus there had been a violation of Article 8 of the Convention. (§174,175)

The Court extended the notion of home to prizon cell, where the applicant was detained and which became his only living space for many years. In the case of *Brânduşe v. Romania*[176] the applicant suffered from offensive smells emanating from waste tip in vicinity of prisoner's cell and affecting his quality of life and well-being. While noting that Mr Brânduşe's health had not deteriorated through proximity to the former refuse tip, the Court considered that, in the light of the conclusions of the environmental studies and the length of time for which the applicant had to suffer the nuisances concerned, the applicant's quality of life and well-being were affected to the detriment of his private life in a way which was not merely the consequence of his deprivation of liberty. Indeed, the applicant's complaint related to aspects which went beyond the context of his conditions of detention as such and which, moreover, concerned the only "living space" the applicant had had available to him for a number of years. It therefore considered that Article 8 was applicable in the case. The studies concluded that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the standards established in 1987 and that persons living nearby had to put up with significant levels of nuisance caused by offensive smells. Thus, there had been a violation of Article 8 due to absence of adequate actions to deal with offensive smells from the tip by Romanian authorities.

The Court issued new decision with its position whether the right to respect for private and family life included the right to clean drinking water and sanitation as the lack of access to such amenities might have negative effect on health and human dignity. In case filed by few Roma comminity members from Slovenia, the Court discussed the possitive obligation of the state to ensure access to clean drinking water and sanitation and possibilities of the state to derive from its obligations in cases with Roma minorities, and also the assessment of the behaviour of applicants and their usage of the opportinities provided by the local authorities to improve their living conditions and family life were discussed by the Court. In the case *Hudorovic and others v.Slovenia*[177] the Court found that measures adopted by the State in order to ensure access to safe drinking water and sanitation for the applicants took account of the applicants` vulnerable position and satisfied the requirements of art.8, thus there was no violation of art.8. On the other hand the applicants received social benefits and have not used them for improving their living conditions, and applicants have not demostrated that the State`s failure to provide them with safe drinking water resulted in adverese consequences to their health and human dignity. With no unanimity the Court voted for the absence of violation of art.8 by Slovenia in respect to two

[176] Brânduşe v. Romania, decision 07.04.09, https://hudoc.echr.coe.int/rus?i=002-1567
[177] Case of Hudorovic and others v.Slovenia, decision 10.03.2020, https://hudoc.echr.coe.int/fre?i=001-201646

groups of applicants. Partly dissenting opinion of Judge Pavli and Judge Kuris raised the issue that Court was for the first time tasked to decide whether the right of access to clean water was guaranteed by art. 8 of the Convention. The Roma case also raised complex questions related to treatment of historicaly marginalised communities and presence of any special obligations for the States in this regard. Thus, the judges of the Court came to mutual agreement that the long-standing lack of access to a safe water supply, which by its very nature affects health and human dignity, comes under the scope of art.8.

2. The state has a positive obligation to take measures to guarantee respect concerning the right to respect for private and family life and to prevent interference from both public and private entities.

In order to determine whether the State is responsible for violation of applicant`s rights under Article 8 of the Convention, the ECHR must determine whether the situation is the result of a sudden and unexpected turn of events, or, conversely, it existed for a long time and was well-known to public authorities; whether the state was or had to be aware of the hazards or harmful effects affecting the private life of the applicant, and the extent to which the applicant had helped to create this situation for himself/herself and was able to remedy the situation without incurring excessive costs.[178] Besides, the court must assess whether the authorities conducted sufficient prior research to assess the risk of potentially dangerous activities planned and whether they developed adequate policy regarding the polluters on the basis of available information, and whether this policy was implemented on time. The ECHR also examines whether the State is aware or whether it had to be aware of the danger or adverse impact made on applicants' private lives.[179]

The principles that apply to the assessment of the State responsibility under Article 8 of the Convention in environmental matters are generally similar regardless of whether the case is considered in terms of direct intervention or positive obligation to regulate private activity.[180]

The positive obligation of the state can manifest itself in the development of legislation which presupposes the responsibility for the resettlement of persons living in sanitary protection zones of large industrial enterprises. But this is one of the possible measures that can be taken by the State. Setting the general right to free new accommodation provided by the State (or industrial enterprise) would be an exaggeration. The State itself has the right to choose activities that would provide an effective solution to the situation of the applicant. For example, the State may help the applicant to move from the area of pollution or to take measures to reduce pollution in this area to acceptable levels.[181]

In the case of *Moreno Gomez v. Spain*[182] the applicant complained of excessive noise at night from a night club working near her home and failure of public authorities to limit this negative impact on her private and family life. The ECHR,

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[178] Case of Dubetska and others v. Ukraine, decision 10.02.2011, paragraph 108. http://zakon5.rada.gov.ua/laws/show/974_689/page2

[179] Presentation: Article 8 of the Convention: Environmental rights. Ihor Karaman. unba.org.ua/assets/uploads/news/post.../2015.03.23-04.03.18-mat5.pdf

[180] Case of Hatton and others v. the United Kingdom, decision 8.07.2003. http://hudoc.echr.coe.int/eng?i=001-61188, p. 98

[181] Case of Fadeyeva v. Russia, Case of Dubetska and others v. Ukraine.

[182] Case of Moreno Gomez v. Spain, decision 16.11.2004, http://hudoc.echr.coe.int/eng?i=001-67478, Ukrainian version of the decision http://zakon3.rada.gov.ua/laws/show/980_232

taking into

account the duration of exposure and the noise levels, indicated that there had been a violation of the rights of the applicant. Inaction on the part of the City Council about the night club's exceeding the noise and vibration levels caused serious violation of the applicant's right; thus, Spain has failed to fulfill its positive obligation to guarantee the applicant's right to respect for her home and private life.

In the case of *Bor v.Hungary*[183], the applicant, who lived opposite the railway station, complained about the high noise pollution caused by trains and the authorities' failure to bring the railway to responsibility on time and effectively for exceeding noise levels. ECHR found a violation of Article 8 by Hungary because of the failure of its positive obligation to guarantee the applicant's right to respect for his home. The existence of a system of sanctions is not enough if sanctions are not applied effectively and on time.

In the case of *Di Sarno and Others v. Italy,*[184] the Court found a violation by the State of its positive obligation to introduce a system of collection of solid household waste and implement the appropriate legislative and administrative policy on waste. The applicants complained of a violation of their rights during the period of emergency when wastes were not collected for 5 months and accumulated in the streets of Campania, polluting the environment and creating a serious threat to life and health of the applicants. The latter also complained that the State had not informed all affected citizens about the risks of living in the waste-contaminated area. The ECHR pointed out that the collection, treatment and disposal of wastes is a dangerous activity, and the state has the obligation to adopt reasonable and appropriate measures that would be sufficient to protect the right of persons affected to a healthy and secure environment. These governmental actions can be qualified as a violation of the applicants' right to respect for their private life and home. Regarding the violation of Article 8 in the light of the procedural obligations of the State, the ECHR did not establish this fact because the State informed the public about the research of the potential risk of living in Campania.

Few cases concerning operation or potential risks of operation of wind farms were considered by the Court. In recent case of *Inita VECBAŠTIKA and Others v. Latvia*[185] the applicants complained of a breach of their rights under Article 8 of the Convention on account of the fact that the State had authorised the construction of wind-energy farms near their homes in Dunika parish. The applicants stated that wind turbines generated high noise levels and caused other nuisance (vibrations, low-frequency sound, shade and shadow flicker) affecting their health and well-being. They also argued that the Contracting States had positive obligations inherent in an effective respect for private life under the Convention. The applicants relied on the Aarhus Convention, and the right to live in an environment adequate to one's health and well-being. The Court concluded that the applicants have not been able to produce any evidence showing that the operation of wind turbines near their properties or homes in Dunika parish would directly and seriously affect them with the necessary degree of probability. The Court considered that the mere mention of certain adverse effects arising from the operation of wind turbines in general is not enough in that regard. In such circumstances, the Court didn`t have reasonable and convincing evidence that there would be a risk of endangering the applicants' private and family life as a result of the adoption of the general and detailed spatial

[183] Case of Bor v.Hungary, decision 18.06.2013, http://hudoc.echr.coe.int/eng?i=001-120959
[184] Case of Di Sarno and Others v. Italy, decision 10.01.2012, http://hudoc.echr.coe.int/eng?i=001- 108480
[185] Case of Inita VECBAŠTIKA and Others v. Latvia, decision from 19.11.2019, https://hudoc.echr.coe.int/fre?i=001-199496

plans, which allowed the construction of wind farms in Dunika parish. The Court stated that the applicants' complaint under Article 8 of the Convention is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 4. Thus, the application was declared inadmissible. (similar decision on inadmissibility by the Court in wind turbines case *Lars and Astrid FÄGERSKIÖLD*[186] *v. Sweden*, taken on 26/02/2008)

The determination of the level of severity of interference of pollution with the applicants` rights under art.8 of the Convention was considered by the Court in the case of *Jugheli and others v.Georgia*[187]. The applicants lived in the city centre, in close proximity (approximately 4 metres) to the "Tboelectrocentrali" thermal power plant. The plant was constructed in 1911 and reconstructed at a later date. For several decades it burned coal to generate power, before replacing it with natural gas. Applicants complained that nuisances were emanating from the plant such as air, noise and electromagnetic pollution and water leakage. An expert examination dated 28 October 2002 and carried out by the Expertise and Special Research Centre at the Ministry of Justice concluded as follows: "As the "Tboelectrocentrali" plant does not have a [buffer] zone and is immediately adjacent to a residential building, the plant's chimneys must be equipped with appropriate filters and other equipment to protect the population from the hazardous gases." As concerns the complaint under Article 8 of the Convention concerning the State's alleged failure to protect the applicants from the air pollution emanating from the thermal power plant in the immediate vicinity of their homes, the Court noted that this complaint must therefore be declared admissible. The Court concluded that even assuming that the air pollution did not cause any quantifiable harm to the applicants' health, it may have made them more vulnerable to various illnesses. Moreover, there can be no doubt that it adversely affected their quality of life at home, therefore the Court found that there has been an interference with the applicants' rights that reached a sufficient level of severity to bring it within the scope of Article 8 of the Convention. The Court noted that the Government did not present to the Court any relevant environmental studies or documents informative of their policy towards the plant and the air pollution emanating therefrom that had been affecting the applicants during the period concerned. The Court considered that the respondent State did not succeed in striking a fair balance between the interests of the community in having an operational thermal power plant and the applicants' effective enjoyment of their right to respect for their home and private life. There had been a violation of Article 8 of the Convention.

In recent years the Court produced few important judgements related to the effect of waste management sites on the enjoyment of the right to respect for private and family life. For example, in the case of *Kotov and others v.Russia*[188], the applicants complained that the authorities had failed to take protective measures to minimise or eliminate the effects of the pollution allegedly caused by the continued operation of a landfill site near their homes, in breach of Article 8 of the Convention. The waste management company operating the dump site at quarry was found liable for violating sanitary, epidemiological and environmental regulations in 16 separate rounds of administrative proceedings between 205-2018, after which a large-scale multi-level waste recycling and processing plant was set up in a quarry. In making an assessment the Court made a distinction between two separate periods in the case. It held that there had been a violation of art.8 in respect to periods between 2015 and 2018, finding that authorities had failed in their positive obligation to

[186] Case of Lars and Astrid FÄGERSKIÖLD v. Sweden, decision 26.02.2008, https://hudoc.echr.coe.int/eng?i=001-85411
[187] Case of Jugheli and others v.Georgia, decision 13.07.2017, https://hudoc.echr.coe.int/eng?i=001-175153
[188] Case of Kotov and others v.Russia, judgement 11.10.2022, https://hudoc.echr.coe.int/fre?i=001-219648

protect the applicant's right to respect for his private life during this period. On the other hand, there had been no violation of art.8 with regard to the period from 2019 until the present time, finding that since 2019 the Russian Government had managed to strike a fair balance between general socio-economic interests in having a sound waste management policy and effective waste management practices in place, and, on the other hand, the applicant`s individual interest in living in favourable environmental conditions.

In case of *Locascia and others v.Italy*[189], the Court considered the implications of crisis of refuse collection, treatment and disposal in Campania region and pollution from a landfill site which was in an area near the homes of 19 applicants. The Court considered that even though it cannot be said, owing to the lack of medical evidence, that the pollution from the waste management crisis necessarily caused damage to the applicants' health, it was possible to establish, taking into account the official reports and available evidence, that living in the area marked by extensive exposure to waste in breach of the applicable safety standards made the applicants more vulnerable to various illnesses. Moreover, the Court also reiterated that severe environmental pollution may affect individuals' well-being in such a way as to adversely affect their private life, without, however, seriously endangering their health . In the present case, the applicants were forced to live for several months in an environment polluted by waste left in the streets and by waste disposed of in temporary storage sites urgently created to cope with the prolonged unavailability of sufficient waste treatment and disposal facilities. The waste collection services in the municipalities of Caserta and San Nicola La Strada were repeatedly interrupted from the end of 2007 to May 2008. The accumulation of large quantities of waste along public roads led the local authorities to issue emergency measures including the temporary closure of kindergartens, schools, universities and local markets and the creation of temporary storage areas in the municipalities. Even assuming that the acute phase of the crisis lasted only five months, the Court considered that the environmental nuisance that the applicants experienced in the course of their everyday life affected, adversely and to a sufficient extent, their private life during the entire period under consideration. The Court also found that, given the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal services, the authorities failed in their positive obligation to take all the necessary measures to ensure the effective protection of the applicants' right to respect for their home and private life. There had therefore been a violation of Article 8 of the Convention in this regard.

As further regards to the pollution caused by the pollution by landfill site near the applicants` homes, the Court held that Italian authroties had failed to take the necessary measures to protect the applicants` right to private life against the environmental pollution caused by the landfill site, in violation of the substantive aspect of art.8.

Few cases concerning the noise in appicants home generated by bars, police stations and other facilities were considered by the Court and the Court found that the level of noise was capable of confirming the victim status of the applicant and triggering application of art.8 to these cases. In the case of *Udovičić v. Croatia*[190], the applicant complained to the noise and other nuisance due to operation of the bar below his appartment for more than 10 years. The Court was satisfied that the disturbance affecting the applicant's home and her private life reached the

[189] Case of Locascia and others v.Italy , Decision 19 October 2023, https://hudoc.echr.coe.int/eng?i=001-228155
[190] Case of Udovičić v. Croatia, decision 24.04.2014, https://hudoc.echr.coe.int/eng?i=001-142520

minimum level of severity which required the authorities to implement measures to protect the applicant from that disturbance. The court stated that in these circumstances, by allowing the impugned situation to persist for more than ten years without finally settling the issue before the competent domestic authorities, the Court found that the respondent State has failed to approach the matter with due diligence and to give proper consideration to all competing interests, and thus to discharge its positive obligation to ensure the applicant's right to respect for her home and her private life. Accordingly, the Court found that there had been a violation of Article 8 of the Convention.

2. The obligation of public bodies is to inform the public about environmental risks and give access to information and possibilities for participation.

When the complaints relate to the state policy on industrial polluters, the role of the ECHR is primarily subsidiary. First of all, it must determine whether the process of making the decision was fair. Only in exceptional circumstances it can cross this limit and review the substantive conclusions of national authorities. The ECHR also examines the extent to which the person affected by this policy could influence the decision, including access to relevant information and the possibility to effectively challenge the decisions of the authorities.[191]

Where the public authorities have to determine complex questions of economic and social policy, the decision-making process should involve appropriate investigation

[191] Cases of Guerra and Others v. Italy, Hatton and Others v. the United Kingdom, Taskin and Others v. Turkey.

and research to predict and assess the impact for the future, which will allow achieving a fair balance between different conflicting interests. The ECHR stressed the importance of public access to the findings of such studies and to information that will enable individuals to assess the risks they are exposed to.[192] However, this does not mean that decisions can be made only if comprehensive and statistical data are available on every aspect of the decision.[193]

In the case of *Guerra and v. Italy*[194] the ECHR analyzed Italy's violation of Article 8 of the Convention due to the damage to the applicants who lived at a distance of 1 km away from the chemical plant producing mineral fertilizers and were exposed to harmful emissions from several accidents at the plant. The most serious accident was in 1976, which resulted in the release of several tonnes of potassium carbonate into the air, and the spill of bicarbonate solution, containing arsenic trioxide. 150 residents were hospitalized due to acute arsenic poisoning. The applicants complained about the lack of practical steps to reduce emissions and risk of accidents in the operation of the plant that violated their right to respect for their lives and physical integrity. Also the corresponding authorities have not informed the public about the risks and the steps to be taken in the event of serious accidents at the plant, which violated their right to freedom of information guaranteed by Art. 10 of the Convention (for details of the case see Section 2.1., 2.4.) The ECHR, recognizing the violation of Art. 8 of the Convention, established that Italy failed to fulfill its obligation to ensure the right to respect for private and family life. Serious environmental pollution, according to the ECHR, may adversely affect the welfare of citizens and prevent the use of their homes, thereby adversely affecting their private and family life. In this case, until the end of production of fertilizers in 1994, the applicants were waiting for important information that would allow them to assess the risks, which they themselves and their families could experience if they continued to live in Manfredonia, in the city, which would be in particular danger in case of an accident at the plant. Thus, the ECHR established the violation of Article 8 of the Convention, and made the conclusion that there is no need to examine the case in light of Article 2.[195]

In the case of *McGinley and Egan v. the United Kingdom*[196] the applicants, who were soldiers and took part in nuclear tests in the Pacific ocean on Easter Island, complained that the government retained information that would allow them to

[192] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.ECHR.coe.int/eng?i=001- 67401, p.119.

[193] Case of Hatton and others v. the United Kingdom, decision 8.07.2003, http://hudoc.ECHR.coe.int/eng?i=001-61188. p.104, 128.

[194] Case of Guerra and others v. Italy, decision 19.02.1998, http://hudoc.ECHR.coe.int/eng?i=001-58135, unofficial Ukrainian translation of the decision: http://medialaw.org.ua/userimages/book_files/Book_WEB_European_Court_Coe_MLI.pdf

[195] However, there are individual opinions of ECHR judges about the violation of Article 2 in the present case. For example, Judge Walsh said: Although in its judgment, the Court briefly touched on Article 2, but did not make a decision concerning it, I believe that its provisions have also been violated. In my view, Article 2 also guarantees the protection of the physical integrity of applicants. In the wording of Article 3 it is also clearly stated that the Convention applies to the protection of physical integrity. In my opinion, there has been a violation of Article 2 of the Convention in this case, and in view of the circumstances it does not seem necessary to go beyond this provision in order to find a violation. http://medialaw.org.ua/userimages/book_files/Book_WEB_European_Court_Coe_MLI.pdf , p.90.

[196] Case of McGinley and Egan v. the United Kingdom, decision 09.06.1998, http://hudoc.ECHR.coe.int/eng?i=001-58175

assess the possibility of causal connection between their health problems and radiation exposure which they suffered during the service. The ECHR pointed out the obligation of the governments that involve citizens in dangerous activity which can have hidden negative impact on their health, to respect their private and family life, and in order to comply with the abovementioned law establish effective available procedures for such citizens to enable them to access all necessary and appropriate information. In this case, the UK government has provided evidence of the procedure, which would allow the applicants to request documents on the basis of which the Minister of Defence concluded that they were not exposed to dangerous radiation, and provided evidence of the effectiveness of this procedure. However, none of the applicants took advantage of this procedure, and therefore the ECHR made the conclusion that the defendant did not violate his positive obligation in respect to the applicants under Article 8 of the Convention.

In a similar case of *Roche v. the United Kingdom*[197] the ECHR found a violation of Article 8 due to the defendant's failure of his positive duty to implement an effective and accessible procedure that would allow the applicant to have access to relevant information that would allow him to assess the risks to which he was subjected while participating in tests of mustard and nerve gas in the 1960s. The ECHR stated that a person who is trying to get information by extrajudicial means shall not apply to the courts for information. Information services and study of the impact on health in this sphere began 10 years after the applicant had started to search for relevant information and appealed to the ECHR. Violations of Art. 10 of the Convention have not been established.

In a new case of *Cordella and Others v.Italy*,[198] the case concerned on-going air pollution by a steelworks, operating since 1965 in Taranto (a town with about 200,000 inhabitants) and owned by a former public company which was privatised in 1995. In 1990 a resolution of the Council of Ministers identified the town of Taranto and four other neighbouring municipalities as being at "high environmental risk" on account of the emissions from the steelworks. In 1998 the President of the Republic approved a decontamination plan. In 2000 a ministerial decree included the municipalities of Taranto and Statte in the "sites of national interest sites for decontamination" (SIN). The authorities concluded agreements with the company. In 2011 substantive and information-related conditions were imposed in the context of an administrative operating licence. Several legislative decrees aimed at preserving Taranto's steel-producing activity, adopted from 2012 onwards, extended the deadlines imposed. In 2015, as a result of its insolvency, the company was placed in compulsory administration, and the administrator was granted exemption from administrative and criminal liability in introducing the planned environmental measures. In the meantime, European Union institutions (the Court of Justice and the Commission) concluded that Italy had failed in its obligation to guarantee compliance with the applicable directives. Various civil or criminal proceedings were brought. Nonetheless, the toxic emissions persisted. The applicants are several dozen physical persons who live or lived in the more or less immediate vicinity of the steelworks. They complained of a lack of action by the State to avert the effects of the factory's toxic emissions on their health. While it was not the Court's task to determine exactly what measures should have been taken in the present case to reduce pollution in a more efficient way, it was certainly

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[197] Case of Roche v. the United Kingdom, decision 19.10.2005, http://hudoc.ECHR.coe.int/eng?i=001- 70662

[198] Case of Cordella and Others v.Italy, decision 24.06.19, https://hudoc.echr.coe.int/eng?i=001-189421

within the Court's jurisdiction to assess whether the national authorities had approached the problem with due diligence and given consideration to all the competing interests. The onus here was on the State to justify, using detailed and rigorous data, a situation in which certain individuals bore a heavy burden on behalf of the rest of the community. Thus, the Court held, unanimously, that there had been a violation of Article 13 taken in conjunction with Article 8 of the Convention.

Few more cases with applicants from the same city Taranto were heard by the Court and the Court by Decisions taken on 5 May 2022 found violation of art.8 of the Convention and in some cases awarded compensation to applicants (e.g. A.A. and others v.Italy, Perelli and others v.Italy, Ardimento and others v.Italy, Briganti and others v.Italy)[199].

Several cases related to climate change impacts on human rights approached the Court and the Court found that art.8 encompasses the right to effective protection by the State authorities from a serious adverse effects of climate change on lives, health, well-being and quality of life. In Grand Chamber judgement in case of *Verein KlimaSeniorinnen Schweiz and Others v.Switzerland*[200], the Court found violation of art.6 and art.8 of the Convention. The case concerned a complaint by four women and a Swiss association, Verein KlimaSeniorinnen Schweiz whose members are all older women concerned about the consequences of global warming on their living conditions and health. They considered that Swiss authorities were not taking sufficient action, despite their duties under the Convention, to mitigate the effects of climate change. The applicant association had the right to bring a compliant regarding the threats arising from climate change in the respondent state on behalf of those individuals who could arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention. The Court found that the Swiss Confederation had failed to comply with its duties under the Convention concerning climate change. There had been critical gaps in the process of putting in place the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national greenhouse gas emission limitations. Switzerland had also failed to meet its past GHG emission reduction targets. While recognising that national authorities enjoy wide discretion in relation to implementation of legislation and measures the Court held that the Swiss authorities had not acted in time and in an appropriate way to devise develop and implement relevant legislation and measures in this case. The Court also concluded that 4 applicants – older Swiss individuals – failed to fulfill the victim-status criteria under art.34, thus their complaints were declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3. (para 535 of the judgement)

Article 8 Para 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 wellbeing 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.

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[199] https://hudoc.echr.coe.int/eng?i=001-217123, https://hudoc.echr.coe.int/rus?i=001-217125 ,

[200] Case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, https://hudoc.echr.coe.int/#{%22fulltext%22:[%22KlimaSeniorinnen%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-233206%22]}, 9/04/24

In the case of *Dzemyuk v. Ukraine*[201] state intervention, according to the Court, took place not in accordance with the law, because such interference was contrary to the law, position of environmental authorities, the court, and as a result, the applicant continued to live at a small distance from the operating cemetery. The applicant complained about water contamination in the well as a result of the operation of the cemetery, and the noise of the funeral ceremonies. Since the applicant had not provided direct evidence of actual harm to his health, the ECHR had to determine whether potential risks to the environment were related to home and private life of the applicant to the extent that they could adversely affect the quality of his life. According to the law, the cemetery should be placed at a distance of at least 300 meters away from houses and water sources. The applicant lived at a distance of 38 meters from the boundary of the cemetery. The bodies of sanitary-epidemiological service and court decisions confirmed the violation of law. The applicant has provided water contamination data that indicate serious bacteriological contamination that could be caused by the existence of the cemetery. Under these conditions, the ECHR came to the conclusion that the cemetery arrangement so close to the applicant's house reached the minimum level required by Art. 8 of the Convention, and constituted interference with the applicant's right to respect for his home and family life.

"If government interference with private and family life, and home of applicants is confirmed, the Court estimates the balance when deciding between public interest and individual rights and interests of applicants. "

In cases involving environmental issues, the State must be given a wide discretion and choice between different ways and means of compliance with their obligations. The main issue for ECHR is whether the state managed to keep the fair balance between the competing interests of affected individuals and society as a whole.[202] In carrying out this assessment in the context of a particular case, all factors must be analyzed, including national legal issues.[203]

In matters relating to state decisions that can affect the environment, the ECHR can conduct research in two directions. Firstly, the ECHR can assess the material aspects of the decision of the national authority, if it is coherent with Article 8 of the Convention. Secondly, the ECHR can assess the decision-making process to be sure that adequate attention was paid to the interests of the individual. According the established practice of the ECHR, despite the fact that Article 8 of the Convention contains no explicit procedural requirements, the decision making process that leads to intervention must be fair and give due consideration to the interests of the people as guaranteed by Article 8 of the Convention. The ECHR should consider all procedural aspects, including the type of decision or policy and the level of consideration of the interests of people in the decision-making process as well as the availability of procedural safeguards. Where the state has to decide on complex issues of economic and environmental policy, the decision-making process should include appropriate research and investigation to anticipate and assess the future consequences of these actions that could have an impact on the environment and violate the rights of citizens so that the state could observe fair

[201] Case of Dzemyuk v. Ukraine, decision 4.09.2014, http://zakon5.rada.gov.ua/laws/show/974_a51
[202] Case of Hatton and others v. the United Kingdom, decision 8.07.2003, http://hudoc.ECHR.coe.int/eng?i=001-61188, p. 100, 119 and 123.
[203] Ibid. p. 120, Case of Fadeyeva v. Russia, decision 09.06.2005, http://hudoc.ECHR.coe.int/eng? i=001-69315, p. 96-97.

balance between conflicting interests. The importance of public access to the results of such studies and to information that will enable the members of the public to assess the danger to which they may be exposed, is indisputable. And lastly, the interested members of the public should have the right to appeal against any decision, action or inaction, if they believe that in the process of decision- making their interests or comments were not given proper consideration.[204]

Since the Convention is designed to protect real, not illusory human rights, a fair balance between different interests in question may be not followed not only when

[204] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.ECHR.coe.int/eng?i=001-67401, p.115-117, 119

there are no provisions for the protection of the guaranteed rights, but if they are not duly observed.[205] Procedural safeguards available to the applicant may be deemed ineffective and the state may be deemed responsible in accordance with the Convention, if the decision-making procedure is unduly prolonged or if as a result the adopted decision remains unfulfilled over a considerable period.[206]

In the case of *Lopez Ostra v. Spain,*[207] the applicant lived in Lorca, where there is a large number of tanneries. Several existing tanning workshops there built a plant for treatment of liquid and solid waste, located 12 meters away from the applicant's home. The start-up of the facility caused the release of gas fumes, persistent smells and contamination (owing to a malfunction), which immediately caused health problems and nuisance to many residents of Lorca, particularly those living in the applicant's district. The town council evacuated the local residents and rehoused them free of charge in the town centre for the months of July, August and September 1988. In October the applicant and her family returned to their flat. On 9 September 1988, following numerous complaints the town council ordered cessation of one of the plant's activities - the settling of chemical and organic residues in water tanks - while permitting the treatment of waste water contaminated with chromium to continue. The applicant complained about municipality of Lorca inaction concerning inconveniences caused by the sewage treatment plant, located a few meters from her place of residence under Article 8 and Article 3 of the Convention, she expressed the opinion that her right to respect for her home was violated, if affected her private and family life and amounted to inhuman treatment. The ECHR noted, however, that the family had to bear the nuisance caused by the plant for over three years before her resettlement. They moved only when it became apparent that the situation could continue indefinitely and when Mrs López Ostra's daughter's pediatrician recommended that they do so. Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the ECHR considered that the State did not succeed in striking a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her private and family life. There had accordingly been a violation of Article 8. The ECHR stated that the conditions in which the applicant and her family lived for a few years, of course, were very difficult, but they do not constitute inhuman treatment under Article 3 of the Convention.

In the case of *Bacila v. Romania,*[208] the applicant lived near a plant which was one of the Europe's biggest producers of lead and zinc and at the time the biggest employer in the town. Despite numerous complaints from the applicant, the plant continued emitting into the atmosphere significant amounts of sulphur dioxide and dust containing heavy metals, mainly lead and cadmium. Analysis showed that heavy

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[205] Case of case of Moreno Gómez v. Spain, decision 16.11.2004, http://hudoc.ECHR.coe.int/eng?i=001-67478, p. 56 and 61.

[206] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.ECHR.coe.int/eng?i=001- 67401, p. 124-125.

[207] Case of Lopez Ostra v. Spain, decision 09.12.1994, http://hudoc.ECHR.coe.int/eng?i=001-57905, Ukrainian version of the decision: http://zakon0.rada.gov.ua/laws/show/980_348

[208] Case of Bacila v. Romania, decision 30.03.2010, http://hudoc.ECHR.coe.int/eng-press?i=003-3084920-3417430

metals could be found in the town's waterways, in the air, in the soil and in vegetation, up to 20 times the maximum levels permitted. The rate of illness, particularly respiratory conditions, was seven times higher in the applicant's town than in other cities of Romania. In the applicant's blood the concentration of lead exceeded the permissible limit, she was often admitted to hospital. The ECHR reiterated that severe environmental pollution could affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. States have a duty to regulate the authorisation, operation, safety and monitoring of hazardous activities and to guarantee the effective protection of citizens whose lives could be endangered by such activities. Whilst the ECHR took into account the interest in maintaining the economic activity of the biggest employer of a town that had already suffered from the closure of other plants, it found that this argument should not have prevailed over the inhabitants' right to enjoy a healthy environment. Therefore, the authorities had failed to strike a fair balance between the interest in ensuring the town's economic stability and the applicant's effective enjoyment of the right to respect for her home and for her private and family life. There had been a violation of Article 8 of the Convention.

In a famous case of *Taşkın and others v. Turkey,*[209] the ECHR also supported the applicants who claimed a violation of their right to respect for private and family life and the right to a hearing of their case in court within a reasonable time. The applicants lived near a golden mine near Bergama and complained about the authorities' permission to allow the mine to work using cyanidation process, and the decision-making process violated their rights under Art. 8 of the Convention. The ECHR found a violation of Article 8 of the Convention because Turkey has not taken steps to guarantee the right to respect for private and family life. First of all, the authorities' decision to grant permission for the operation of the mines was declared invalid by Supreme Administrative Court in May 1997. However, the mine was not closed down until February 1998. By the decision of the Council of Ministers in March 2002, which was not made public, the mine resumed its operation, but it actually resumed its work earlier in April 2001. Such actions of the government violated the applicants' rights under Art. 8 of the Convention, depriving them of any procedural guarantees of their rights. The ECHR found a violation of the applicants' right to a fair trial within a reasonable timing under Article 6 of the Convention.

In a similar case of *Ockan and others v. Turkey,*[210] the ECHR was addressed by 315 Turkish nationals living in Bergama area where the conflict arose in connection with granting permits for gold exploration in the vicinity of Izmir. The ECHR concluded that the administrative authorities deprived the applicants of actually taking advantage of the procedural guarantees to which they were entitled under the law. Thus, the ECHR ruled that Turkey was unable to fulfil its obligation to ensure the applicants' right to respect for private and family life. It was therefore a violation of Art. 8 of the Convention.

In the case of *Ferhan ÇIÇEK and others against Turkey*[211], the Court deliberated on the application of art.8 to the case of operation of lime production plant with a quarry in the vicinity of applicants` homes

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[209] Case of Taşkın and Others v. Turkey, decision 10.11.2004, http://hudoc.ECHR.coe.int/eng?i=001- 67401

[210] Case of Ockan and others v. Turkey, decision 28.03.2006, http://hudoc.ECHR.coe.int/eng?i=001- 125726

[211] Case of ÇIÇEK and others v. Turkey, decision 27.02.2020, https://hudoc.echr.coe.int/eng?i=001-188957

(500m). The court said that the mere allegation that an industrial activity was not carried on legally because It lacked one or more of the necessary permits or licences is not sufficient to ground the assertion that the applicants` rights under art.8 have been interfered with. In this case, the Court can not establish the extent of air pollution allegedly caused by the plant as applicants did not provide any specific information concerning the plant`s operations but referred to general scientific studies, the applicants did not provide medical or environmental expert reports relevant to their situation or any other evidence of air pollution or nuisance allegedly caused by the Plant. In the absence of proof of any direct impact on the applicants or their quality of life, the Court was not persuaded that the nuisance complained of amounted to an interference with applicants` private lives, thus article 8 is not applicable to this case.

The case of *Fadeyeva v. Russia*[212] is about the applicant who lives in the town of Cherepovets, Vologda region, in the sanitary protection zone of Cherepovets Steel Plant JSC "Severstal". The level of air pollution at the place of her residence considerably exceeded maximum permissible concentrations of harmful substances set by the Russian legislation. In 1996 and 1999 she addressed Cherepovets city court twice with claims to the JSC "Severstal" about immediate relocation from the sanitary protection zone. As a result of processes in the Russian courts, she was placed in a public queue to obtain housing. In several years she was not even number 5000 in this queue. The ECHR found a violation of Art. 8 of the Convention, as Russia has not followed a fair balance between the interests of the community and the effective implementation of the applicant's right to respect for private life and home. The State authorised the operation of a polluting plant in the middle of a densely populated town. Strong indirect evidence makes it possible to conclude that the applicant's health deteriorated as a result of harmful emissions into the air. The ECHR further observes that the Severstal steel plant was and remains responsible for almost 95% of overall air pollution in the city. The ECHR noted the lack of measures taken by the state: the goals to reduce emissions have not been achieved, the research and sanctions did not have any effect, and any meaningful environmental policy was absent. The ECHR pointed out that the state or the polluting enterprise had to provide the applicant with free housing. But the state did not offer the applicant any effective solution to the problem to help her move from the dangerous area. The European Court of Human Rights, finding a violation of Art. 8 of the Convention, awarded the applicant EUR 6,000 for non- pecuniary damage suffered. In the decision in a similar case of *Ledyayeva and others v. Russia*[213], the applicants also lived where Fadeyeva did, and based on the same arguments, the ECHR found a violation of their rights under Art. 8 of the Convention.

In the case of *Giacomelli v. Italy*,[2143] since 1950 the applicant has lived in a private house on the outskirts of the city, 30 metres away from a plant for the storage and treatment of "special waste", a part of which was classified as hazardous. The plant began operating in 1982. The applicant brought three sets of proceedings for judicial review of the decisions by the Regional Council to grant the company operating licenses for waste recycling activity. Her applications in the first set of proceedings were dismissed. The second set resulted in a decision ordering the suspension of the plant's operation, which was not implemented. The Ministry of the Environment issued three decisions on the environmental impact of plant and obliged it to fulfil

[212] Case of Fadeyeva v. Russia, decision 09.06.2005, http://hudoc.ECHR.coe.int/eng?i=001-69315

[213] Case of Ledyayeva and others v. Russia, decision 26.10.2006, http://hudoc.ECHR.coe.int/eng? i=001-77688

[214] Case of Giacomelli v. Italy, decision 2.11.2006, http://hudoc.ECHR.coe.int/eng?i=001-126090

the requirements to improve the conditions for operating and monitoring the plant. The applicant complained under Article 8 that the persistent noise and harmful emissions from the plant entailed severe disturbance to her environment and a permanent risk to her health and home.

The Court observed that neither the decision to grant the company an operating license for the plant nor the decision to authorize it to treat industrial waste by means of detoxification had been preceded by an appropriate investigation or study. The ECHR further noted that during the inspection under the Ministry, it was discovered on two occasions that the plant's operation was incompatible with legal requirements. Namely, the unsuitable geographical location of the plant was mentioned and that there was a specific risk to the health of the local residents. The ECHR also reviewed the progress of the applicant's complaints by the relevant national authorities. The ECHR noted that the decision about the immediate suspension of the plant on the grounds that its activities do not meet the legal requirements was not implemented and the plant did not stop working. For many years, the applicant suffered from violations of the right to respect for home because of the dangerous production process, which was carried out at the plant near her home. The ECHR also concluded that the state had not succeeded in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life. The ECHR held that there had been a violation of Article 8 of the Convention.

A judgment in the case of *Tătar v. Romania*[215] is interesting in terms of the position of the court and the application of the international principle of precaution. The applicants, father and son declared that the use of cyanide in the gold mining puts their lives at risk. The applicants lived near the vicinity where gold is extracted using cyanide. As a consequence, the son began to show asthmatic attacks, and numerous complaints about environmental pollution on behalf of the father failed. In 2000 an accident occurred: a dam breached, causing the release of 100,000 m^3 of cyanide contaminated water into the environment. The court found violation of Article 8 of the Convention since Romania had failed in its obligation to assess the risks from such activities and to take appropriate measures to protect the rights of the persons concerned to respect for their private life and home, and more generally - for the right to a healthy and safe environment. The ECHR pointed out that pollution can interfere with private and family life through damaging human welfare and the state has the duty to protect its citizens by regulation in the form of the provision of permits for construction and operation, controlling and monitoring industry, which is dangerous for the environment and human health. However, the applicants have not proven causality between the impact of sodium cyanide and asthma. The ECHR pointed to the violation of the principle of precaution by the state, which allowed the company to resume its work after the accident in 2000. This principle means that the lack of certainty in today's scientific and technical research cannot justify any delay by the state in implementing effective and proportionate preventive measures. The ECHR pointed out that the government should provide public access to the findings of investigations and research, and has the responsibility to ensure that members of the public participate in decisions concerning the environment.

In the case of *Dubetska and others v. Ukraine,*[216] the applicants residing in the

[215] Case of Tătar v. Romania, decision 27.01.2009, http://hudoc.ECHR.coe.int/eng?i=001-117147
[216] Case of Dubetska and others v. Ukraine, decision 10.02.2011,

hamlet of Vilshyna complained about a 60-metre spoil heap formed as a result of coal processing factory "Chervonohradska" located 430 metres from the Dubetska-

http://zakon5.rada.gov.ua/laws/show/974_689

Nayda family house and 420 metres from the Gavrylyuk-Vakiv family house. In 1960, the Velykomostivska No. 8 coal mine was put into operation, whose spoil heap is located 100 metres from the Dubetska-Nayda family house. The applicants' houses were within 500 meters of sanitary protection zone of the factory's spoil heap. Samples of water in the wells of Vilshyna hamlet showed that water does not meet safety standards. In particular, the maximum permissible concentration of nitrates was exceeded by 3-5 times, the concentration of iron – by 5-10 times, and the concentration of manganese - by 9-11 times. The concentration of soot in air samples taken in Vilshyna hamlet was 1.5 times higher than the maximum concentration permitted by national standards. The water in the well had been contaminated by mercury and cadmium, the concentration of which exceeded national safety standards by 25 and 4 times respectively. According to the report, the hamlet residents were exposed to a high risk of cancer and diseases of the respiratory tract and kidneys. The applicants alleged that their houses were damaged due to soil subsidence caused by coal mining activities, and they always suffered from a shortage of drinking water. Using water from local wells and the stream for washing and cooking caused itching and intestinal infections. Some of the applicants have acquired chronic illnesses in connection with the activities of the factory, especially air pollution. The applicants alleged that their suffering due to environmental factors affected communication between family members. In this case, according to the ECHR, there is a rather strong link between polluting emissions and the state to raise the question of state responsibility under Article 8 of the Convention. The ECHR finds that when it comes to the broad discretion granted to the states in the context of their environmental obligations under Article 8 of the Convention, establishing the applicant's general right to free new housing by the state would be an exaggeration. The applicants' complaints under Article 8 could also be addressed adequately by solving environmental problems. At the same time, the government's approach to solving the problem of pollution in this case was also characterised by delays and improper performance, the applicants were not properly protected from environmental risks arising from the production activity of the factory. Overall, it appears that during the period under review, both the mine and the factory performed activities not in accordance with the applicable provisions of national environmental legislation and the government failed to facilitate the relocation of the applicants and secure a functioning policy to protect them from environmental risks connected with permanent residence in close proximity to these industrial facilities. Such actions constitute a violation of Art. 8 of the Convention.

In the case of *Hatton and others v. the United Kingdom*[217], the applicants, residents of London, complained about government policies concerning regulation of night flights at Heathrow Airport which resulted in the violation of their rights under Art. 8 of the Convention, and that they were denied an effective means of solving their claims on violation of Art. 13 of the Convention. The applicants are all members of the Heathrow Association for the Control of Aircraft Noise (HACAN, now HACAN-ClearSkies), which itself is a member of the Heathrow Airport Consultative Committee. The applicants lived at a distance of 4 to 12 km away from the airport and pointed to the constant disturbance of their sleep and their relatives' sleep through the night flights. The ECHR noted that the main issue, which should be solved, was to ascertain whether the introduction of the

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[217] Case of Hatton and others v. the United Kingdom, 8.07.2003. http://hudoc.ECHR.coe.int/eng?i=001-61188

government schemes in 1993 regulating night flights at Heathrow ensured a fair balance between the interests of individuals and the interests of society as a whole. Under these circumstances the ECHR does not believe that the authorities have exceeded the limit of their discretion and failed to comply with a fair balance between the rights of the applicants and the conflicting interests of others and society as a whole, also the court does not see serious procedural violations when preparing the scheme of night flights in 1993. According to part 2 of Art. 8 of the Convention, restriction of the right to respect for private life is allowed, among other cases, in the interest of economic wellbeing of the country and to protect the rights and freedoms of others. Thus, the government acted quite legitimately, in this case taking into account the interests of airport operators, interested companies and economic interests of the country in general. Therefore, the ECHR does not see violation of Article 8 of the Convention in the actions of the government.

Regarding the violation of Article 13 of the Convention, the Court found its violation due to the fact that the applicants could not appeal the government's decision of 1993 about night flights schemes in terms of violation of their rights under Art. 8 of the Convention. The courts could consider such a case and hold the scheme unlawful in the light of the classic British conception of public law: irrational, illegal and clearly unreasonable, but could not give an opinion whether the night flights scheme represented a reasonable restriction of the right to respect for private and family life of those who lived near Heathrow airport. Therefore, the limits of the courts' review of the government's decision in 1993 are not sufficient to meet the requirements of Article 13 of the Convention.

In a similar case of *Flamenbaum and others v. France*[218], the applicants lived at a distance of 500-2500 meters away from the runway of Deauville airport in Normandy and complained about the noise disturbance caused by the extension of the airport's main runway and of shortcomings in the related decision-making process. They also complained of the decline in market value of their properties as a result of the runway extension, and about the insulation costs that they had had to bear. The ECHR stated that local courts paid attention to the public interest of building and legitimate purpose of the government - to improve the economic well-being of the region. The ECHR found no violation of Art. 8 of the Convention, as local authorities have taken sufficient measures to limit the impact of noise on local residents, and thus the authorities had struck a fair balance between the competing interests. The ECHR found no violations in the decision-making process. As for the violation of Article 1 of Protocol No. 1, the applicants had failed to establish the existence of an infringement of their right to peaceful enjoyment of their possessions.

There were cases in the court connected with the negative impact of roads and transport that uses these roads on private and family life and housing. The cases of

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[218] Case of Flamenbaum et Autres c. France, decision 13.12.2013, http://hudoc.ECHR.coe.int/eng? i=001-115143

Dees v.Hungary[219] and *Grimkovska v. Ukraine*[220] are the most important.

In the case of *Dees v. Hungary* the applicant complained about the heavy traffic on the streets, which served as the entrance to the toll motorway. According to the applicant's claims as a result of noise, emissions and bad smell caused by heavy traffic on the streets, his home was unfit for living. He also complained about the excessive length of judicial proceedings, which were initiated by him on this topic. The government had to keep a fair balance between the interests of the residents of this street and roads users. The actions of the authorities, according to the ECHR, were insufficient because the noise level in the applicant's house exceeded permitted levels by 12-15% over a long period of time. The ECHR decided that there was a violation of Article 8 of the Convention because the government failed to fulfil its positive obligation to guarantee the applicant's right to respect for his private life and home.

Ms. Grimkovska of Ukraine complained to the ECHR about redirecting the motorway with heavy traffic through her street in 1998, which is only 6 m wide, located in a residential area and completely unsuitable for heavy traffic transport. In addition, the local authorities have not conducted regular monitoring of pollution and other impacts from the operation of the road. The ECHR noted that in making this decision the government of Ukraine did not conduct environmental impact assessment, and did not take sufficient measures to reduce the negative impact on the functioning of the motorway. The ECHR decided that there had been a violation of Article 8 of the Convention.

In the court decision on the admissibility of the case *Greenpeace E.V. and others v. Germany,*[221] the ECHR stated that the applicants, who had office and accommodation nearby busy intersections and roads in Hamburg, have not proven the inactivity of the state to limit emissions from diesel vehicles, therefore their application was considered inadmissible. The German government has proven that it has taken some measures to reduce emissions of diesel vehicles and the choice of the ways to solve environmental problems is within the discretion of each state. The applicants have not proven that, by refusing to take the measures the applicants asked about, the state exceeded its discretion and has not achieved a fair balance between individual interests and the interests of society as a whole.

The Court considers not only the gravity of environmental nuisance and severity of impact of environmental conditions on health and wellbeing of citizens, but also all the conditions of location of houses of applicants and legality of their homes. In case *Martinez Martinez and Maria Pino Manzano v.Spain*[222] the Court found no violation of art.8 of the Convention due to the fact that applicants lived in industrial zone which was not intended for residential use and thus location of stone quarry in the vicinity of their house, which generated noise and pollution of the levels equal or slightly above the norm, was not considered as disrespect for their home and family life.

The applicants which rights to respect for private and family life had

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[219] Case of Dees v.Hungary, 9.11.2010, http://hudoc.ECHR.coe.int/eng?i=001-101647

[220] Case of Grimkovska v. Ukraine, 21.07.2011p.. http://www.epl.org.ua/law/mizhnarodni-dohovory/yevropeiskyi-sud-z-prav-liudyny/412-sprava-hrimkovska-proty-ukrainy-povnyi-tekst-rishennia-ukrainskoiu-movoiu

[221] Case of Greenpeace E.V. and Others against Germany, 12.05.2009, http://hudoc.ECHR.coe.int/eng?i=001-92809

[222] *Martinez Martinez and Maria Pino Manzano v.Spain, decision 3.07.2012,* https://hudoc.echr.coe.int/rus?i=003-4008133-4669143

been violated by national authorities or private entities, are entitled to just satisfaction, under the article 41 of the Convention. When satisfaction awarded by national courts or other entities was deemed to be not just, the Court can award just satisfaction to the injured Party which rights under Convention had been violated. In the case of *Otogon v. the Republic of Moldova*[223] (application no.22743/07) the applicant drank contaminated water from the tap which resulted in hospital stay and worthening of health of the applicant. The national courts ruled in her favor but awarded her very small amount of compensation to her physical and moral sufferings due to drinking unsafe water (around 310 EUR). The ECHR stated that domestic courts provided a remedy to applicant in the form of establishing the company's responsibility and awarding compensation of non-pecuniary damage. Finally, the Court stated that the applicant can still claim to be a victim of a violation of art.8 of the Convention and there has been a violation of article 8. It awarded the applicant 4000 Euro of just satisfaction as compensation of non-pecuniary damage.

In another case, the Court also relied and confirmed the decisions of national courts stating violation of the applicants' rights established by article 8 of the Convention . In addition, the court in *case of Genç and Demirgan v. Turkey*[224] stated that notwithstanding the procedural guarantees afforded by Turkish legislation and the implementation of guarantees by judicial decisions, the administrative authorities deprived them of any useful effect in respect of the applicants. Thus, therefore the respondent State did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of art.8 of the Convention. In this case the administrative bodies refused to comply with administrative court decisions and issued a permit to operate the Ovacik gold mine using cyanide process. So the gold mine was in operation regardless numerous national court decisions and national authorities resumed its operation many times. Thus, the Court also stated the violation of art.6 of the Convention.

The Court also reminded in the Judgement on the case of *Karin Andersson and Others v. Sweden* [225] that article 8 of the Convention entails the right to appeal to the courts against any decision, act or omission where their interests or their comments had not been given sufficient weight in the decision-making process.

From ECHR's practice on the application of Article 8 in environmental matters it follows that this article can be applied in such cases where environmental factors directly and seriously affect private and family life, housing of citizens. The seriousness of the impact is determined by the level and duration of exposure, physical and psychological consequences for people in general. This article imposes obligations on the state to take measures to guarantee the respect for this right and the prevention of interference on behalf of both public and private entities; information from state authorities about environmental risks, especially to inform those persons whose right to respect for private and family life is under

[223] Otogon v. the Republic of Moldova, judgement on 25.10.2016, https://hudoc.echr.coe.int/rus?i=001-167797

[224] Genç and Demirgan v. Turkey, judgement on 10 October 2017, https://hudoc.echr.coe.int/rus?i=001-177387.

[225] Karin Andersson and Others v. Sweden, judgement on 25 September 2014, https://hudoc.echr.coe.int/rus?i=001-146399

threat; the decisions of public authorities that may affect the environment in a way that there would be interference in private life, or the housing of citizens must meet the following requirements: be in the form of law, pursue a legitimate aim and be proportionate to the aim pursued. The ECHR stressed the obligation to take into consideration the opinion of potentially affected citizens in the final decision of the public authority.

2.5. Article 10 Freedom of expression

Article 10 Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The purpose of this Article is to ensure freedom of opinion and expression as one of the main pillars of democracy. In its practice the Court under this Article has repeatedly stated that freedom of expression is crucial for effective public debate and free exchange of ideas, and thus it is necessary in a democratic society. The Court has frequently found violations of freedom of expression in cases of censorship, bans of publications, punishment for implementation of this right (criminal responsibility for expression or remedy for damages in civil proceedings), requests from journalists to reveal their sources, disciplinary measures or confiscation of materials.

Analysis of "environmental" cases of the Court makes it evident that applicants often refer to violation of Article 10 of the Convention because of omissions of the State in providing information about environmental factors that may have adverse impact on health and quality of life. Nevertheless, the Court states that the freedom to receive information under Article 10 cannot be interpreted as the imposing on public authorities of general obligation to collect and disseminate information on the environment at their own initiative.

On the other hand, the freedom to receive information under Article 10 in the interpretation of the Court prohibits public authorities to restrict the person in receiving information from another person who wants to share it.

In the case of *Guerra and Others v. Italy*[226] (more information on the case can be found in sections 2.2. and 2.4.) the applicants complained that the relevant authorities had not informed the public about the risks and about the procedure in the event of a serious accident, which violated their right to freedom of information (Article 10). However, the court did not establish in the present case a violation of Article 10, since in its opinion the Article does not imply a duty of the State to

[226] Guerra and Others v. Italy, http://hudoc.echr.coe.int/eng?i=001-58135

collect, process and disseminate information on its own initiative. On the contrary, Articles 2 and 8 of the Convention can impose specific positive obligation on public authorities to ensure access to information on environmental matters under certain circumstances.[227]

The obligation to ensure access to information is usually combined with the positive obligation of the State to provide information to persons whose right to life under Article 2 or their right to respect for private and family life and home under Article 8 are threatened. The Court found that in particular in the context of dangerous activities, responsibility for which bears the State, emphasis should be placed on the public right to information[228]. Moreover, the Court declared that under Article 2, States are obliged to "adequately inform the public about any dangerous for life situations including natural disasters"[229].

For example, in the case of *Guerra and Others v Italy*, the Court found a violation of Article 8 because the State failed to make available the information which would give opportunity to the applicants to assess the risks, they and their families bore due to living near the factory. Violation of Articles 2 and 8 in connection with a violation of the State's obligation to provide access to such information for applicants has been established in the cases *Oneryildiz v. Turkey* (violation of Article 2 - failure to provide information to the poor on the risk of an explosion at the landfill), and *Budayeva and others v. Russia* (violation of Article 2 - failure to provide information about the risk of powerful mudslides), *Brinket and others v. Malta* (violation of articles 2 and 8 – failure to provide to workers of the shipyard the information about the dangers of working with asbestos), *Roche v United Kingdom* (violation of Article 8 - the lack of effective procedures for access to information about the risks of participation in tests of mustard and nerve gases) and many others.

In our opinion binding obligation of a State to provide access to such environmental information to the right to life and the right to respect for private and family life makes this obligation still more important. Despite the absence in the Convention of the right to safe and healthy environment, the procedural component of this right - the right to access to environmental information - in some circumstances is deemed by the Court as a positive obligation of the State to protect life, physical integrity and privacy.

Nevertheless, at least one recent case under Article 10 delt with an unlawful refusal of public authorities to provide environmental information. In *Rovshan Hajiyev v. Azerbaijan*[230] (applications 19925/12 and 47532/13, judgement of 9 December 2021) a journalist requested information on the environmental and public-health impact of the military radar station and requested copies of any reports. The Ministry of Healthcare replied that a report had been prepared and transmitted to the Cabinet of Ministers. The latter did not respond at all to the applicant's request. The applicant instituted court proceedings against the authorities but was unsuccessful.

The Court reiterated that although Article 10 did not confer on the individual a right of access to information held by a public authority or oblige the Government to impart such information, such a right or obligation could arise where access to the information was instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to

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[227] Öneryildiz v. Turkey, http://hudoc.echr.coe.int/eng?i=001-67614, para. 90; Guerra and others v. Italy, http://hudoc.echr.coe.int/eng?i=001-58135, para. 60.
[228] Öneryildiz v. Turkey, http://hudoc.echr.coe.int/eng?i=001-67614, para. 90
[229] Budayeva and Others v. Russia, http://hudoc.echr.coe.int/eng?i=001-117225, para. 131.
[230] Rovshan Hajiyev v. Azerbaijan, https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-213788%22]}

receive and impart information" and where its denial constituted an interference with that right. The Court was satisfied that the information requested, which had been ready and available, constituted a matter of public interest and access to this information had been instrumental for the applicant, as a journalist, to exercise his right to receive and impart information.

Furthermore, the Court took note that both the authorities and later on the domestic courts failed to duly examine the requests / lawfulness of the denial in accordance with the domestic law on processing individual requests for information. According to the applicable law the information owners indeed were required to provide access unless the information was lawfully restricted or there were other specifically defined grounds for refusing to provide access. However, as Court observed, the existence of any such substantive grounds for denial was not put forward by the domestic courts or the authorities. Therefore, the violation of Article 10 was confirmed.

Most of the "environmental" cases, in which the Court found a violation of Article 10 of the Convention, however, are related to the protection of individuals from state censorship and from lawsuits from individuals, designed to stop the spread of information.

The right to receive and disseminate information and ideas is guaranteed by Article 10 of the Convention. In the specific context of environmental protection, the Court found that there was significant public interest to enable individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest.[231]

In the case of *Sapundzhiev v. Bulgaria*[232] (application no. 30460/08, judgment of 6 September 2018) a neighbour of an applicant started a printing company near the building where he lived with his family causing the nuisance (smell of ink and solvents, vibrations). The applicant submitted a series of complaints to the relevant public authorities claiming that the company was operating contrary to legal requirements and asking for help in forcing them to cease its operations. He also produced some posters, calling on the community's support for the termination of the company's operations and claiming that it had been licensed in breach of the relevant legal requirements and that the pollution it was causing was harmful to the people living nearby.

The owner of the printing company brought defamation proceedings against the applicant under the Criminal Code complaining that the applicant's actions had damaged his printing business and his personal reputation. The national courts found the applicant guilty of defamation and ordered to pay a fine and damages to the victim.

Considering this case the Court underlined that the applicant has exercised his right to make complaints to the authorities competent to deal with such an issue on alleged irregularity in the conduct of another person. As regards statements to the relevant authorities, the Court observes that these written complaints were not made public and thus their potentially negative impact on the owner's reputation, if any, was quite limited. They were made to draw the authorities' attention to the business which the applicant considered was polluting the environment and damaging people's health. For these reasons the Court found that no pressing social need for the interference with the applicant's freedom of expression was convincingly demonstrated in this

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[231] Steel and Morris v. the United Kingdom, decision 15.02.2005, http://hudoc.echr.coe.int/eng?i=001-68224, para. 89; Affaire Vides Aizsardzības Klubs c. Lettonie, decision 27.05.2004, http://hudoc.echr.coe.int/eng?i=001-66349, para. 40.

[232] Sapundzhiev v. Bulgaria, decision 06.09.2018, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186036%22]}

regard.

Regarding the posters the Court said that since by the time the applicant had displayed them in his shop, he had been informed by the authorities that the chemical agents' levels in the air around his home were within the applicable legal norms, some form of an appropriate sanction for this conduct would not have been incompatible with Article 10. However, the Court disagreed as to the severity of the sanction (EUR 770), which in view of the applicant's personal situation was not insignificant. The Court found that this risked having the effect of stifling complaints before relevant authorities, as well as dissuading all public expression on issues about environmental protection and people's health and well-being. The Court ruled that the interference in question was not "necessary in a democratic society" and confirmed a violation of Article 10.

In the context of Article 10, the Court also considered a number of cases related to dissemination of information by environmental NGOs. In the case of *Vides Aizsardzības Klubs v. Latvia*[233] (application 57829/00, judgement of 27.05.2004) the applicant was an environmental NGO which in November 1997 adopted a resolution addressed to the competent authorities expressing its concern about the preservation of coastal dunes of the Gulf of Riga. The resolution, which was published in the local newspaper, contained a statement that the local mayor facilitated the illegal construction in the coastal zone. The mayor sued the applicant for damages, claiming that the information in the resolution against him was false. Latvian courts have concluded that the applicant had not proved the truth of his allegations and ordered them to publish an official apology and compensate the damage to the mayor for publishing defamatory statements.

In this case the court reiterated that imposed by the State restrictions on the right to receive and disseminate information and ideas, including on environmental protection, shall be provided by law and pursue a legitimate goal. Means that restrict this right should be proportionate to the legitimate goal and a fair balance must be achieved between the interests of the individual and society. The Court noted that the disputed resolution was intended to draw attention of the authorities to the sensitive issue of common interest, namely the violations in the important sector relevant to the competence of local authorities. According to the Court, as a non-governmental organization specialized in the relevant area, the applicant organization carried out its role of a "watchdog". This organization's activities are essential in a democratic society. Thus, in order to perform its task effectively, the organization had to be able to highlight facts that represent the public interest, give them its assessment and thus contribute to the transparency of public bodies. Furthermore, the Court noted that the limits of criticism of public figures are much narrower than for ordinary citizens. According to these facts the Court ruled that there was a violation of Article 10 of the Convention, since the limitation of the applicant's right to freedom of expression was not proportionate to the legitimate goal (protection of reputation and rights of others).

In the case of *Verein gegen Tierfabriken v. Switzerland*[234] (application 24699/94, judgement of 28 June 2001) the applicant was a non-governmental organization VgT Verein gegen Tierfabriken working to protect animals. For broadcasting on state television, the applicant produced a commercial that promoted the welfare of animals and was a kind of response to advertising of meat industry products. The commercial demonstrated a noisy hall full of pigs in small pens, which resembled concentration camps. The film concluded with the exhortation: "Eat less meat, for the sake of your health, the animals and the environment!" TV company refused to

[233] Affaire Vides Aizsardzības Klubs c. Lettonie, decision 27.05.2004, http://hudoc.echr.coe.int/eng? i=001-66349
[234] Verein gegen Tierfabriken v. Switzerland, decision 28.06.2001, http://hudoc.echr.coe.int/eng?i=001-59535

broadcast the applicant's commercial in view of its clear political character. Swiss law "On the Federal Radio and Television" prohibits political advertising in order to prevent powerful financial groups from getting advantages of the political situation by demonstrating their political advertising.

Solving this case, the Court examined whether restriction of the applicant's right was required by law, motivated by a legitimate goal and necessary in a democratic society. The Court emphasized that the phrase "necessary in a democratic society" requires "the existence of a pressing social need". Although the State is endowed with discretion when deciding on the existence of pressing social needs, the limits of such discretion are much narrower when it comes to advertising, serving rather interests of society than only the commercial interests.

Given that the law establishes a ban on broadcasting political advertising only for electronic media and allowed to do it in the press, the Court has concluded that there was no pressing social need to ban political advertising. Moreover, it was not proven that the applicant is a powerful financial group that wants to achieve certain benefits, but instead it just tried to take part in the general public debate on animal welfare issues. The Court found a violation of Article 10, as the Swiss Government insufficiently justified interference with the applicant's exercising of its freedom of expression.

The issue of the right of environmental activists to disseminate information was touched upon in the case of *Steel and Morris v. the United Kingdom*[235]. Applicants in the case were associated with London Greenpeace, a small group, unconnected to Greenpeace International. In the mid-1980s the organization conducted an anti- McDonald's campaign, part of which was dissemination of a leaflet entitled "What's wrong with McDonald's?" The leaflet contained accusations against McDonald's, in particular that the company is responsible for starvation in the "third world" countries, for forcing off small farmers from their lands and tribal peoples from rainforests. A number of allegations concerned the absence of nutritional qualities of food at McDonald's, as well as health risks associated with its consumption. The leaflet also accused the corporation of excessive targeting of advertising on children, the cruel practice of animal husbandry and poor working conditions. McDonald's initiated a lawsuit against the applicants and claimed damages for libel. The applicants were prosecuted for publishing the leaflet that according to the court contained ungrounded and false statements. The judge ruled for damages for McDonald's. After the appellate review of the case the total amount to be paid by the applicants was 76,000 pounds.

The first issue that the Court considered in the context of Article 10 was whether the interference with the applicants' right to freedom of expression was "necessary in a democratic society". The government claimed that since the applicants were not journalists, they are not eligible to a high level of protection provided by Article 10 to the press. The Court however noted that in a democratic society even small and informal groups such as London Greenpeace, must be able to effectively carry out their activities. There is considerable public interest in enabling individuals and groups outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public concern, such as health and the environment.

Nevertheless, the Court noted that despite the admissibility of hyperbole in the leaflet, in this case there have been very serious charges presented in the form of facts, not value judgments. In response to the applicants' allegations, the Court ruled that imposing the burden of proof in a

[235] Steel and Morris v. the United Kingdom, decision 15.02.2005, http://hudoc.echr.coe.int/eng?i=001-68224

defamation lawsuit[236] on the defendant is not a violation of Article 10 of the Convention, and the fact that the plaintiff is a large international corporation should not deprive them of the right to defend their reputation, though it's true that large companies inevitably and intentionally make themselves the object of general criticism, and the limits of permissible criticism of such companies are wider.

The Court noted that in the case of competing interests of the public discussion of business practices and protecting the commercial success and viability of companies, the State enjoys discretion on remedies in the domestic law that allow companies to challenge inaccurate information and limit damage to reputation. The Court said that if the State provides such a remedy as a defamation lawsuit, it must guarantee procedural fairness and equality of the parties, otherwise there will be a "chilling effect" on free exchange of ideas and information. Failure of the State to provide such guarantees in this case was established by the Court in the context of a violation of Article 6 along with the violation of Article 10. According to the Court case-law under Article 10, compensation for defamation must be proportionate to the damage that was caused to reputation. In this case, the Court concluded that significant amount of compensation awarded to the company was disproportionate to the legitimate aim it served.

In one of the more recent cases the Court considered a violation of Article 10 in conjunction with Article 11 (freedom of assembly and association) in case of a fine imposed on an environmental protestor. In *Bumbeș v. Romania* (application, judgment of 3 May 2022) a known activist was fined for handcuffing himself near the main Government building and displaying signs in a protest against a mining project without a prior notice.

The Court highlighted that in the given situation the penalty imposed on the applicant could not be dissociated from the views expressed by him through his actions. The Court observed that the applicant had wished to draw the attention of the fellow citizens and public officials to his disapproval of the government's policies concerning the mining project. This was a topic of public interest and contributed to the ongoing debate in society about the impact of this project and its green-lighting by governmental and political powers. Therefore, the Court reminded that there is little scope for restrictions on political speech or debates on questions of public interest and very strong reasons are required for justifying such restrictions.

The Court found that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society". It noted that the domestic courts had not focused on the issue of public speech on a matter of public interest and had not duly considered the extent of the "disruption of ordinary life" caused by the protest, instead looking primarily at the lack of prior notification of the protest. Finally, although the fine imposed had been the minimum statutory amount, the imposition of a sanction, however lenient, on the author of an expression which qualified as political, in Courts view, could have an undesirable chilling effect on public speech. The Court therefore found a violation of Article 10.

Having analysed the jurisprudence of the Court on access to and dissemination of environmental information, we could extrapolate the following:

1. In matters of the State's omissions regarding provision to applicants of information that could help them assess the risks to life and health, the Court is inclined to find violations of

[236] Defamation lawsuit is a civil lawsuit to claim the damage caused to honor, dignity and business reputation as a result of dissemination of false or negative information.

Articles 2 or 8 of the Convention, as it considers the State's duty to disseminate such information in the event of a real and imminent danger to be – an element of the positive obligation of the State to protect physical integrity or private life of individuals within its jurisdiction.

2. Unlawful refusal of public authorities to provide environmental information could however constitute an interference with Article 10 right where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information.

3. Subjects relating to the protection of nature and the environment, health and respect for animals are *issues of general concern* which, in principle, enjoy a high level of protection under the right to freedom of expression.

4. Imposed by the State restrictions on the right to receive and disseminate information and ideas, including on environmental protection, shall be provided by law, pursue a legitimate goal and be necessary in a democratic society.

5. Effective functioning of non-governmental organizations performing the role of a "watchdog" is very important in a democratic society.

6. In a democratic society even small and informal groups should be able to effectively carry out their activities. There is considerable public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas about health and the environment.

7. To fulfill its tasks effectively, the organization should be able to share the facts that represent the public interest, give them its assessment and thus contribute to the transparency of public authorities.

8. The pressing social need must be demonstrated convincingly by the State for an interference with the freedom of expression in respect of complaints to the authorities.

9. The scope of a state's discretion in determining "the existence of a pressing social need" for restriction of the right to freedom of expression is much narrower, when it comes to information dissemination of which serves the public interest.

10. If the State chooses to provide in its legislation such a remedy of reputation protection as defamation lawsuit, it must provide guarantees of procedural fairness and equality for parties of the litigation.

11. Means of restricting the right to expression should be proportionate to the legitimate goal, i.e., compensation for spreading false information should be proportionate to the damage caused to the reputation and should not be too large.

12. The imposition of a sanction, however lenient, on the author of political speech could have an undesirable chilling effect on public speech and thus is not necessary in a democratic society.

2.6 Article 1 Protocol 1 Protection of property

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The jurisprudence of the ECHR on Article 1 of Protocol 1 on the issues relating to the environment can be divided into three groups:

1. cases where due to adverse environmental factors applicants' rights were violated under Article 2 or 8 of the Convention, and the same factors resulted in total or partial loss of property peacefully possessed by the applicants;

2. cases where the Court decided on the legality of government's interference with the right to peaceful enjoyment of property in general public interests, in particular in the interest of environmental protection;

3. a case where the Court decided whether a costs award made against an environmental association in the result of unsuccessful legal proceedings against a nuclear power plant amounted to unjustified interference with the association's rights.

In the case of *Oneryildiz v. Turkey*[237] (application № 48939/99, judgement of 30 November 2004) – for more details on the case see sections on Articles 2 and 6 – the applicant's home was built illegally on the land that he did not own and did not meet technical standards. As a result of the explosion at the landfill, the house was littered with debris and destroyed. The applicant appealed to the court with a civil suit for damages caused by death of his relatives and the destruction of his property. In 1995, the government awarded the applicant approximately 2077 EUR compensation for non-pecuniary damage and 208 EUR for pecuniary damage. As of the day of the case proceedings at the ECHR, these amounts were not paid to the applicant.

In the context of Article 1 of Protocol 1, the Court decided that although the house was built illegally, the authorities deliberately did not take any action to demolish it, although it had the right to do so; such tolerance pointed to de facto recognition by the authorities that the applicant and his family had a proprietary interest in their home and movable goods. In addition, the uncertainty caused by the government's attitude to application of legislation on termination of illegal settlements, did not give the applicant an idea that his situation could change overnight. Thus, proprietary right of the applicant regarding his home was of sufficient nature and was sufficiently recognized by the state to be of great interest and mean "possession".

The Court also established a causal link between the gross negligence of the State and destruction of the applicant's house, to the extent sufficient to establish a violation of the positive obligation of the State under Article 1 of Protocol 1 to do everything in its power to protect the property interests of the applicant. This positive obligation required from the national authorities to take the same practical measures as in respect of Article

[237] Öneryıldız v. Turkey, decision 30.11.2004, http://hudoc.echr.coe.int/eng?i=001-67614

2, to avoid the destruction of the applicant's house. However, no such measures were taken.

The Court pointed out that provision by the State to the applicant of the right to buy housing on favourable terms does not deprive the applicant of victim status. Having assessed facts of the case, the Court concluded that there was the violation of the applicant's right to peaceful enjoyment of property.

In another case against Turkey, *Taskin and Others v. Turkey*[238] – for further information see chapters on Articles 6 and 8 – in the context of application of Article 1 of Protocol 1 the Court reminded previous practice of the Commission and repeated that some types of activities that may have adverse impact on the environment can also substantially decrease the value of property to the extent that would make it impossible to sell it, and therefore, constitutes partial expropriation or limits its use creating the situation of de facto expropriation.

In the case of *Dubetska and others v. Ukraine*[239] (application № 30499/03, judgement of 10 February 2011) – for more details on the facts on the case see the section on Article 8 – applicants claimed 28,000 EUR of pecuniary damage. They argued that this amount corresponded to the purchase price of two similar houses (one house for each family of the applicants) in unpolluted areas nearby. They argued that they are entitled to these amounts of compensation because their homes have lost market value (due to location in the vicinity of several mining facilities that had been the source of significant pollution) and could not be sold because of their unattractive location. Regarding these claims the Court explained that this application was submitted and examined by the Court under Article 8 of the Convention and not by Article 1 of Protocol 1 to the Convention, which protects property rights. Since the Court did not consider the violation of Article 1 of Protocol 1, the Court found these claims unreasonable because of the lack of a causal link between the violation of Article 8 and the alleged loss of market value of the housing. Nevertheless, due to the violation of Article 8, the Court awarded the applicants jointly just satisfaction in the amount of 65 000 EUR.

The Court also considered the violation of the right to peaceful enjoyment of property due to the loss caused by natural disasters. In the case of *Budayeva v. Russia*[240] (application № 15339/02, judgement of 20 March 2008) – for details of the case see section on Article 2 – applicants lost their property due to exceptionally powerful mudslides. The Court noted that it was unclear to what extent proper maintenance of protective infrastructure could have alleviated the exceptional strength of mudslides. Nor was it established that damage to homes and property of the applicants could have been prevented by existence of a protective system, and thus the damage could not be unequivocally attributed to the negligence of the State. Moreover, the obligation of the State to protect private property could not be considered as identical to the obligation to reimburse the full market value of the destroyed property. The proposed by the State compensation must be assessed taking into account all other measures taken by authorities, the complexity of the situation, the number of owners, and economic, social and humanitarian issues that arise when providing assistance in case of natural disasters. In Court's opinion, the compensation provided to the applicant was not clearly inadequate. Given the large number of victims and the scale of

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[238] Affaire Taşkın et autres c. la Turquie, decision sur la recevabilite, decision 29.01.2004, http://hudoc.echr.coe.int/eng?i=001-44756

[239] Dubetska and Others v. Ukraine, decision 10.02.2011p., https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-103273%22]}

[240] Budayeva and others v. Russia, decision 20.03.2008, https://hudoc.echr.coe.int/eng#{%22appno%22:[%2215339/02%22],%22itemid%22:[%22001-85436%22]}

operations to provide emergency assistance, the upper limit (13 200 rubles, about 530 EUR) of compensation for household goods was deemed by the Court as justified. Access to compensation payments was direct and automatic and did not provide for participation in a competitive process or the need to prove actual loss incurred. That is the terms of compensation did not impose disproportionate burden on the applicants. Thus, in this case the Court found no violation of Article 1 of Protocol 1.

According to Article 1 Protocol 1 of the Convention, natural persons are entitled to the peaceful enjoyment of their possessions and to protection against unlawful deprivation of their possessions. However, this right is not absolute, and some limitations are acceptable. Under some circumstances, the authorities may expropriate property. However, any deprivation of an individual of its property must be reasonable, be based on the law and in the public interest, and a fair balance must be established between interests of the individual and public interests[241]. Article 1 of Protocol 1 does not guarantee the right to continuous possession of the property in favourable natural environment[242]. It recognizes that authorities have the right to control the use of the property in compliance with general interest. In this context, the Court recognized that in today's society the protection of the environment is an increasingly important consideration[243].

For example, *Fredin v. Sweden*[244] (application № 12033/86, judgement of 18 February 1991) is focused on termination of the permit for exploitation of a gravel pit located on the land of the applicant on the basis of the Law on Nature Protection. In this case, the Court ruled that in modern society environmental protection is becoming increasingly important. The Court concluded that termination of the permit was "interference" with the peaceful use of property. Nevertheless, it had a legitimate goal and served the general interest of environmental protection. The Court emphasized that the applicants were aware of the authorities' ability to terminate their permits. Although the authorities were obliged to take account of their interests when considering the renewal of the permit every ten years, this commitment did not constitute legal grounds for the applicants to expect that they would be able to continue to operate for a long time. In addition, the applicants received a three-year closing-down period, which later at their request was extended for another eleven months. The Court concluded that the termination of the permit in this case was not disproportionate to the legitimate goal of protecting the environment, and therefore Article 1 of Protocol 1 was not violated.

In *Pine Valley Developments Ltd and Others v. Ireland*[245] (application № 12742/87, judgement of 29 November 1991) applicants were several companies the main business of which was purchase and development of land. They complained about judgement of the Supreme Court of Ireland that found invalid the permit issued to them for construction of an industrial warehouse and office centre. The applicants complained of interference with their right to peaceful enjoyment of property, namely the prohibition to perform construction works on the land lot they

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[241] Case of Brosset-Triboulet and Others v. France, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-98036%22]} , paragraph. 80.

[242] Affaire Taşkın et autres c. la Turquie, decision sur la recevabilite, 29.01.2004, http://hudoc.echr.coe.int/eng?i=001-44756

[243] Case of Fredin v. Sweden, decision 18.02.1991, http://hudoc.echr.coe.int/eng?i=001-57651, paragraph. 41.

[244] Case of Fredin v. Sweden, decision 18.02.1991, http://hudoc.echr.coe.int/eng?i=001-57651

[245] Case of Pine Valley Developments Ltd and Others v. Ireland, decision 29.11.1991, http://hudoc.echr.coe.int/eng?i=001-57711

owned without any compensation.

The Court did not find in this case a violation of Article 1 of Protocol 1 of the Convention, since termination of the construction permit was proportionate to the legitimate goal of preserving the environment. The Court noted that such interference with property rights served the purpose of ensuring correct application of legislation in the process of planning and environmental protection not only regarding the applicants, but all others as well. The Court stated that prevention of construction in the area of agriculture planned for the development was a proper way, if not the only way that served the legitimate goal, which was to preserve the green belt. In addition, the applicants were engaged in business activities that inherently bear an element of risk, and they were aware not only of the zoning plan, but also of the opposition of the local authorities against any deviation from it.

In a similar case of *Kapsalis and Nima-Kapsali v. Greece*[246] (application № 20937/03, decision on admissibility of 23 September 2004) the Court decided that in such areas as spatial planning and environment the assessment of national authorities should prevail unless it is clearly unreasonable. In this case termination of the construction permit was supported by the Supreme Administrative Court after a thorough study of all aspects of the issue and there is no indication that its decision was arbitrary or unpredictable. Two other permits for construction on plots located in the same area as the land of the applicants were terminated by the court even before termination of the applicants' permits. In addition, the procedure of making a decision regarding the permit for construction in the area of the applicants land lot had not been completed when they purchased it; authorities cannot be held responsible for negligence of the applicants regarding checking the status of the land lot that they bought. Having assessed the facts of the case, the Court held that termination of the construction permit was proportional to the aim of protecting the environment, and therefore the application must be rejected as obviously ungrounded.

In the case of *Hamer v. Belgium*[247] (application № 21861/03, judgement of 27 November 2007), in 1967 the applicant's parents illegally built and used a holiday home on the lands of forest fund. In 1994, the police drew up two reports, one about the breach of forest legislation because of tree cutting near the house, the other one for building the house without a planning permission in the forested area for which a permission could not be issued. National authorities ordered the applicant to restore the site to its former condition and to demolish the building at her own expense without any compensation.

The ECHR in this case confirmed that the authorities made interference with the applicants' right to respect for their property but noted that such interference was justified. As regards the proportionality of measures taken, the Court noted that the environment is an asset, the protection of which is subject to significant and constant concern of the public and, therefore, of the government as well. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard. The public authorities therefore assume a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment are not entirely ineffective. Thus, restrictions on property rights may be allowed on condition,

[246] Case of Affaire Kapsalis and Nima-Kapsali c. la Grèce, decision sur la recevabilite, decision 23.09.2004, http://hudoc.echr.coe.int/eng?i=001-66878
[247] Case of Hamer v. Belgium, decision 27.11.2007, http://hudoc.echr.coe.int/eng?i=001-83537

naturally, that a fair balance is maintained between the individual and collective interests concerned.

In this case, the Court found that the challenged measures pursued the legitimate aim of protecting the forest, where construction was prohibited, and focused on the question whether the benefits of the use of forests for other purposes is proportional to inconveniences caused to the applicants. In this regard, the Court noted that the owners had peaceful and uninterrupted enjoyment of the holiday home for thirty-seven years, and the government, which knew or should have known about the existence of the house for a long time failed to perform any action and thus contributed to the situation which only undermines efforts to protect the forest. The Court also noted that no measure except for full restoration of the site is sufficient, given the undeniable damage to the forest area where construction was prohibited. In addition, unlike other cases in which it was established that the authorities gave their consent, the house in the instant case was built without a permit. The Court concluded that the applicant has not suffered disproportionate interference with her property rights. Accordingly, there has been no violation of Article 1 of Protocol No.1.

In two other cases of *Turgut and Others v. Turkey*[248] (application № 1411/03, judgement of 8 July 2008) and *Satir v. Turkey*[249] (application № 36192/03, judgement of 20 May 2010) the ECHR found a violation of Article 1 of Protocol 1 in connection with the seizure of legally acquired land without adequate compensation. In the case of *Turgut and Others v. Turkey*, three generations of the applicant's family had owned over one hundred thousand square meters of forest area. The applicant appealed against the decisions of the domestic courts that cancelled their ownership title, and the land plot was registered in the name of the Treasury because affiliation of the plot to the public forest estate. The Court noted that the seizure of property without payment of compensation constituted disproportionate interference, and full lack of compensation can be justified only in exceptional cases. The Court noted that the applicants did not receive any compensation for the transfer of property to the Treasury and the Turkish government did not rely on any exceptional circumstances that could justify it. The Court concluded that the failure to award the applicants any compensation upset, to their detriment, the fair balance that should be struck between the demands of the general interest of the community and the requirement of the protection of individual rights.

The Court also concluded on violation of a fair balance between competing social and individual interests in the case of *Papastavrou and Others v. Greece*[250] (application № 46372/99, judgement of 10 April 2003). The case focused on the decision of Athens prefect about afforestation of land lots belonging to 25 applicants that was adopted to implement the ordinance of the Ministry of Agriculture of 1934. In this case, the Court, given the fact that the decision of the prefect was made solely on the basis of data that was sixty years old and was not in any way updated, geological studies that had established the unsuitability of the sites for afforestation and absence in Greek law of the possibility for compensation, established the breach of Article 1 of Protocol No. 1.

In the cases against France, *Depalle v. France*[251] (application № 34044/02, judgement of 29 March 2010) and *Brosset-Triboulet and Others v. France*[252] (application № 34078/02, judgement

[248] Case of Turgut and Others v. Turkey, decision 8.07.2008, http://hudoc.echr.coe.int/eng?i=001- 87441
[249] Case of Satir v. Turkey, decision 20.05.2010, http://hudoc.echr.coe.int/eng?i=001-98764
[250] Case of Papastavrou and Others v. Greece, decision 10.04.2003, http://hudoc.echr.coe.int/eng? i=001-61019
[251] Case of Depalle v. France, decision 29.03.2010, http://hudoc.echr.coe.int/eng?i=001-97978
[252] Case of Brosset-Triboulet and Others v. France, decision 29.03.2010,

of 29 March 2010) the Court emphasized that even massive interference with property rights can be justified by interest of environmental protection. In both cases, the Court found no violation of Article 1 of Protocol No. 1 in situations where public authorities ordered the applicants to restore the coast to previous state at their own expense and without compensation. Houses that were to be demolished, were built on community lands based on permission issued half a century ago, which formally did not prove the ownership right or the right of temporary residence of the applicants on lands belonging to community property.

In the case of *O'Sullivan McCarthy mussel development Ltd v. Ireland*[253] (Application № 44460/16, judgement of 7 June 2018) the Court sustained a temporary prohibition on mussel seed fishing in a "Natura 2000" site imposed by the State following the results of an infringement procedure brought by the EU against Ireland for not complying with two environmental directives. The applicant company in this case was engaged in the cultivation of mussels in Castlemaine harbour – a subject to the Bird Directive and the Habitat Directive – obtaining the necessary licences and permits each year since the 1970s. In 2007 the Court of Justice of the European Union declared that Ireland had failed to fulfil its EU obligations under the aforementioned directives. In view of the judgment, the authorities temporarily prohibited mussel seed fishing from June 2008. Later same year the applicant company was able to resume its activity, however, according to the applicant they sustained financial loss. Its compensation proceedings against the State was unsuccessful.

In this case the Court concluded that the interference of the State had the clear aim to protect the environment and ensure State's compliance with its obligations under EU law, both of which were legitimate general-interest objectives of considerable weight. The Court took notice that there was no legal basis for the applicant company to entertain a legitimate expectation of being permitted to operate as usual in 2008, following the finding by the CJEU of December 2007. Furthermore, in these circumstances being a commercial operator the applicant was expected to display a high degree of caution and take special care in assessing the risks in their activities. Instead, they purchased its new boat in May 2008.

Furthermore, the Court highlighted that achieving compliance on the nationwide scale, and within an acceptable timeframe, with the respondent State's obligations under EU law afforded a wide margin of appreciation for the domestic authorities, and thus it was for them to decide the nature and extent of the measures required. The partial restriction applied to commercial activities in the harbour, as opposed to a total one, was to the benefit rather than the detriment of the applicant company. In sum, the Court concluded that Ireland had not failed in finding a fair balance between the general interest of the community and the protection of individual rights.

In the case of *Yaşar v. Romania*[254] (Application № 64863/13, judgement of 26 November 2019) the Court considered the confiscation of a vessel used for illegal fishing in light of the right of peaceful enjoyment of one's property. The applicant rented his vessel to a person who subsequently was arrested and convicted for illegal fishing in the Black Sea. In the result of

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http://hudoc.echr.coe.int/eng?i=001-98036

[253] Case of O'Sullivan McCarthy mussel development Ltd v. Ireland, decision 07.07.2018, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183395%22]}

[254] Case of Yaşar v. Romania, decision 26.11.2019, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-198637%22]}

criminal proceedings brought against its captain the vessel was confiscated and later on sold by the State.

The Court concluded that interference had been in accordance with the law, namely the domestic law on fishing and aquaculture, and had pursued the legitimate aim of preventing activities which posed a serious threat to the biological resources in the Black Sea, such as illegal fishing. The confiscation had therefore been in the general interest. The Courts in this case had carefully balanced the rights at stake and had found that the demands of the general interest to prevent activities which posed a serious threat to the biological resources in the Black Sea had outweighed the applicant's property rights given the fact that he had been fully aware of what the vessel was used for and the ultimate value of the vessel itself.

When assessing the achievement of a fair balance between the competing interests of environmental protection and individual property rights the Court gives direct importance to the fact of paying compensation to the person concerned. A good example of this would be the case of *Bērziņš and Others v. Latvia*[255] (Application № 73105/12, judgement of 21 September 2021) concerning a disproportionate denial of access to and use of applicants' plot of land for over a decade to ensure access to clean drinking water for others. In 2004 the applicants purchased a land plot with the following permitted use: "designated for the needs of a farm" and in early 2005 registered their property rights in the Land Register. The relevant entry contained no record as regards any water protection zones. In the autumn of 2005, they discovered that a fence had been built around their land plot and a "no entry" sign had been placed on it. The applicants were informed that a "strict" protection zone (covering their land) had been envisaged around a water supply source. A project to establish that protection zone had been prepared in 2003, yet the protection zone had not been marked in any relevant spatial plan. Later on the Municipal Council established a "strict" protection zone on the applicants' land plot and the permitted use from then onwards was designated as: "a specially protected nature territory where any economic activity shall be prohibited" and approved the relevant spatial plan. No compensation or allocation of another plot of land were offered to the applicants.

The Court accepted that the protection of that zone was in public interest as it guaranteed access to clean drinking water for others and in order to ensure the preservation and renewal of water resources, and, more generally, the environment conservation, which in today's society is an increasingly important consideration. Hovever, giving regard to the lack of domestic law provisions on compensation in the regulatory framework concerning the protection zones and the manner in which the case was handled by the authorities in general, the Court found that the domestic authorities have not ensured a fair balance between the demands of the general interest of the community and the requirements for the protection of the applicants' property rights as the applicants have had to put up with significant interference for more than a decade without being offered any compensation or other redress; therefore, concluding that the interference complained of was disproportionate to the aim pursued.

In the light of Article 1 Protocol 1 the Court considered another interesting question – whether an allegedly excessive costs award made against the applicant, an environmental association, for the

[255] Case of Bērziņš and Others v. Latvia, decision 21.09.2021, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-212012%22]}

legal representation of the successful respondent party, a nuclear power plant, in reopening proceedings amounted to unjustified interference with the applicant association's rights. In *National Movement Ekoglasnost v. Bulgaria*[256] (application № 31678/17, judgment 15 December 2020) an environmental non-profit organisation unsucessfully tried to join as a third party judicial-review proceedings of a ministerial decision concerning the only nuclear power plant in the State. At the final stage the applicant applied for the reopening of proceedings to the Supreme Administrative Court which upheld the decisions of the lower courts and ordered the applicant to pay the legal fees of the nuclear power plant in the amount of 6,000 euros (EUR). Before the Court the applicant argued that the costs award made against it had overall been excessive and had failed to balance the interests of society and the individual's fundamental rights, particularly given non-governmental organisations' "watchdog" role.

The Court examined the "interference" with the association's property in the light of its lawfulness, the public interest, and the balance between the general interest and the association's rights. The Court reiterated that costs are a well-established and necessary feature of a legal system. Thus, the order in this case had had a legitimate aim. The Court noted that in Bulgaria, the general rule was that the "loser pays". The amount due is assessed by the courts taking into account the complexity of and interest in the case and could be reduced (but not below a statutory minimum). In its decision the Court higlited that the Supreme Administrative Court had not specified sufficiently how it had assessed the costs as well as the fact that the amount ordered had been 24 times the minimum set out in law even thought the issues had been mainly procedural and not particularly complex. The Court thus concluded that the Supreme Administrative Court had not given sufficient thought to the specifics of the case, and had failed to balance the general interest and the applicant association's rights, leaving the association to the bear an excessive individual burden.

Having analysed the case-law of the Court on Article 1 of Protocol No. 1 the following conclusions could be drown:

1) Similar to the right to life and respect for private and family life, the Convention protects the right to property in the context of dangerous activities and natural disasters, in case of failure of the State to exercise its positive duty to protect this right.

2) However, in the context of natural disasters, the obligation of the State to protect private property cannot be regarded as identical with the obligation to reimburse the full market value of the destroyed property. Proposed by the State compensation is assessed by the Court with account taken of all the other activities carried out by the authorities, the complexity of the situation, the number of owners, and economic, social and humanitarian issues that arise when providing assistance during natural disasters.

3) The right to peaceful enjoyment of their property is not absolute and certain restrictions are permissible. Any deprivation of an individual of its property must be grounded, based on the law and performed in the public interest, and a fair balance must be struck between individual and public interests[257].

4) Authorities have the right to control the use of property in compliance with general

[256] Case of National Movement Ekoglasnost v. Bulgaria, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-206506%22]}

[257] Case of Brosset-Triboulet and Others v. France, http://hudoc.echr.coe.int/eng?i=001-98036, para. 80.

interest[258]. In this context, the Court gives to the environment an increasingly significant attention. The State enjoys wide discretion when making decisions on regional planning and policy on environmental protection where common interests of a community prevail[259].

5) The Court gives direct importance to the fact of paying compensation to the person concerned in assessing the achievement of a fair balance between the competing public and individual interests.

6) Regarding judicial costs payable by an environmental organisation the Court considers the "watchdog" role of the applicant when balancing general interest and the association's rights.

[258]Case of Fredin v. Sweden, decision 18.02.1991, http://hudoc.echr.coe.int/eng?i=001-57651, para. 41.
[259] Case of Depalle v. France, http://hudoc.echr.coe.int/eng?i=001-97978, parapara. 83-84; Case of Brosset-Triboulet and Others v. France, http://hudoc.echr.coe.int/eng?i=001-98036, parapara. 84 та para. 86-87.

Conclusions

At the time of adoption of the Convention in 1950 environmental rights did not draw as much attention as fundamental human rights. As the result, the Convention does not provide direct protection of environmental human rights in its text. Nevertheless, over the years such protection was offered through the application of other rights enshrined in the Convention such as the right to life, respect for private and family life and other rights. Limited Court's case-law covering the cases that could be considered environmental ones or related to the protection of environmental rights in the last three decades, however, suggests that the Court was not particularly eager to give environmental rights the same level of protection as to those rights that are explicitly set forth in the Convention before seeing corresponding amendments to the Convention or the adoption of an additional protocol on the right to safe and healthy environment. Therefore, to submit a case related to violation of environmental rights to the Court, the application should be carefully prepared and substantiated with evidence of violations by the State of the basic human rights covered by the Convention.

The Court provides environmental protection mainly indirectly and predominantly in cases when damage or pollution had occurred. Due to its nature, the Court decision has no impact on prevention, limitation, control, or clean-up of pollution. The only category of cases where the Court directly protected the environment were the cases related to limitation by the State of some human rights (right to peaceful enjoyment of property) on the basis of the need to protect common interests (environment is this case). However, such cases are scarce and the role of the Court in them comes to recognizing the absence of violation of the Convention by the State that gave priority to environmental protection.

Analysis of the Court's case-law in environmental cases highlights the following tendencies and opportunities for potential applicants – individuals and NGOs: the Convention can be used for protection of environmental rights of individuals and protection of individuals' rights from adverse environmental factors, but such adverse impact has to reach certain level of seriousness and cause significant damage to the applicant. Due to the subsidiary role of the Court, the latter will rely on decisions of national courts and public authorities in assessing the degree of seriousness of damage and impact on citizens, and causation link between environmental pollution and worthening health conditions of applicants. One should not expect an active role of the Court in finding and obtaining evidence, but potential applicants should first prepare utmost acceptable and relevant evidence when submitting a lawsuit in the national court. Moreover, in order to get protection of environmental rights in Court, a lawyer needs creativity and competence in the Court' case-law for stipulating all aspects of violations of rights enshrined in the Convention.

Equally important if not greater role the Court' case-law could play in the formation of domestic jurisprudence. Being directly binding on national courts carefully selected refences to the Court' case-law in claims brought domestically, could strengthen the position of plaintiffs protecting the environment or their environmental rights. Special attention in this regard should be paid to the position of the Court in environmental cases that emphasized positive obligations of the State, such as an obligation to assess the risks and mitigate those risks to human rights originated from the environmental condition or human activity, to provide for the release and dissemination of information on environmental risks, involvement of the public concerned in decision-making with a possibility to challenge such a decision, as well as for taking into account a watchdog role of environmental NGOs, including all the aspects of access to court. The Court recognizes the right

of non-governmental environmental organizations to represent interests of their members and protect rights of their members as well as their rights on the national level and on the level of the Council of Europe. Moreover, the Court has long ago acknowledged the important role of the civil society organisations in holding the states accountable to their actions and failures to act in the area of fundamental human rights and public interest implying the obligation of the states to promote and support their activities. Being sufficient on their own, these conclusions also align with the provisions of the UNECE Convention on on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) to which Ukraine is a Party.

The Court's case-law becomes increasingly known among the jurists and judges. Given the Ukraine's accession process on becoming EU member-state, this tendency will develop and more and more Court's judgments will be cited by both the applicants and national courts. Despite the overall cautiousness, the interpretation by the Court of norms of the Convention in view of modern conditions opens new potential possibilities for protection of environmental rights (2024 judgments on climate change being the most recent and prominent examples). This publication with the analysis and translation (in Ukrainian version of publication) of the most important judgements of the Court in environmental cases aims to promote the use of the Court's case-law by the lawyers and attorneys supporting environmental activists and organisations filing claims in domestic courts as well as to inspire public interest environmental lawyers to creatively interpret the Convention's provisions to tackle contemporary environmental challenges thus contributing to further development of an environmental pillar of the Court's jurisprudence.