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Human Rights and Environmental Protection in Europe

Case law from the European Court of Human Rights and its implications

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Human Rights and Environmental Protection in Europe

Case law from the European Court of Human Rights and its implications

Editors
Biljana Braithwaite, Western Balkans Programme Director, the AIRE Centre
Catharina Harby, Senior Legal Consultant, the AIRE Centre

Main contributor
William Ferris, Solicitor, Clyde & Co, London

We are very grateful to Nevena Kostić of Sustineri Partners, as well as Azra Bećirović of the AIRE Centre, for their contributions to the publication.

This original English version has also been translated into Bosnian/Croatian/Montenegrin/Serbian.

Design by
Kliker Dizajn

Preface

The relationship between human rights and environmental protection has become a key issue in Europe and beyond in recent years. The Western Balkans, a region rich in natural resources but highly vulnerable to environmental degradation, faces specific challenges in this context.

The European Convention on Human Rights (ECHR) provides a crucial framework for addressing environmental issues through the lens of human rights, offering legal protection where environmental harm threatens fundamental rights. This document investigates the ECHR's role in protecting the environment, with particular focus on climate change, pollution, natural disasters and the regulation of industrial activities.

The increasingly abundant case-law of the European Court of Human Rights (ECtHR) demonstrates its dynamic interpretation of the ECHR regarding environmental harm, climate disputes and broader environmental issues. The Court's judgments in cases involving air pollution, industrial activities and climate change reflect its commitment to protecting individuals from harmful environmental impacts, while also respecting the obligations of the States.

These legal principles are becoming increasingly relevant in the Western Balkans, where industries such as mining, energy production and waste management continue to impact communities and ecosystems. The courts in the region are now more frequently encountering cases highlighting the urgent need for stronger environmental governance and more effective protection within domestic and international legal frameworks.

This guide addresses these challenges, analysing how various provisions of the ECHR — such as those guaranteeing the rights to life, health, privacy and property — are utilised to tackle various threats to the environment. The guide also examines landmark climate-related cases, including the European Court of Human Rights' 2024 judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, which is widely regarded as a potential milestone in shaping the Court's approach to States' obligations in addressing climate change. While climate change may be the most pressing issue of our time, other challenges, such as pollution, land degradation, and biodiversity loss, remain just as important, particularly in ecologically diverse regions like the Western Balkans.

I extend my sincere gratitude to the entire team whose effort, knowledge and experience contributed to this document. The guide before you is just the beginning, as we plan to continue our presence in the field of human rights and environmental protection in the future — both through research and analyses and through concrete support for legal professionals, policymakers, and activists focusing on this vital issue.

Biljana Braithwaite

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List of Acronyms

The European Convention on Human Rights	**The Convention/ECHR**
The European Court of Human Rights	**The Court/ECtHR**
The European Union	**EU**
The United Nations	**UN**
Non Governmental Organisations	**NGOs**

Introduction

In 2022, the United Nations General Assembly adopted a resolution recognising that access to a healthy and sustainable environment was a fundamental, universal human right. While this resolution was non-binding, the right to a healthy environment has been recognised in the domestic law of roughly 80% of United Nations ("UN") member states.[1] The Council of Europe remains the only regional human rights system that has not yet explicitly recognised the right to a healthy environment.[2]

As this guide will explain, however, the Council of Europe's European Convention on Human Rights ("ECHR" or "the Convention"), along with the jurisprudence issued by the European Court on Human Rights ("ECtHR" or "the Court"), does provide significant protection at the intersection of human rights and the environment. Over time, the Court has recognised that damage to the environment and the existence of environmental harms may and can undermine existing Convention rights and lead to human rights violations. As of the date of publication, the ECtHR has developed a deep and extensive body of jurisprudence on environmental issues. It has issued judgments and decisions covering everything from the dangers of pollution and the impact of environmental regulation on property rights, to the responsibility of States to protect people from natural disasters and man-made climate change.

The protection of the environment is becoming an increasingly significant priority for governments, companies and individuals. This is reflected in the growing number and scope of international and European Union ("EU") legal instruments concerned with environmental and climate protection. The 2015 UN Paris Agreement, for example, legally binds its State parties to work towards the reduction of carbon emissions and to recognise that climate change impacts social justice, equity, and human welfare. The Paris Agreement recognises that vulnerable populations, including indigenous people, women, and low-income

[1] The Right to a Healthy Environment: A User's Guide, David R. Boyd (Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment), 2024; The report of the Special Rapporteur on Human Rights and the environment (2020), Good Practices, (A/HRC/43/53)

[2] See the Preamble of the Aarhus Convention; Article 24 of the African Charter on Human and Peoples' Rights; Article 38 of the Arab Charter of Human Rights; Article 11 of the Protocol of San Salvador

communities, are disproportionately affected by climate change and that it will therefore exacerbate existing inequalities. By integrating human rights with climate policy, the Paris Agreement seeks to ensure that efforts to reduce the impact of climate change promote societal well-being and protect those most at risk. Further UN treaties and initiatives that consider both the environment and human rights include the 1972 Stockholm Declaration, 1992 Rio Declaration, the 1992 UN Framework Convention on Climate Change and the United Nations' 2030 Agenda for Sustainable Development.

The EU also recognises the importance of environmental protection but has predominantly approached the issue from a regulatory angle. Key EU initiatives include the adoption of the Environmental Impact Assessment Directive[3] and the Industrial Emissions Directive[4]. The former directive mandates that a comprehensive environmental impact assessment analysis must take place before certain public and private projects can be approved. This ensures that decision-makers consider the environmental consequences of their decisions, as well as take public opinion and input into account. This serves to protect community health and ecological integrity. The latter directive regulates major industrial activities. It requires companies to meet stringent environmental standards and implement the best available pollution reduction techniques before they can obtain operating permits. Further, the Corporate Sustainability Due Diligence Directive, which came into force on 25 July 2024, aims to foster sustainable and responsible corporate behaviour by requiring companies to identify, prevent, mitigate, and account for their adverse impacts on the environment and human rights across their global value chains.

The Council of Europe is also working towards a more formal framework of environmental protection following a supportive PACE Committee Report published on 28 March 2024.[5] This report recommends that the Council of Europe develops the protection afforded by the European Social Charter and the Convention in the context of its prior experience creating the Bern Convention on the Conservation of European Wildlife and Natural Habitats and the Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment.

[3] Environmental Impact Assessment Directive 2011/92/EU, as amended by Directive 2014/52/EU

[4] Industrial Emissions Directive 2010/75/EU, as amended by Directive 2024/1785

[5] Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process, Report of the Committee on Social Affairs, Health and Sustainable Development, 2024

The Framework of the ECHR

The Relevant Articles

The relevant Articles covered in this Guide are:

- **Article 2 (the right to life)**
  - Cases involving Article 2 relate to environmental issues causing the deaths or threatening the lives of individuals. Such issues could both be man-made (such as industrial pollution) or natural (such as floods and other natural disasters).

- **Article 3 (the prohibition of inhuman or degrading treatment)**
  - Cases involving Article 3 relate to specific instances where the environment in which individuals are held in detention by the State exceeded the threshold of severity required to be considered inhuman and degrading.

- **Article 5 (the right to liberty and security)**
  - Cases involving Article 5 relate to instances where individuals have been held in State detention in relation to environmental destruction for which they were allegedly responsible.

- **Article 6 (the right to a fair trial)**
  - Cases involving Article 6 relate to a range of different issues, but mainly to the principle of the right of access to court and instances of failure to enforce final judicial decisions.

- **Article 8 (the right to respect for private and family life and the home)**
  - Cases involving Article 8 relate to a range of different environmental issues, but this guide will predominantly consider cases relating to industrial pollution, noise pollution, air pollution, waste management and disposal, soil and water contamination, climate change and access to information on environmental risks.

- **Article 10 (freedom of expression/the freedom to receive and impart information)**
  - Cases involving Article 10 in this guide will concentrate on jurisprudence affecting environmental protests and freedom of the press.

- **Article 11 (freedom of assembly and association)**
  - Cases involving Article 11 relate to instances where environmental organisations and associations have been subject to State oppression and/or been prevented from forming and acting.

- **Article 13 (the right to an effective remedy)**
  - Environmental cases involving Article 13 often interact with other Articles, in particular Articles 8, 2 and Article 1 of Protocol No. 1, and relate to instances where individuals did not benefit from a sufficient judicial response to an environmental issue.

- **Article 14 and Article 1 of Protocol No. 12 (prohibition of discrimination)**
  - Cases involving Article 14 and Article 1 of Protocol No. 12 relate to instances where environmental protection measures and regulations adversely and unfairly affect some groups of people more than others.

- **Article 1 of Protocol No. 1 (protection of property)**
  - Cases involving Article 1 of Protocol No. 1 can be split into examples of where the implementation of environmental regulations has potentially impacted on the value of private property and examples where the State's failure to protect the environment impacted on the value of private property.

Negative and Positive Obligations

The ECHR is an international treaty between States and imposes both negative and positive obligations on State parties in relation to Convention rights.

Negative obligations require States to refrain from directly violating Convention rights. This means that States must not engage in activities that, for example, violate the right to life, freedom of expression or respect for property. In practice, this means that a State might breach its negative obligations under the ECHR by running a state-owned factory that pollutes the environment and emits

harmful chemicals, thereby interfering with individuals' rights under Article 8 (by damaging their health) or Article 1 of Protocol No. 1 (by diminishing the value of their property).

Positive obligations require States to take action to create an environment in which Convention rights are enjoyed by all. These actions include instituting effective legal frameworks that guarantee human rights are respected, protected, and fulfilled. For example, by creating and maintaining an effective regulatory system, States can work to prevent environmental pollution from occurring and potentially violating individuals' rights. States might breach their positive obligations by failing to take adequate action to protect the rights of individuals. In practice, this could be by failing to put in place a judicial framework that ensures that breaches of the Convention are investigated, punished and effectively deterred[6], or by failing to set up an effective regulatory system that can prevent environmental pollution.[7] States may also breach their positive procedural obligations (as opposed to their substantive obligations described above) should they fail to investigate their own potential culpability in circumstances where a potential violation of the Convention has occurred. This means that while a private company or person cannot themselves violate the Convention, their actions may negatively impact the Convention rights of others. This can then result in a violation of the Convention being found against the State due to its failure to comply with its positive obligation to create an environment in which Convention rights can be enjoyed.

Absolute, Unqualified and Qualified Rights

An ECHR right is not always considered violated the moment it is interfered with. Indeed, many interferences can be justified and do not amount to a violation of the Convention.

An interference with some ECHR rights, such as the prohibition of inhuman or degrading treatment, can never be justified. These rights are known as absolute rights. However, if there has been an interference with any other kind of right then the Court will consider the circumstances of the interference to determine whether

[6] *Budayeva and Others v. Russia*, judgment of 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (included as a summary in this publication).

[7] *Locascia and others v. Italy*, judgment of 19 October 2023, no. 35648/10 (included as a summary in this publication).

it was justified or whether there has been a rights violation and compensation and/or satisfaction is due to the victim concerned.

An interference with certain other ECHR rights, such as the right to life and the right to liberty and security, can be justified only in specified limited circumstances. These rights are known as unqualified rights. For these rights, the Convention sets out an exhaustive list of exceptions where interference with a right could be justified and would not amount to a violation. For example, the right to life may only be infringed by a State in the three situations set out in Article 2 § 2. These are, (a) to defend someone from unlawful violence; (b) to effect a lawful arrest or prevent the escape of someone lawfully detained; and (c) in lawful action to quell a riot or insurrection.

An interference with the remaining ECHR rights, including the right to respect for private and family life and the home and the right to protection of property, requires the Court to conduct a balancing exercise, assessing various conflicting factors, before it will consider a right to be violated. These remaining rights are known as qualified rights. This balancing exercise must, amongst other things, weigh up whether the adverse effects of the interference are proportionate to the legitimate aims a State might have in causing or allowing that interference to take place. These legitimate aims could include protecting another individual's rights or acting in the wider public interest and are outlined in the Convention text of the relevant Articles. States are granted a margin of appreciation by the Court in determining whether this balance has been struck and in choosing the methods they adopt to achieve that balance. However, any interference with a right by the State must be subject to the rule of law. For example, if a piece of environmental regulation makes the use of a polluting but valuable machine illegal, the legitimate aim of protecting the environment might, in the circumstances, outweigh the infringement of the machine owner's right to peaceful enjoyment of their possessions.

Being a Victim Under the Convention

Article 35 of the Convention sets out the strict admissibility criteria for a case to be brought before the ECtHR. These criteria include that the Court will only hear applications from persons, NGOs, or groups of individuals who have exhausted all potential domestic remedies before applying to the Court. The criteria also require applicants to be victims of a violation of the Convention, i.e. they are persons with "victim status". Under Article 34 of the Convention, in environmental cases,

a victim must claim to have been "directly affected" in person by the violation in question. In situations concerning potential violations of Convention rights that may not yet have occurred, applicants must still be able to assert in an arguable and detailed manner that they are exposed to a real risk of harm in order to gain victim status. Applicants may still claim to be a victim of a breach of their rights even when the harm itself has ended. Violations and one's victim status in relation to the Convention will only cease once a State has found that a violation of the Convention has occurred and an appropriate award of redress has been made to the victim.[8] The rules around victim status fundamentally shape what cases the ECtHR hears and how it addresses alleged violations of the Convention. These procedural rules do not necessarily reflect how domestic legal systems operate, with domestic legal systems usually having much broader rules regarding who and on what grounds persons can bring environmental claims. Therefore, while this Guide explains the interaction between the ECHR and the protection of the environment, it is likely that domestic courts would consider and address a significantly wider range of environmental cases and issues than are represented in this Guide.

[8] *López Ostra v. Spain*, judgment of 9 December 1994, no. 16798/90 (included as a summary in this publication).

Environmental Protection under the ECHR

Damage to the Physical Environment

There is no explicit right in the Convention to a clean and quiet environment.[9] Nor does the Convention provide for any general protection of the environment.[10] However, damage to the physical environment, whether caused by humans or by natural forces, can amount to an interference with and violation of the ECHR. This can occur in circumstances where that damage negatively affects individuals' enjoyment of their established Convention rights. Therefore, while the purely environmental effects of pollution and industrial damage to the environment fall outside the scope of the Convention's protections, this same destruction's effect on human individuals does not. Established Convention rights, seemingly unrelated to the environment, can therefore in certain circumstances lead to the Convention providing a level of indirect environmental protection.

Natural Disasters

Although States may not directly cause natural disasters, they do possess a positive obligation under the Convention to take appropriate steps to safeguard individuals from their negative effects.

One circumstance in which natural disasters may lead to a violation of the Convention is a situation where a State has failed to take appropriate steps to shield individuals from the physical harm caused by the disaster. In such cases the right to life (Article 2) and the right to respect for private and family life (Article 8) will be relevant.

The right to life (Article 2) is an unqualified right. In situations where individuals' lives may be at stake, the Convention requires a State to act and ensure that it has

[9] *Hatton and Others v. the United Kingdom*, Grand Chamber judgment of 8 July 2003, no. 36022/97 (included as a summary in this publication).

[10] *Kyrtatos v. Greece*, judgment of 22 May 2003, no. 41666/98.

done all that it could do to prevent those lives from being avoidably put at risk.[11] Even where no death actually occurs, the protections of Article 2 may still apply where an individual has been or may be exposed to a serious, real and immediate threat to their life. The protections of Article 2 also require States to ensure there is an adequate response to natural disasters that have either caused loss of life or put life at risk. One key requirement of Article 2 when a natural disaster has taken place is for the State to institute a judicial investigation into the disaster and its effects. This investigation must be independent, impartial and official. If the investigation leads to prosecutions or civil legal claims, the conduct of these cases will also be covered by Article 2's procedural limb.

The right to respect for private and family life (Article 8) is a qualified right. This right requires States to take positive steps to prevent natural disasters from affecting individuals' private and home lives. The Court has recognised that the scope of the positive obligations placed on States by Article 8 largely overlap with those of Article 2 set out above. Therefore, the principles employed for determining whether there has been an infringement of one of these Articles may be used to determine whether there has been an infringement of the other.[12]

Whether or not a State has taken the appropriate steps to meet its positive obligations under the Convention will depend on what preventative regulations were in place and whether or not the relevant natural disaster was foreseeable. For instance, where sources of danger are relatively foreseeable State authorities will be required to assess all the potential risks and take practical measures to ensure that individuals who might be endangered by those risks are effectively protected.[13] At a basic level such measures could include early warning and evacuation systems for potential events like floods, and at a higher level could involve expensive and wide ranging flood prevention engineering.[14] Despite these obligations, and because there is no practical end to the steps States can take to guard against the potential dangers of natural disasters that are beyond human control, the Court grants States a wider margin of appreciation to determine what

[11] *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, no. 23413/94, (included as a summary in this publication).

[12] *Budayeva and Others v. Russia*, judgment of 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (included as a summary in this publication).

[13] *Kolyadenko and Others v. Russia*, judgment of 28 February 2012, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (included as a summary in this publication).

[14] *Kolyadenko and Others v. Russia*, judgment of 28 February 2012, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (included as a summary in this publication).

an appropriate response to the risk of these events would be. The Court is clear that the Convention should not require a disproportionate burden to be imposed on State authorities by their positive obligations.[15]

Another area in which natural disasters may lead to a violation of the Convention is in circumstances where States have failed to take appropriate steps to shield individuals' property from physical harm. Under the right to protection of property (Article 1 of Protocol No. 1) and the right to respect for the home (Article 8), States have a positive obligation to take appropriate steps to protect individuals' property and homes from damage caused by foreseeable natural environmental disasters. To comply with this positive obligation, States must take steps to protect individuals' property that are reasonable in the circumstances. Regarding Article 1 of Protocol No. 1, where property damage has occurred as a result of a State's failure to take these steps the Court has found that the provision of appropriate compensation to the victim would ensure there was no violation of the Convention.[16]

Pollution

Pollution is a wholly man-made source of damage to the natural environment. Sources of pollution can include industrial activities, waste management, light and noise, and agriculture. The prevention of pollution therefore engages States' negative and positive obligations under the Convention.

Where pollution has caused loss of life or amounts to a serious, real and immediate threat to life, then victims of pollution can benefit from the protections of the right to life (Article 2). As with natural disasters, States have a positive obligation to do all they can to prevent lives from being avoidably put at risk by pollution. Once loss of life has occurred, they are also required to ensure that there is an adequate response to the polluting event, including by ensuring a judicial investigation is carried out. Unlike in the case of natural disasters, it may be harder to establish a causal link between the pollution and the loss of life suffered. In such cases, State authorities will meet their obligations under the procedural limb of Article 2 if they have carefully scrutinised, in the context of the scientific knowledge

[15] *Budayeva and Others v. Russia*, judgment of 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (included as a summary in this publication).

[16] *Budayeva and Others v. Russia*, judgment of 20 March 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (included as a summary in this publication).

available at the time, sufficient evidence to determine whether pollution has caused a threat to life.[17]

In order to demonstrate that pollution has caused a violation of the right to respect for private life under Article 8, applicants must prove that the relevant pollution event prevented them from enjoying their private and family lives. In practice, such pollution could derive from industrial or non-industrial sources, and is not required to directly affect an individual's health before this threshold is reached.[18] For example, Article 8 may be engaged in relation to noise pollution if the noise pollution reaches the minimum level of severity and can be shown to have directly impacted the applicant's private life.[19] However, strong scientific evidence of how and to what extent the pollution directly and immediately affected the applicant's quality of life must be presented to the Court before a violation of Article 8 can be found.[20] Therefore, Article 8 is not automatically engaged every time environmental pollution occurs.[21]

States have an obligation to prevent pollution from interfering with individuals' quality of life where that interference violates their rights. States must therefore take positive steps to prevent pollution by private industry by putting adequate and effective regulation in place to prevent it from occurring.[22] However, in assessing the State's responsibility for preventing pollution, a fair balance still has to be struck between the competing interests of the individual suffering from the pollution and the interests of the community as a whole. In striking that balance, States enjoy a certain margin of appreciation in determining what steps are appropriate for ensuring that balance is struck and that the Convention is not violated.[23]

[17] *Smaltini v. Italy*, decision of 24 March 2015, no. 43961/09 (included as a summary in this publication).

[18] *López Ostra v. Spain*, judgment of 9 December 1994, no. 16798/90 (included as a summary in this publication).

[19] *Mileva and Others v. Bulgaria*, judgment of 25 November 2010, nos. 43449/02 and 21475/04.

[20] *Fadeyeva v. Russia*, judgment of 9 June 2005, no. 55723/00 (included as a summary in this publication).

[21] *Çiçek and Others v Turkey*, decision of 27 February 2020, no. 44837/07.

[22] *Hatton and Others v. the United Kingdom*, Grand Chamber judgment of 8 July 2003, no. 36022/97 (included as a summary in this publication).

[23] *Martínez Martínez and Pino Manzano v. Spain*, judgment of 3 July 2012, no. 61654/08.

Instances of pollution can also violate the prohibition of torture and inhuman and degrading treatment under Article 3 of the Convention. Instances of these violations can be found in cases where States have failed to protect prisoners from pollutants, environmental nuisance or a polluted prison environment. For example, the constant exposure of a prisoner to passive cigarette smoke to the extent that he developed pulmonary fibrosis was judged to reach the high severity threshold required for a situation to amount to torture or inhuman and degrading treatment. The State's failure to protect the applicant from this environmental pollution was therefore held to be a violation of Article 3.[24]

Industrial Activities

Like pollution, industrial activities that cause environmental damage are wholly man-made. The prevention of damage to the environment caused by industrial activities therefore engages States' negative and positive obligations under the Convention. However, there may also be some overlap between industrial activities and natural disasters where the industrial activity in question causes or exacerbates a natural disaster such as a flood.[25]

As set out above, where industrial activities are a danger to life, States are required by Article 2 of the Convention to take all the steps they can to prevent lives from being avoidably put at risk. In considering whether States have taken all the steps they can, the Court will consider whether the State authorities knew or ought to have known that the individual at risk was in mortal danger. Where this is the case, the State is required to put in place adequate health and safety protections to prevent that risk of danger. These could include measures such as licensing regimes and regulations governing the operation, security and supervision of the industrial activity.[26]

In certain situations, although the danger to the applicant may be lethal, it may still not pass the severity threshold of Article 2, which requires a serious, real and immediate threat to life. In such cases, the Court may then go on to assess whether

[24] *Elefteriadis v. Romania*, judgment of 25 January 2011, no. 38427/05 (included as a summary in this publication).

[25] *Kolyadenko and Others v. Russia*, judgment of 28 February 2012, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (included as a summary in this publication).

[26] *Brincat and Others v. Malta*, judgment of 24 July 2014, nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11 (included as a summary in this publication).

the applicant was placed in a situation in which their private and/or family life was affected under Article 8.[27]

To interfere with an individual's Article 8 rights, industrial activities must prevent that individual from enjoying their life in such a way that it affects their private and family life. When considering the effects of industrial activities, strong evidence is usually contained in environmental impact assessments that should have been produced and which can establish a sufficiently close link between the activity and the harm caused. These impact assessments can also establish the severity of the harm to the applicant's private and family life. Such assessments can also be used to challenge the development of industry under Article 8, even when the industrial activity in question is still in the planning stages.

No individual has a right to the peaceful enjoyment of their possessions in a pleasant environment. However, Article 1 of Protocol No. 1 can be violated by industrial activity in circumstances where those activities cause damage to the environment and that environmental damage causes the value of individuals' property to diminish. A State may have violated the Convention in these circumstances if it failed to take appropriate positive steps, such as regulating private industry, to prevent such activities from damaging property values.[28] If the relevant industrial activities were carried out by the State or by State owned entities, then the State may also have violated its negative obligations under Article 1 of Protocol No. 1 to refrain from interfering with individuals' property rights.[29]

Climate Change

Much of the case law and legal principles governing the relationship between the ECHR and the environment are well established. However, one increasingly important aspect of environmental protection, the fight against climate change, has only recently become part of the ECHR framework. The three climate change cases brought before and decided by the Grand Chamber in April 2024, and especially the Grand Chamber judgment in *Verein KlimaSeniorinnen Schweiz and*

[27] *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, no. 23413/94, (included as a summary in this publication).

[28] *Öneryildiz v. Turkey*, Grand Chamber judgment of 30 November 2004, no. 48939/99 (included as a summary in this publication).

[29] *Dimitar Yordanov v. Bulgaria*, judgment of 6 September 2018, no. 3401/09 (included as a summary in this publication).

Others v. Switzerland (the *KlimaSeniorinnen* case),[30] have introduced new principles that will set, at least initially, the approach of the Court to its interpretation of how the Convention provides protection to individuals from the effects of climate change.

The Right to Protection from the Effects of Climate Change

The Grand Chamber in the *KlimaSeniorinnen* case decided that the effects of climate change would have serious adverse impacts on the health, well-being and quality of life of individuals. Therefore, the right to respect for private and family life (Article 8) placed a positive obligation on States to protect individuals from the serious adverse effects of climate change.

It was an accepted fact before the Court that, globally, inadequate State measures to reduce carbon emissions and mitigate climate change exacerbated its serious adverse effects. Therefore, to comply with their positive obligations under Article 8, the Court held that States were required to adopt and implement regulations and measures that would effectively mitigate the effects of climate change.

The Court did recognise that States have a margin of appreciation in choosing how to comply with Article 8. However, the Court held that, at a minimum, States had to put in place a domestic regulatory framework that was rational, science based, and incorporated relevant targets and timelines for mitigation measures to be implemented. The Court also required that this framework include procedural safeguards. In particular, it required States to share information with the public on how and on what basis mitigation measures would be implemented, and for the public to be able to effectively engage and provide their views on climate change related decision making. In the *KlimaSeniorinnen* case the Court held that Switzerland had violated Article 8 by failing to adequately implement the relevant domestic regulatory framework or to meet its past emission reduction targets.

Climate Litigation and Victim Status

Given the universal impact of climate change on individuals across the Earth, it was established in the *KlimaSeniorinnen* judgment that in order to assert victim status under Article 34 of the Convention, an individual had to be personally and

[30] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Grand Chamber judgment of 9 April 2024, no. 53600/20 (included as a summary in this publication).

directly affected by their government's action or inaction in relation to climate change. This was to be judged on whether the individual suffered from a high intensity of exposure to the adverse effects of climate change and therefore if the State had a corresponding pressing need to ensure their protection. No individual in the three climate change cases were found to have achieved victim status alone. However, the organisation *Verein KlimaSeniorinnen Schweiz* was found to effectively represent a group of individuals, older women who complained of health problems affecting their private lives, exacerbated during heatwaves, who collectively did satisfy the requirements for victim status. Therefore, their claim was found to be admissible.

Environmental Regulations and Protections

States possess the legal power and authority to control the destruction of nature in the public interest. They do so by establishing and instituting measures such as constitutional rights to the protection and enjoyment of nature, national parks, environmental planning regulations and restrictions on industrial pollution. Reflecting changes in jurisprudence and public opinion, the Court in turn has recognised that the protection of the environment by the State is a matter of increasing importance to society. However, the implementation of environmental regulations and interactions between the State and environmentalists can often interfere with Convention rights.

The Right to Peaceful Enjoyment of Possessions

Environmental regulations by their nature restrict the freedom of individuals to use and dispose of their property. They therefore have the potential to interfere with the protection provided by Article 1 of Protocol No. 1. As a qualified right, where such interferences of Article 1 of Protocol No. 1 occur, the State must strike a balance to determine whether they amount to a violation.

The Court has determined that States enjoy a broad margin of appreciation when striking a balance between an interference with the right to protection of property and the legitimate aim of protecting the environment.[31] The Court has recognised that environmental conservation is "extremely important" and that the protection of public health and the environment, as well as the prevention of

[31] *S.C. Fiercolect Impex S.R.L. v. Romania*, judgment of 13 December 2016, no. 26429/07 (included as a summary in this publication).

natural hazards and the provisions of relief to people affected by natural hazards is in the general/public interest.[32] Further, the Court has established that public authorities have a responsibility towards the environment that in practice requires them to intervene in order to ensure statutory regulations and protections for the environment are not ineffective.[33]

This means that the Court will not consider an interference with property rights in the name of environmental protection to be a violation of the Convention in circumstances where the interference was (a) judged to be in the general/public interest and (b) that judgement had a reasonable foundation in fact and law and struck a fair balance between the rights of the individual and the requirements of the general/public interest.[34]

Environmental regulations that interfere with individuals' property rights may not be justified where they involve expropriation of property without compensation. Violations of the Convention may also occur in circumstances where a State uses environmental grounds to justify its interference with the enjoyment of property but then subsequently fails to implement any environmental protections that required that interference to take place.[35]

Prohibition of Discrimination

Environmental regulations may impact certain groups of people more than others. The results of such regulations could therefore amount to an interference with the prohibition of discrimination (Article 14 and Article 1 of Protocol No. 12). Article 14, as it guarantees that ECHR rights should be enjoyed without discrimination, is always considered in conjunction with other rights under the Convention. In environmental cases this is commonly Article 1 of Protocol No. 1. Examples of where discrimination, and a violation of Article 14, has been found to exist in relation to Article 1 of Protocol No. 1 include situations where large landowners are made subject to different restrictions on their use of land than smaller landholders, and where compliance with environmental regulations

[32] *Tarim v. Turkey*, decision of 9 March 2010, no. 54948/07.

[33] *S.C. Fiercolect Impex S.R.L. v. Romania*, judgment of 13 December 2016, no. 26429/07, § 65 (included as a summary in this publication).

[34] *Sakskoburggotski and Chrobok v. Bulgaria*, judgment of 7 September 2021, nos. 38948/10 and 8954/17.

[35] *Z.A.N.T.E. – Marathonisi A.E. v. Greece*, judgment of 6 December 2007, no. 14216/03.

would be more costly for certain groups of people than others.[36] Environmental regulations could also conceivably discriminate in their impact on peoples due to their lifestyles and/or traditions, such as in cases where environmental laws governing the use of land have adversely affected persons with nomadic lifestyles.[37]

Article 1 of Protocol No. 12 created a freestanding prohibition of discrimination, as it guarantees that any right guaranteed in law, not just those in the ECHR, shall be enjoyed without discrimination. It has only been ratified by 20 Council of Europe States[38], however these States need to ensure that that the enjoyment of any environmental rights enshrined in national law should be enjoyed without discrimination. Although there is not yet a significant body of jurisprudence from the Court with regard to Article 1 of Protocol No. 12, the Court has made it clear that it will apply the notion of discrimination in the same manner as for Article 14.

Society, the Environment and the Courts

Convention rights have long protected the acts of individuals engaging in civil society. For example, the Court has an established body of jurisprudence relating to the right to protest, freedom of information and the right to a fair trial. The Court has also recognised the particular importance of civil society with regard to the protection of the environment. It has further recognised that the protection of the environment is a matter of general societal concern.[39] Consequently, the Court has developed a distinctive interpretation and body of jurisprudence regarding cases relating to environmental activism, reporting on environmental issues and environmental litigation.

[36] *Chassagnou and Others v. France*, Grand Chamber judgment of 29 April 1999, nos. 25088/94, 28331/95 and 28443/95, and *Chabauty v. France*, Grand Chamber judgment of 4 October 2012, no. 57412/08.

[37] *Chapman v. the United Kingdom*, judgment of 18 January 2001, no. 27238/95.

[38] Full list - Treaty Office (coe.int)

[39] *Bumbes v. Romania*, judgment of 3 May 2022, no. 18079/15 (included as a summary in this publication).

Environmental Activism

The ECHR's protections of environmental activism and environmental activist groups mainly derive from the right to freedom of expression (Article 10) and the right to freedom of assembly and association (Article 11). These are both qualified rights and therefore States may in certain circumstances interfere with their enjoyment in order to pursue other legitimate aims, including the prevention of disruption and the need to uphold the law in the public/general interest.

Environmental Demonstrations

Environmental campaigns and demonstrations are regarded by the Court to be the expression of an opinion. They are therefore protected by the right to freedom of expression (Article 10). Environmental demonstrations are also protected by the right to freedom of assembly and association (Article 11). While all forms of expression and assembly are protected by Articles 10 and 11, the Court has established in its jurisprudence that some forms and subjects of speech and action are afforded a heightened level of protection because of their importance to society. Where this higher level of protection exists, States have a lower margin of appreciation in assessing whether it was justified to interfere with an individual's rights. As the protection of nature and the environment, health and respect for animals are considered to be issues of general concern, environmental campaigns and demonstrations enjoy this higher level of protection under Articles 10 and 11. Expressions of political or activist views, including those of environmental activism, also benefit from this higher level of protection under Article 10.[40]

Individuals engaged in environmental demonstrations still benefit from this increased level of protection in circumstances where a demonstration involves physically preventing certain activities from being carried out. However, if the demonstration and/or environmentalist expression amounts to coercion then this higher level of protection is lost. Examples of coercive demonstrations include those where the demonstrating individuals force other individuals to abandon a lawful activity.[41] Where the higher level of protection is lost, States have a broad margin of appreciation in assessing whether it was necessary to interfere with an individual's Article 10 and/or 11 rights. This broad margin of appreciation also applies in circumstances where demonstrations and/or environmentalist expression cause

[40] *Bumbes v. Romania*, judgment of 3 May 2022, no. 18079/15 (included as a summary in this publication).

[41] *Drieman and Others v. Norway*, decision of 4 May 2000, no. 33678/96.

property damage. In these circumstances the State must weigh up its interference with Article 10 and/or 11 against its legitimate aim of preventing an interference with the right to protection of property under Article 1 of Protocol No. 1.

Environmental Organisations

The right to freedom of association under Article 11 also applies to membership of environmentalist organisations. The Court has recognised the importance of Article 11 by finding that there is a direct link between democracy, pluralism and the protection of the right to freedom of association. In order to enjoy the right to freedom of association individuals must have the ability to establish a legal entity in order to act in a collective manner. A State's refusal to grant legal entity status to an environmentalist group, or its requirement of unjustified conditions for its agreement to grant legal entity status, would therefore amount to an interference with the Convention.[42] Once an organisation has been founded, unreasonable restrictions on its functioning and/or financing would also amount to an interference with Article 11.[43] Interferences with Article 11 could also arise in situations where a State has unjustifiably dissolved an environmentalist group. The right to freedom of association also ensures that individuals are not made to join, or include other people in, particular groups or associations.[44] States also have positive obligations in relation to Article 11. States must guarantee the proper functioning of associations, even where their actions annoy or offend others. This means that States must act to ensure that such associations can hold meetings without fear of violence or intimidation and that members of associations are not discriminated against on the grounds of their membership.[45]

Providing and Accessing Information on the Environment

Article 10, the right to freedom of expression, protects the freedom to both provide and receive information and ideas. As explained previously in this Guide, in certain circumstances Article 10 extends a heightened level of protection to some forms of expression because of their importance to society. Where this

[42] *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, no. 26695/95.

[43] *Yordanovi v. Bulgaria*, judgment of 3 Sept 2020, no. 11157/11.

[44] *Ecodefence and Others v. Russia*, judgment of 14 June 2022, nos. 998/13 and others.

[45] *Zhdanov and Others v. Russia*, judgment of 16 July 2019, nos. 12200/08, 35949/11 and 58282/12.

heightened level of protection exists States have a lower margin of appreciation when assessing whether it was justified to interfere with a person's ability to provide and receive information.

A heightened level of protection under Article 10 is extended to journalists and media professionals where their work involves providing information of public interest. The Court has explained that a key reason why this work receives a heightened level of protection is because it involves journalists and media professionals scrutinising the State and publicising information on its activities and behaviour, including in relation to the environment. The Court has described this as fulfilling the role of a "public watchdog". When dedicated to public-interest issues, such as the protection of the environment, NGOs are recognised by the Court as also taking on this watchdog role. This means both the news-media and environmental NGOs enjoy a similarly high level of protection under Article 10. States therefore have a lower margin of appreciation when assessing whether it was justified to interfere with their ability to provide and receive information relating to environmental issues.[46]

With regard to the right to receive information, Article 10 does not generally grant individuals a right to access information held by a public authority. In an environmental context, such information could include scientific survey and testing data and the results of environmental impact assessments. However, a denial of access to information would interfere with Article 10 if the disclosure of that information had been ordered by a judicial body, and/or access to that information was deemed instrumental to an individual's ability to enjoy their Article 10 rights. The considerations the Court has taken into account when determining whether a denial of access to information would amount to an interference with Article 10 are (1) the aim of the request for information; (2) the nature of the information sought; (3) the applicant's role; and (4) the availability of the information requested.[47] Examples of circumstances where a denial of access to environmental information was considered a violation of Article 10 include where the application was for environmental information regarding a public-interest subject, the applicant was a member and representative of an NGO acting in a "public watchdog" capacity,

[46] *Steel and Morris v. the United Kingdom*, judgment of 15 February 2005, no. 68416/01 (included as a summary in this publication).

[47] *Magyar Helsinki Bizottság v. Hungary*, Grand Chamber judgment of 8 November 2016, no. 18030/11.

and the information was not secret.[48] Article 10 also requires that information provided by the State or a public authority is honest, accurate and adequate.[49]

In certain circumstances a failure by a public authority to provide environmental information to the public may also interfere with individuals' Article 8 rights. These circumstances include when a State decides to act in a way that interferes with Article 8 but fails to provide relevant information to the public regarding its decision-making process. As Article 8 is a qualified right, States can interfere with individuals' Article 8 rights as long as the interference is justified. One aspect of determining whether such an interference is justified is whether the decision to interfere with the Convention was made in a fair way that took into account the Article 8 rights of the people who were to be affected. The Convention requires this decision-making process to involve appropriate investigations and studies into how individuals will be affected and for the State to then make the results of these studies available to the public. These results must allow the public to accurately understand and assess the danger to which the State's actions are exposing them. This would then provide affected individuals with the opportunity to appeal the State's decision, providing an important procedural safeguard and ensuring that individuals are given the opportunity to ensure their interests and views have been given sufficient weight in the decision-making process.[50] In situations where this interference is caused by environmental damage, the Convention effectively requires States to conduct an environmental impact assessment and/or feasibility study and to then make the results of this assessment/study available to the public. Such information is required to be accurate and relevant to the affected people so that they are able to take properly informed decisions regarding the protection of their health and wellbeing.[51]

[48] *Cangı v. Turkey*, judgment of 29 January 2019, no. 24973/15, and *Association Burestop 55 and Others v. France*, judgment of 1 July 2021, nos. 56176/18 and others.

[49] *Association Burestop 55 and Others v. France*, judgment of 1 July 2021, nos. 56176/18 and others.

[50] *Tatar v. Romania*, judgment of 27 January 2009, no. 67021/01 (included as a summary in this publication).

[51] *Grimkovskaya v. Ukraine*, judgment of 21 July 2011, no. 38182/03 (included as a summary in this publication).

Challenging Environmental Damage and Climate Change in the Courts

Environmental litigation is a developing area of global jurisprudence. The provisions of the ECHR that are the most relevant concerning such litigation and effectively challenging environmental damage are the right to a fair trial (Article 6) and the right to an effective remedy (Article 13).

In order to benefit from the protections of the right to a fair trial, an individual must demonstrate to the Court that they are involved in domestic judicial proceedings which involve a genuine, serious and decisive dispute over whether a civil right that could benefit that individual exists and/or the scope and manner in which that right could be exercised. The Court has confirmed that Article 6 can also apply to NGOs and environmental associations, as long as their claims could equally have been brought by an affected individual on whose behalf the NGO or association is acting.[52] As civil society actors, NGOs and environmental associations can also have individual legal personalities, such as under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

These procedural hurdles mean that the applicability of Article 6 to environmental litigation depends on what domestic civil rights relating to the environment exist in the domestic law of each Convention Party. Some countries, including 19 EU nations[53], guarantee a full constitutional right to a healthy environment, while others only guarantee aspects of such a right.

The absence of a direct civil right relating to the environment does not mean that Article 6 will not apply to cases involving the environment. For instance civil rights concerning the protection of life, of physical integrity or the protection of property may all be interfered with by environmental damage. In one ECtHR case, Article 6 was used by an applicant to confirm a civil right to use a well on their property which had been polluted by a nearby waste treatment plant.[54] Article 6 will also provide procedural protections for parties engaged in environmental

[52] *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France*, decision of 28 March 2006, no. 75218/01.

[53] European Parliamentary Research Service research paper "A universal right to a healthy environment", December 2021

[54] *Zander v. Sweden*, judgment of 25 November 1993, no. 14282/88 (included as a summary in this publication).

litigation. The right to a fair trial protects the principle of equality of arms, including an applicant's right to access legal representation.[55] It also ensures that applicants are able to achieve a judicial result within a reasonable time frame.

Climate litigation is also protected by the civil limb of the right to a fair trial (Article 6). In the *Klimaseniorinnen* case the Court found that national courts had to take compelling scientific evidence concerning climate change seriously and consequently had to provide convincing reasons for their rejection of climate change related cases if they were not to be examined on their merits. Indeed, the Court emphasised the important role of domestic courts in the developing field of climate change litigation and their role in ensuring the effective implementation of mitigation measures that were required under existing Swiss law.

Complementing Article 6, Article 13 provides for the right to an effective remedy. This ensures that individuals are able to access domestic courts and achieve a decision from the courts that will end and/or provide compensation for violations of their rights. Therefore, where States do not allow individuals to bring environmental claims or do not allow for just court outcomes that stop violations of the Convention, a violation of Article 13 may be found.[56] However, the Court is clear that a failure by a domestic court to find in favour of an environmental litigant does not mean no remedy was available through the courts.[57]

[55] *Steel and Morris v. the United Kingdom*, judgment of 15 February 2005, no. 68416/01 (included as a summary in this publication).

[56] *Hatton and Others v. the United Kingdom*, Grand Chamber judgment of 8 July 2003, no. 36022/97 (included as a summary in this publication).

[57] *Kolyadenko and Others v. Russia*, judgment of 28 February 2012, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05 (included as a summary in this publication).

Conclusion

Despite the absence of an express right to a healthy environment in the ECHR, this Guide has demonstrated how the Convention still touches on a wide range of environmental issues. Key to the Convention's interaction with the environment is the Court's recognition that the welfare of individuals and the protection of their rights cannot be separated from the environment in which they live. States must therefore not only refrain from violating individuals' rights by damaging the environment, but also work to ensure that the environment enables individuals to enjoy their rights.

The Court has recognised that the protection of the environment and the public's engagement with environmental issues are of significant and growing importance. This is demonstrated by, amongst other things, the higher levels of protection afforded to environmental protest under Article 10. However, the Court will not necessarily place the protection of the environment above other important issues, recognising that a balancing exercise should be carried out with regard to the effects of environmental regulations and activism to ensure other Convention rights and legitimate aims are not unfairly and adversely affected.

The approach taken by the Court to interferences with Convention rights in environmental cases is in most situations not significantly different to its approach in non-environmental cases. However, the proliferation of new domestic regulations and laws concerning climate change and the protection of the environment demonstrate that this is not a settled area, either from the perspective of society or law. It is also clear from the *KlimaSeniorinnen* judgment that the Court is willing to think deeply about environmental issues and develop evolving approaches to ensuring human rights are protected in the face of new and developing environmental threats.

Selected Case Summaries from the European Court of Human Rights

In light of the seriousness of the impact of prolonged exposure to asbestos on the health of workers, the Court considered that the Maltese Government had failed in their positive obligations, resulting in violations of Article 2 and Article 8

JUDGMENT IN THE CASE OF BRINCAT AND OTHERS v. MALTA

(Application nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11)
24 July 2014

1. Principal facts

The 21 applicants in total were born from 1931 – 1981 and lived in various locations in central and north-east Malta. From the 1950s/60s to early 2000, predominately, the applicants were those who had been employed at the state-owned Malta Drydocks Corporation (MDC), and the applicants in application no. 62338/11 were the immediate family members of Mr Attard who worked at the Malta Drydocks during the same period.

Asbestos was used extensively at MDC for insulation on ships and in storerooms. Repairs often involved handling asbestos, releasing particles into the air, contaminating workers' clothing, and potentially affecting their families. Despite becoming a member of the International Labour Organisation (ILO) and World Health Organisation (WHO) in the 1960s, MDC employees were not informed or protected against asbestos dangers. The Maltese government contested the timing of international awareness, pointing to later dates for ILO and WHO asbestos warnings. The first significant awareness of asbestos dangers at MDC came from a 1989 lawsuit regarding a worker's death from asbestosis in 1979, resulting in a 1990 compensation award. Post-verdict, only minimal actions were taken such as assurances given about ventilation and fabric masks.

Mr. Attard died in 2006 from mesothelioma linked to asbestos exposure. His colleagues underwent medical tests showing conditions like pleural plaques and

potential asbestos in the digestive system, associated with long-term exposure. Most applicants were non-smokers, which excluded smoking as a cause of their respiratory issues. One applicant was suffering from severe respiratory problems, confined to bed and dependent on oxygen. Another applicant, unlike others, showed no signs of asbestos-related disease in his medical results.

In May 2009, the applicants (excluding Mr Attard's family members) filed constitutional redress proceedings, alleging violations of Articles 2, 3, and 8 of the Convention through the State's failure to protect them from health risks, constituting inhuman treatment and interference with private and family life. In November 2010, the Civil Court in its constitutional jurisdiction decided against exercising its powers, dismissing the applications based on non-exhaustion of ordinary domestic remedies. The court indicated the applicants should have pursued a civil action for damages from tort or contractual liability.

In April 2011, the Constitutional Court upheld the first-instance decisions. The court also noted that constitutional redress should only be sought if civil proceedings did not adequately address the rights breaches, and it found that the ordinary remedy would have been effective. Furthermore, it observed that the applicants had not specifically claimed non-pecuniary or moral damage in their constitutional applications, having only requested compensation for pecuniary damage.

In April 2010, the family members of Mr Attard filed proceedings alleging violations of Articles 2, 3, and 8 of the Convention. The Civil Court chose not to exercise its constitutional powers, dismissing the claims due to non-exhaustion of ordinary remedies. The court noted that not pursuing ordinary remedies is not enough reason to decline its powers if those remedies could not fully address the issue. However, it emphasised prudence in exercising such powers, particularly when fundamental human rights are seriously or likely violated. Despite this, the court found the applicants primarily sought monetary compensation, which could be pursued through ordinary civil remedies. The Constitutional Court upheld the initial decision.

2. Decision of the Court

The applicants complained that the Government as an employer had not protected their rights under Articles 2, 3, 8, and 13 of the Convention.

Admissibility – exhaustion of domestic remedies

The Court first addressed admissibility concerns on the exhaustion of domestic remedies, designed to allow States to address issues domestically as per Article 35. It clarified that remedies must address specific alleged breaches, be available and sufficient, and offer a genuine prospect of redress, with the government proving an effective remedy was available and accessible, after which the applicant must show it was inadequate or that special circumstances justified not using it.

The rule of exhaustion must be applied flexibly considering the broader context and acknowledging that remedies must function effectively in practice, not just exist formally. Under Articles 2 and 3, compensation for non-pecuniary damages should generally be available if these articles are breached. This principle extends to failures by authorities to protect individuals from third-party acts. Similarly, for breaches of Article 8, compensation for both pecuniary and non-pecuniary damages should ideally be part of the remedial range under Article 13, reflecting the fundamental importance of securing effective redress for violations of human rights.

The Court considered that the Constitutional Court used its discretion to decline jurisdiction, expecting applicants to first seek ordinary civil remedies even though no legal requirement mandated this sequence. Faced with the choice between pursuing partial redress through civil action or comprehensive redress through constitutional proceedings, the applicants chose the latter, which the Court found justifiable given the circumstances and inefficiencies in pursuing tort actions. The Court hence concluded that the constitutional proceedings sufficiently exhausted domestic remedies for the substantive complaints under Articles 2, 3, and 8.

Article 2 and Article 8

The Court reiterated that the State had a positive duty to take reasonable and appropriate measures to secure applicants' rights under Articles 2 and 8 of the Convention in a state-owned place of work. Article 2 has been applied in cases of serious risk or actual deaths, including those involving serious illnesses. Mr. Attard's death, linked to asbestos exposure at the shipyard, meant Article 2 was applicable to the case. Other applicants, with respiratory issues but no malignant mesothelioma diagnosis, did not fall under Article 2, making their complaints inadmissible under this Article. The Court noted that positive obligations under Article 2 and Article 8 largely overlap in the context of dangerous activities, allowing examination of remaining applicants' complaints under Article 8.

Included in positive obligations, the Court explained, is ensuring the public's right to information and duty to provide procedures to identify and address procedural shortcomings and errors. The Court found that the Maltese Government had known or ought to have known of the dangers arising from exposure to asbestos at least from the early 1970s, given the domestic context as well as scientific and medical opinion accessible to the Government at the time. Legislation passed in 1987 had not adequately regulated asbestos related activity or provide any practical measures to protect employees whose lives may have been endangered. The Government's only practical measure was distributing masks that were inadequate. Additionally, the Government failed to provide essential information or studies about asbestos risks at the applicants' workplace, and information from the Occupational Health and Safety Authority (OHSA) that was only made available after 2000, by which time the applicants had left employment. The applicants had been left without any adequate safeguards against the dangers of asbestos, either in the form of protection or information about risks.

Regarding the procedural complaint under Article 2, the Court reiterated that this could only be examined in the context of the death of Mr Attard. In the Court's view, where there are incidents from dangerous activities under Article 2, authorities must act with diligence and promptness, initiating investigations to ascertain circumstances and identify responsible officials (unlike medical negligence cases where civil remedy may suffice). Referring to previous case law, the Court emphasised the need for official investigations in homicides due to State officials often holding key knowledge about the deaths. Such considerations apply to dangerous activities causing loss of life under public authority responsibility. Generally, a complaint is lodged to initiate investigations, but this is not mandatory if authorities are better positioned to know the cause. The Court considered that Mr. Attard's death was not caused by a single event but by circumstances spread over decades, the dangers of which had already become public knowledge by the time of his death in 2006 and therefore the knowledge was not confined to State officials' knowledge and no ex officio investigation was required. The applicants could have lodged a complaint requesting the Government to investigate but did not. Therefore, this part of the complaint was rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4.

The Court concluded that, in view of the seriousness of the threat posed by asbestos, and despite the State's margin of appreciation as to the choice of means, the Government had failed to satisfy their positive obligations, to legislate or take other practical measures under Articles 2 and 8, thereby violating Article 8 and Article 2 substantively, but not procedurally.

Article 3

Upon reviewing the medical reports of the applicants, the Court found that while their living conditions caused discomfort and difficulties, these conditions did not rise to the level of degrading treatment as per Article 3. The Court deemed the complaint manifestly ill-founded and rejected it in accordance with Article 35 §§ 3(a) and 4 of the Convention.

Regarding the relatives of Mr. Attard, the Court noted that even if Mr. Attard's suffering met the threshold under Article 3, this complaint could not be transferred to his heirs based on the strictly personal nature of Article 3. The Court highlighted that there was neither a general nor a strong moral interest that would allow for such a transfer, and the complaint was found to be incompatible *ratione personae* with the provisions of the Convention and rejected under Article 35 § 4.

Article 13

The applicants alleged that the Constitutional Court's judgment deprived them of an effective remedy under Article 13 in conjunction with Articles 2, 3, and 8 of the Convention.

The Court noted from prior Maltese cases that although domestic law allowed for a remedy against a final judgment of the Constitutional Court, the lengthy proceedings reduced the effectiveness of this remedy. Therefore, the applicants were justified in bringing their complaint to the Court without pursuing another constitutional remedy.

For the complaints under Articles 2 and 8, the Court identified that effective remedies were available. The fact that these remedies did not favour the applicants or were not used did not render them ineffective. The Court concluded that the complaint under Article 13 was manifestly ill-founded according to Article 35 § 4 of the Convention.

Article 41

The Court awarded jointly to the family members of Mr. Attard €30,000 in respect of non-pecuniary damage, to another applicant €12,000 in respect of non-pecuniary damage, to another applicant €1,000 in respect of non-pecuniary damage, to another applicant €9,000 in respect of non-pecuniary damage, and €6,000 jointly to all the applicants for costs and expenses.

The State has positive obligations under Article 2 to take preventative measures to protect life in cases of environmental disaster and to conduct effective investigations, however the obligations are lesser in safeguarding the right to property under Article 1 Protocol 1

JUDGMENT IN THE CASE OF BUDAYEVA AND OTHERS v. RUSSIA

(Application nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02)
20 March 2008

1. Principal facts

The six applicants were born between 1953 and 1961. The applicants lived in the town of Tyrnauz, situated in the mountain district in the Republic of Kabardino-Balkariya (Russia).

Mudslides have been recorded in the area almost every year since 1937, and in 1999 there was serious damage caused to a mud dam. Recommendations were made following this serious mudslide to improve protective infrastructure and take other protection measures, however, none of the recommended measures were implemented.

On 18 July 2000 a flow of mud and debris hit the town of Tyrnauz and flooded part of the residential area. According to the applicants there was no advance warning, forcing residents to narrowly escape. One applicant and her daughter were injured and suffered severe friction burns. Following the first mudslide, the authorities claimed that they had ordered an emergency evacuation of Tyrnauz. Police and local officials called at people's homes, and police vehicles equipped with loudspeakers drove round the town, urging residents to evacuate.

Despite alarms raised via loudspeakers, no rescue forces or emergency relief were present. On 19 July 2000, as the mud level fell, residents, including one applicant and her family, returned home due to the absence of barriers or emergency officers and were unaware of any evacuation order. Later that day, a second, more powerful mudslide struck, causing severe injuries to an applicant's son and the death of her husband when their block of flats collapsed. The town experienced successive mudslides until 25 July 2000, resulting in eight officially reported deaths and 19 missing. The applicants reported the destruction of their homes and possessions, and a deterioration in their living conditions and health since the disaster.

According to the Government, the mudslides' exceptional force could not have been predicted or stopped and all necessary measures were taken to rescue victims, to resettle residents and to bring in emergency supplies.

On 3 August 2000 the Prosecutor's Office of the Elbrus District decided not to launch a criminal investigation into the disaster or into the death of the husband of one of the applicants, as it was considered accidental.

Following a decision by the Government of the Republic of Kabardino-Balkariya on 12 August 2000, all the applicants were granted free replacement housing and an emergency allowance in the form of a lump-sum (₽13,200 RUB: equivalent at that time to €530).

The applicants subsequently brought civil proceedings for compensation. Their claims were rejected on the grounds that the authorities had taken all reasonable measures to mitigate the risk of a mudslide. The applicants challenged this and accused the authorities of three major shortcomings in the functioning of the system for protection against natural hazards in Tyrnauz: failure to maintain mud-protection facilities, lack of public warning, and no enquiry into the effectiveness of the authorities' actions before and during the mudslide. They submitted newspaper articles; witness statements; and, official letters and documents which proved that no funds had been allocated in the district budget for the repair work required after the 1999 mudslide and that the authorities received a number of warnings about the imminent disaster from the Mountain Institute, a state agency responsible for monitoring weather hazards in high-altitude areas. The Institute had recommended repairing the damaged dam and setting up observation posts to ensure the functioning of the warning system in the event of a mudslide.

2. Decision of the Court

The applicants complained that the Russian authorities had violated their rights under Articles 2, 8, and 13 of the Convention and Article 1 of Protocol No. 1.

Article 2

The Court confirmed the positive obligations of States to take appropriate steps to safeguard the lives of those within their jurisdiction, such as establishing a legislative and administrative framework to provide effective deterrence against threats to the right to life. The Court noted that in 1999 the authorities had received

a number of warnings about the risks of a large-scale mudslide. The authorities should have taken essential practical measures to ensure the safety of the local population, including warning the public and arranging for emergency evacuation.

However, the applicants consistently maintained and the Government confirmed that residents had not received any warning until the mudslide had actually arrived in the town on 18 July 2000. Moreover, despite persistent requests by the Mountain Institute, temporary observation posts in the mountains had not been set up, such that the authorities had no means to estimate the time, force or duration of the mudslide. Finally, no alternative safety measures were implemented before the disaster and budget allocations for reconstruction were made only after the disaster, supporting the argument that measures could have been taken earlier. Their submissions exclusively referred to the mud-retention dam and collector, which had not been adequately maintained.

The Court held that the authorities' omissions in implementing land-planning and emergency relief policies led to deaths and injuries, violating Article 2 in its substantive aspect.

In dangerous activities, the Court explained that an official criminal investigation is essential because public authorities often have the most knowledge to understand what caused an incident. If authorities knew the risks but did not take necessary measures to prevent them, not prosecuting those responsible can violate Article 2, even if other remedies are available, even involving a natural disaster. If lives are lost due to the State's failure to take preventive action, Article 2 requires an independent and impartial investigation that meets minimum effectiveness standards and can apply criminal penalties if justified by the findings. Authorities must act quickly and diligently to investigate the incident's circumstances and any regulatory system shortcomings and identify any involved State officials.

The prosecutor's office did not conduct a thorough investigation into the circumstances of the death of the husband of one of the applicants and did not address safety compliance or the authorities' responsibility. The applicants' claims for damages had been dismissed by the domestic courts for failing to demonstrate to what extent the State's negligence had caused damage exceeding what had been inevitable in a natural disaster, which required complex expert investigation beyond their reach. The domestic courts did not fully utilise their powers to establish the facts or seek expert opinions, making the proceedings inadequate for addressing the deaths.

The Court held that no comprehensive investigation or examination of State responsibility for the accident was conducted, resulting in a violation of Article 2 in its procedural aspect.

Article 1 of Protocol No. 1

The Court found that in dangerous activities, State negligence that leads to loss of life and property requires the State to protect proprietary interests. However, natural disasters, being beyond human control, do not call for the same level of State involvement. Positive obligations for property protection from weather hazards are less extensive than for man-made activities. The obligation to protect the right to peaceful enjoyment of possessions is not absolute and allows a wider margin of appreciation for the State in deciding protective measures. The Court found that while maintaining mud-defence infrastructure and setting up a warning system were vital for protecting lives, the causal link between State inaction and material damage was unclear.

There was no evidence that a warning system could have prevented property damage. The lack of an independent enquiry and judicial response does not have the same significance for destroyed property as for loss of life. The applicants received free substitute housing, emergency allowances, and the authorities repaired public facilities. Moreover, the obligation of the State to protect private property could not be seen as synonymous with an obligation to compensate the full market value of a destroyed property.

On that basis, the Court concluded that the housing compensation and compensation for house belongings to which the applicants had been entitled had not been manifestly out of proportion to their lost homes. There had therefore been no violation of Article 1 of Protocol No. 1.

Article 13

The Court found that no separate issues arose under Article 13.

Article 8

The Court considered that it was unnecessary to examine separately the complaint under Article 8.

Article 41

The Court awarded in respect of non-pecuniary damage €30,000 to the applicant whose husband was killed and son seriously injured, €15,000 to the applicant who was injured as well as her daughter and €10,000 to each of the other applicants.

Sanction, in form of a fine, after applicant's environmental protest in front of the government building violated his rights under Article 10 interpreted in the light of Article 11 of the Convention

JUDGMENT IN THE CASE OF BUMBES v. ROMANIA

(Application no. 18079/15)
3 May 2022

1. Principal facts

The applicant was born in 1981 and lived in Curtea de Argeș. He was a founding member and president of the Spiritual Militia Civic Movement Association, and known for his involvement in the campaign called 'Save Roșia Montană', which was a protest movement against proposed silver and golden mining using cyanide in the Roșia Montană region in north – western Romania.

On 27 August 2013, the applicant and three other persons decided to protest by handcuffing themselves to one of the entrance barriers to the government building while holding up signs. In addition, a video recording of the event was made and posted on YouTube. The protesters refused to leave when asked to do so by a police officer. Eventually, the police managed to cut the rails to which they were attached and placed the protesters in a police car. During interviews in the recording posted on YouTube, the protestors made it clear that they intended to raise awareness and to do something concrete around the mining issue, given that the earlier petitions have been ignored.

At the police station, the applicant was fined €113 for breaching certain norms of social coexistence, public order and peace. The applicant challenged the report and the fine in the domestic courts. He argued that he should have been punished under Law no. 60/1991 on the organisation and conduct of public gatherings, and not under Law no. 61/1991, as expressing opinions freely could not be an antisocial act.

However, the Bucharest District Court held that the sanction was lawful as the form of protest chosen by the applicant had breached Law no. 60/1991, and it has also been in accordance with Article 11 of the Convention. A further appeal was dismissed on the basis that the two domestic laws were complimentary and not mutually exclusive.

Parliament later voted down the bill to allow mining in Roșia Montană following widespread protests.

2. Decision of the Court

The applicant complained that the final judgment of 10 June 2015 of the Bucharest County Court, upholding the sanction imposed on him, had violated his rights to freedom of expression and peaceful assembly provided for by Articles 10 and 11 of the Convention.

Article 10 and Article 11

The Government argued that the case should only be examined from the angle of Article 11 of the Convention, which was *lex specialis* in relation to Article 10. The applicant had been punished because he had committed acts affecting the public order owing to the manner in which he had chosen to protest, in particular by handcuffing himself to the barrier and as Article 11 conferred only a right to peaceful assembly, it was not applicable in the present case.

The Court noted that in making his complaints under Articles 10 and 11 of the Convention, the applicant has presented his own version of the events as well as written and video evidence to support it. It was clear that both the event itself and the signs that were held up were designed and aimed to send a message directed both at the government in power and at the public at large. In these circumstances the Court could not accept that the penalty imposed on the applicant could be dissociated from the views expressed by him. The applicant's conduct, although involving handcuffing himself to a barrier and some damage being done to the rails of that barrier, did not amount to violence or incite it, and no one was injured during the event. The facts of the applicant's case therefore fell within the scope of Articles 10 and 11 of the Convention, and the Court rejected the Government's objection concerning the applicability of these Articles.

The Court reiterated that freedom of expression contained in Article 10 constituted one of the essential foundations of a democratic society, which included not only the ideas expressed, but also how they are expressed. Article 11, however, only protected the right to peaceful protest. It stated that freedom of expression and freedom of peaceful assembly were closely linked in this case. The fine had constituted an interference with the applicant's right to freedom of expression, as it had not just concerned his conduct, but his attempt to spread a message.

Reiterating that its power to review compliance with domestic law was limited, the Court held it would examine only whether the effects of domestic court's decision were in accordance with the Convention. The applicant contested the legal qualification of the incident, stating that it should have come under Law no. 60/1991 rather Law no. 61/1991, and that therefore the resulting fine had been unlawful. However, the Court was satisfied that the relevant domestic legal framework as applied was formulated sufficiently clearly to fulfil the legitimate aim of preventing public disorder and thus 'prescribed by law'. The two laws in question were complementary and could be read in conjunction with each other.

The actions of the applicant and his fellow protestors had been to draw the attention of the public and officials to the Roșia Montană mining project, which had been of general interest. There was little scope under Article 10 § 2 of the Convention for restrictions on political speech on questions of public interest. The applicant had been given little time to express his views, and the courts had dealt with the matter as a prior-notification question principally, and had not examined the actual disruption the applicant had caused and thus had not balanced the right to freedom of expression with the need to maintain public order. Effectively, the enforcement of rules governing public assemblies had become an end in itself in this case. In addition, the fine imposed had had a chilling effect on public speech.

Given the above, the Court ruled that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society", leading to a violation of Article 10 interpreted in the light of Article 11.

Article 41

The Court granted the applicant €113 in respect of pecuniary damage, and €5,000 in respect of non-pecuniary damage, as well as €1,872 in for costs and expenses.

The State failed to protect a property from unlawful mining activities, in violation of Article 1 of Protocol No. 1 of the Convention

JUDGMENT IN THE CASE OF DIMITAR YORDANOV v. BULGARIA

(Application no. 3401/09)
6 September 2018

1. Principal facts

The applicant was born in 1939 and lived in Sofia. In 1990, the State decided to establish a coalmine near Golyamo Buchino, where the applicant owned land. Consequently, his property (among other properties) was expropriated to do so.

The applicant waited two years for a replacement plot of land in compensation, which was promised to him as part of the expropriation procedure. Due to the length of time that passed, the applicant cancelled the procedure with local authorities and remained in the house; meanwhile the state-owned mine started operating and gradually expanded.

The mine operated within 160-180 metres of his house, with coal being extracted by blasting. This was despite the legal requirement to maintain a 500-metre "sanitation zone" between non-industrial buildings, such as residential dwellings, and the mining operation. Consequently, cracks appeared in the walls of the applicant's house, and his barn and animal pen collapsed.

The applicant abandoned his property in 1997, considering it too dangerous to stay. The house later fell down, and the property remained abandoned at the time of the Court's judgment.

In 2001, the applicant brought a tort action against the mining company, seeking compensation for the damage caused to his property. The courts heard from the applicant's neighbours, and commissioned expert reports, establishing that serious damage had been caused to his property and that detonations in the nearby mine had been carried out inside the 500-metre buffer area, in breach of domestic law.

However, the domestic courts concluded in 2007 that they were unable to establish a causal link between the mining activities and the damage, which could

also have been caused by normal wear and tear, or shortcomings in the house's construction. This was also exacerbated by the fact that, due to the passage of time and the destruction of some documents, it had proved impossible to determine the distance between the house and the area where the detonations had been carried out in 1997.

2. Decision of the Court

The applicant complained that the courts had wrongly dismissed his tort claim and that the State had failed to protect his property from unlawful mining activities, violating his rights under Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention.

Article 6 §1

The Court emphasised that it does not deal with errors of fact or law allegedly committed by the national courts, as it is not "a court of fourth instance". Therefore, it does not re-assess national courts' findings, provided there has been a reasonable assessment of the evidence. Thus, issues such as the weight attached to given items of evidence or to assessments submitted to them are not normally for the Court to review.

Nevertheless, the Court may entertain a fresh assessment of evidence where the decisions reached by the national courts can be regarded as arbitrary or manifestly unreasonable. This case failed to constitute "a manifest error of assessment" on the part of the national courts, or a "gross misinterpretation" of the relevant circumstances, or reasoning disregarding the bulk of the evidence presented or failing to connect the established facts, the applicable law and the outcome of the proceedings. The matter concerned the national courts' assessment of the applicant's claim as argued by him and in light of the evidence presented. The courts discussed and took into account the findings of the experts which they had appointed, and the testimony of the witnesses put forward by the applicant, and made their own assessment as to their evidentiary value, stating in particular that the witness evidence was insufficient to prove the causal link alleged by the applicant.

The Court therefore found no violation of Article 6 § 1, as the decisions of the national courts, in particular their conclusion contested by the applicant as to the existence of a causal 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".

Article 1 of Protocol No. 1

The applicant's land constituted "possessions", within the meaning of Article 1 of Protocol No. 1. Although the applicant requested that the expropriation be cancelled, he could not be blamed for the failure of the procedure, as the Government had not shown that the authorities had intended to honour their legal obligations under the expropriation procedure.

The mine, where coal was extracted by means of detonations, represented an environmental hazard. It was undisputed that the health-and-safety requirements contained in domestic regulation, namely the 500 metre "sanitation zone", applied to it. However, the mine gradually expanded, and operated within 160-180 metres of the applicant's house.

The mine had been managed by a company that was entirely State-owned. The company had not been engaged in ordinary commercial business, but instead in a heavily regulated field subject to environmental and health-and-safety requirements. It was significant that the decision to create the mine had been taken by the State, which had also expropriated numerous privately owned properties in the area to allow for its functioning. The company was thus held to be the means of the government conducting a State activity.

The authorities, through the failed expropriation of the applicant's property and the work of the mine (under what was effectively State control), had been responsible for the applicant's property remaining in the area of environmental hazard, including the daily detonations in proximity to the applicant's home.

That situation, which caused the applicant to abandon his property, amounted to State interference with the peaceful enjoyment of his "possessions". The detonations within the sanitation zone had been in manifest breach of domestic law. The interference with the peaceful enjoyment of the applicant's possessions had thus not been lawful under Article 1 of Protocol No. 1.

Article 41

The Court awarded the applicant €8,000 in respect of pecuniary and non-pecuniary damage, and €1,922 for costs and expenses.

The prolonged legal proceedings and the Health Board's failure to comply with judicial decisions related to noise from neighbours' dogs constituted violations of Article 6 of the Convention

JUDGMENT IN THE CASE OF EKHOLM v. FINLAND

(Application no. 68050/01)
24 July 2007

1. Principal facts

The applicants, born in 1922 and 1951 respectively, were Finnish nationals who primarily resided in Esbo. They owned a secondary residence on the Åland Islands, which was used by both applicants. They utilised the property for holiday purposes, rented it to tourists, and conducted business meetings there. A dog yard was located on a neighbouring property, and the noise from barking dogs became the subject of a prolonged legal dispute.

In the summer of 1991, the applicants applied to the South Åland Municipal Health Board, requesting that the dog yard be moved due to the noise. The Health Board decided on 12 September 1991 that no nuisance existed. The applicants appealed, and whilst the Åland Provincial Administrative Court upheld the Health Board's decision, the Supreme Administrative Court found that the barking did constitute a private nuisance and sent the case back to the Health Board for action.

During the second examination, the neighbours were ordered to install sound-absorbing walls around the dog yard and create an exercise yard. After further appeals from both sides, an inspection was conducted on 22 June 1995, although the applicants were not informed. On 24 August 1995, the Health Board again decided no private nuisance existed. The neighbours and the applicants continued to appeal various decisions, however these appeals were rejected.

After further proceedings and new evidence being submitted, the Åland Administrative Court sent the case back to the Health Board on 30 June 2003, ordering it to address the nuisance and partially covering the applicants' legal costs. The Health Board ordered the neighbours to enhance noise prevention measures by December, however the Administrative Court in April 2004 found the Health Board's measures insufficient and sent the case back.

The Health Board decided on 10 June 2004 to accept the neighbours' proposal to rebuild the wall, despite a recommendation to move the dogs. The Administrative Court however found bias in the Health Board's decision-making and sent the case back for proper instructions. In April 2006 the Health Board issued new instructions, ordering the existing dog yard to be discontinued. Appeals from both parties followed, but the Administrative Court rejected them on 27 February 2007. The proceedings were still ongoing at the time of the European Court's judgment.

2. Decision of the Court

The applicants complained that the length of the proceedings breached their right to a fair hearing within a reasonable time under Article 6, and that the proceedings were unfair because the Health Board had failed to comply with judicial decisions and did not provide their neighbours with sufficiently precise instructions on how to muffle the noise from the dogs. Additionally, the applicants claimed that the noise interference violated their right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1, as it prevented them from using or selling their property.

Article 6

The Court first observed that the applicants' property had been subject to judicial proceedings from the autumn of 1991 and that at the time of the Strasbourg proceedings they were still ongoing, which meant that the period to be taken into consideration was almost sixteen years. The Government had argued that there were several separate sets of proceedings, however the Court found that all these sets of proceedings could be considered *in toto* for the purposes of Article 6.

Bearing in mind the relevant criteria, i.e. the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute, and referring to case law in similar judgments where violations had frequently been found, the Court considered that the Government had not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, there had been a violation of Article 6 of the Convention on account of the length of the proceedings.

Further, the Court considered the question of whether the authorities had failed to comply with the relevant decisions in this case. Article 6 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal and hence it embodies the "right to a court", of which the right

of access constitutes one aspect. However, that right would be illusory if a State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court is therefore regarded as an integral part of the trial for the purposes of Article 6.

These principles are of vital importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights. By lodging an appeal with the State's highest administrative court, the litigant seeks not only annulment of the impugned decision but also and above all the removal of its effects. The effective protection of a party to such proceedings and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a judgment of that court.

In the present case, following the decisions of the Supreme Administrative Court and the Administrative Court the Health Board refrained for about ten years, more precisely until the Court communicated the application to the Government, from complying with the decisions. Hence, it deprived the right to a fair trial of all useful effect, and there had been a violation of Article 6.

Article 1 of Protocol 1

Given its earlier finding that the Health Board's failure to comply with judicial decisions violated the applicants' right to a fair trial under Article 6, the Court concluded that it was unnecessary to separately assess the complaint under Article 1 of Protocol No. 1.

Article 41

The Court awarded both applicants jointly €10,000 in respect of non-pecuniary damage, €5,000 in respect of pecuniary damage for the first applicant and €5,000 for costs and expenses.

The Romanian authorities failed to safeguard a prisoner who was transported and had to share a cell as well as court waiting rooms with smokers and went on to develop pulmonary illnesses – violation of Article 3

JUDGMENT IN THE CASE OF ELEFTERIADIS v. ROMANIA

(Application no. 38427/05)
25 January 2011

1. Principal facts

The applicant was a Romanian national born in 1966, serving a life sentence for murder in Poarta Albă Prison.

The applicant was declared physically fit when he first entered prison in 1992. Between 1994 and 2000, he served his sentence in a 13.81m² cell together with three smokers. On 25 January 1999, he was diagnosed with pulmonary fibrosis.

The applicant had unsuccessfully requested a transfer on numerous occasions from 1994 onwards. He was moved to a non-smoking cell in 1999. Between 2000 and 2005, he was imprisoned in different establishments. According to medical certificates issued in 2005, his overall state of health was good.

After moving to Rahova Prison on 25 February 2005, he was again placed in a cell with two prisoners who smoked significantly. In November, he was transferred to a non-smoking cell.

Throughout his imprisonment, the applicant was transported on several occasions between the prison and the courts, to appear at public hearings. He travelled in vans with large numbers of prisoners in cramped conditions and without any ventilation. During the journeys, and also in the prisoners' waiting areas at the courts, smoking was allegedly permitted, and the applicant inhaled other prisoners' cigarette smoke.

The applicant's first legal complaint against the director of Rahova Prison made on 22 April 2005 was rejected, as Rahova Prison was not able to provide separate cells for non-smokers. A second legal complaint of 31 January 2006 was rejected by the Bucharest County Court, when the court noted that the national prisons authority had banned prisoners from smoking in the court transport vehicles. Regarding waiting areas, it stated that while the waiting areas may have smoking

prisoners, prisons were not responsible for the manner in which the courts organised their activities.

In the meantime, the applicant had brought a third set of proceedings against Rahova Prison on 11 October 2005, seeking to be placed in a non-smoking cell on health grounds. However, the national prisons authority stated that it had been impossible to separate smokers and non-smokers in accordance with domestic legislation. The applicant's detention satisfied the criteria in the prison's internal regulations and applicable legislation; thus, the court rejected the complaint and did likewise when the case was referred back to it following two appeals on points of law. The court observed that the applicant had been with smokers owing to the physical impossibility for the authorities to provide cells for non-smokers. Further, the applicant had subsequently been transferred to a cell shared with a non-smoker, as the prison then had sufficient capacity. The applicant had also not provided proof of the alleged damage.

Medical tests in 2008 showed the applicant to be suffering from grade two chronic obstructive bronchopneumopathy.

On 19 January 2009 the applicant was transferred to Poarta Albă Prison and placed in an individual cell.

2. Decision of the Court

The applicant complained he had been obliged to share a cell with smokers, that he had contracted pulmonary illnesses with no treatment, and that he had been transported and locked up with smokers prior to hearings, which violated his rights under Article 3.

Admissibility

The applicant's complaint concerning the period from June 1994 to December 2000 was rejected as being out of time. His complaint of not receiving appropriate treatment was rejected for failure to exhaust domestic remedies. The Court thus examined the conditions of detention in Rahova Prison and his journeys between prison and court for that period.

Article 3

The Court stated that there was a positive obligation on States to ensure that every prisoner is detained in conditions compatible with respect for human dignity, that the

methods of carrying out the measure do not subject the person concerned to distress or hardship of an intensity which exceeds the inevitable level of suffering inherent in detention and that, having regard to the practical requirements of the imprisonment, health and well-being of the prisoner are adequately ensured, in particular by the administration of the required medical care. Thus, the detention in inadequate conditions of a sick person may in principle constitute treatment contrary to Article 3.

States must organise their prison systems in such a way as to ensure respect for prisoners' dignity, regardless of logistical or financial obstacles. This may imply the obligation to take measures to protect a prisoner against the harmful effects of passive smoking when, in view of medical examinations and the recommendations of treating doctors, his state of health requires.

It was undisputed that from February to November 2005 the applicant had been detained in a cell together with smokers, in spite of his requests to be transferred to a non-smoking cell. While his health had stabilised between 2003 and 2005, his pulmonary fibrosis was a chronic illness - the medical certificate from 1999 clearly indicating that the applicant suffered from this. The authorities were thus required to take measures to protect his health, notably by separating him from smokers, as the applicant had requested and as doctors had advised to avoid exposure to smoke. This was not only desirable, but also possible given the existence, in the same prison, of a cell for non-smokers.

The overcrowding in Rahova Prison – confirmed by European Committee for the Prevention of Torture reports – did not exempt the authorities from their obligation to protect the applicant's health. Daily exercise in the prison yard, sports and a relatively large non-crowded cell with natural light and ventilation were not sufficient to compensate for the harmful effects of the second-hand smoke to which the applicant had been subjected.

The medical certificates issued by several doctors after 2005 evidenced the deterioration in the applicant's condition and noted the emergence of the novel chronic obstructive bronchitis, which the applicant claimed was worsened by exposure to smokers in the transport vehicles and in waiting areas prior to hearings.

The Court stated that where a person is placed under the responsibility of the State in good health and this is no longer the case when released or, as in the present case, after a certain period in detention before being released, it is for the State to provide a plausible explanation for the origin of this situation, failing which a question could arise under Article 3.

While there were no precise indications that the applicant had been subjected to the effects of cigarette smoke during his journeys, the fact that he had been held in court waiting rooms with smokers was confirmed by the Bucharest County Court judgment of 14 June 2006. Although it was not known how often the applicant had been locked up in those rooms, it had clearly occurred on several occasions when he had been summoned to appear before the domestic courts. Even assuming that it had been for a short period on each occasion, the conditions in question had been contrary to the doctors' advice to avoid exposure to smoke.

The fact that the applicant had subsequently been placed in a cell with a non-smoker and was at the time of this judgment in an individual cell in a different prison, was not due to the objective criteria in the legislation but due to a combination of circumstances (the existence of sufficient capacity in the prison at the particular time), and there was no indication that the applicant would continue to be held in such favourable conditions if overcrowding occurred in the future.

Finally, domestic courts had rejected the applicant's claim for compensation as he had not provided evidence of the alleged damage and his conditions had improved following his transfer. The fact that the situation had ceased to exist in the meantime due to his transfer to a better milieu did not exempt the domestic courts from the obligation to examine whether that situation imposed harmful effects on him. It was not reasonable to place the burden on the applicant to prove the suffering caused. Adopting such an approach would exclude the possibility of compensation in many cases where detention was not accompanied by an objectively measurable deterioration in the prisoner's physical or mental health.

The Court therefore held that there had been a violation of Article 3.

Article 41

The Court awarded the applicant €4,000 in respect of non-pecuniary damage.

Russia violated its positive duties by allowing unsafe pollution levels from a steel plant to persist and failing to resettle the applicant, who lived nearby, thus not striking a fair balance between the community's interests and the applicant's Article 8 rights

JUDGMENT IN THE CASE OF FADEYEVA v. RUSSIA

(Application no. 55723/00)
9 June 2005

1. Principal facts

The applicant was born in 1949 and lived in Cherepovets, Russia during the relevant period.

The Severstal steel plant was built in Soviet times. The plant was the largest iron smelter in Russia. To delimit the areas in which pollution caused by steel production was excessive, the authorities established a buffer zone - "the sanitary security zone" - around the Severstal premises. The applicant lived in a flat within this zone with her family since 1982.

Although this zone was supposed to separate the plant from the town's residential areas, thousands of people continued to live there. A 1974 decree by the Russian Soviet Federative Socialist Republic's Committee of Ministers directed the Ministry of Black Metallurgy to resettle the inhabitants of certain districts of the sanitary security zone by 1977, which the ministry failed to do. In the following years, the Government adopted several new programs aimed at reducing the steel plant's toxic emissions to safe levels and decreasing the risk of resulting harm to nearby residents. A 1996 decree stated that "the environmental situation in the city had resulted in a continuing deterioration in public health", including dramatic increases in the prevalence of respiratory, blood and skin diseases among children, and deaths from cancer among adults.

The applicant submitted various medical evidence. Her medical history from the clinic at Cherepovets Hospital included indications of "occupational illness" from work and various illnesses of the nervous system. The causes were not expressly indicated, but doctors stated the disease would worsen from working in conditions of toxic pollution. Next, the applicant submitted a report prepared by an environmental toxicologist concluding that residents within the zone would likely suffer from above-average incidences of many different medical conditions. Finally, the applicant submitted an information note from the Cherepovets

environmental department, which contained recommendations for how to act during periods of acutely high pollution when wind carried emissions towards the city.

In 1993, the steel plant was privatised, and the apartment buildings owned by the steel plant and situated within the zone were transferred to the local council.

In 1995, the applicant and others living within the zone brought a court action against the steel works, seeking resettlement outside the security zone. In April 1996, Cherepovets Town Court found that, under domestic law, the applicant had the right in principle to be resettled at the local authority's expense. However, the court made no specific resettlement order but required the local authorities to place her on a "priority waiting list" for new accommodation upon the availability of funds. The appellate court upheld the decision but removed the availability of funds condition. An execution warrant was issued, but the enforcement proceedings were discontinued on the ground that there was no "priority waiting list" for people living in the security zone to obtain new housing. The applicant was placed on the general waiting list for new housing as number 6,820 in line.

In 1999, the applicant brought new proceedings against the local council, seeking immediate resettlement in accordance with the previous judgment. However, Cherepovets Town Court dismissed her action because there was no "priority waiting list", no allocated council housing and the judgment of April 1996 had already been executed by placing the applicant on the general waiting list. The regional court upheld this decision in 1999.

2. Decision of the Court

The applicant alleged, under Article 8 of the Convention, that the State had failed to protect her private life and home from severe environmental nuisance arising from operation of a steel plant near her home.

Article 8

To raise an issue under Article 8, the adverse effects of environmental pollution must attain a certain minimum level to fall within its scope. The assessment of that minimum is relative and depends on the circumstances of the case, including the intensity and duration of the nuisance and its physical or mental effects. The context of the environment, such as hazards inherent to a modern city, is also relevant, as the detriment cannot be negligible compared to environmental hazards inherent

to a city. Thus, environmental nuisance complaints must show that there was an actual interference with the applicant's private sphere and that a level of severity was attained. Only the period since 1998, when the Convention entered into force in Russia, was taken into consideration.

The medical history report alone contained insufficient evidence to establish a causal link between environmental pollution and the applicant's illnesses. However, the concentration of various toxic elements (including disulphide, formaldehyde, manganese, benzopyrene and sulphur dioxide) in the air near the applicant's house seriously exceeded the safe concentrations of toxic elements, as defined under Russian legislation. The environmental toxicologist's report also disclosed potential adverse effects of formaldehyde and carbon disulphide, which constantly exceeded the legislation's maximum permissible limits. The Government failed to produce evidence of concentration levels beyond mere averages or explain such an omission, so the Court drew the adverse inference that concentration levels could have been worse at times than it appeared from available evidence. Because domestic courts recognised the right to resettlement and legislation declared the zone unfit to live in, the Court inferred that the existence of interference with the applicant's private sphere was taken for granted at the domestic level. Taken together, these factors created a presumption that the pollution was potentially harmful to the health and well-being of those exposed to it.

The very strong combination of indirect evidence and presumptions allowed the conclusion that the applicant's health had deteriorated as a result of her prolonged exposure to the industrial emissions from the Severstal steel plant. Even assuming that the pollution did not cause any quantifiable harm to her health, it inevitably made the applicant more vulnerable to various diseases. Moreover, there could be no doubt that it adversely affected her quality of life at home. Therefore, the Court accepted that the actual detriment to the applicant's health and well-being reached a degree sufficient to bring it within the scope of Article 8.

As to the attribution of the alleged interference to the State, the plant had been privatised in 1993, and there had thus been no direct interference from the Russian Federation. However, under the Court's case-law, the failure to regulate a private industry in environmental cases may engage a State's responsibility. The Court assessed whether the State could reasonably be expected to act so as to prevent or end the alleged infringement on the applicant's rights. Following the plant's privatisation in 1993, the State continued to exercise control over the plant by imposing operating conditions and supervising the plant. The municipal authorities were aware of the continuing environmental problems and applied

certain sanctions to improve the situation. Thus, the Court concluded that the authorities were in a position to evaluate the pollution hazards and to take adequate measures to prevent or reduce them. The combination of these factors was sufficient to engage the State's positive obligation under Article 8.

The next question was whether the State had struck a fair balance between the interests of the applicant's rights and the larger community as required by Article 8 § 2. The Court found that the State authorised the operation of a polluting plant in the middle of a densely populated town. Since the toxic emissions from this plant exceeded the safe limits established by domestic legislation, the State established legislation creating a buffer zone. However, these measures were not implemented in practice. The State was not necessarily under an obligation to provide the application with free housing, and it is not the Court's role to dictate precise measures for the State to adopt to comply with their positive duties under Article 8.

Nonetheless, the Court may assess whether the Government approached the problem with due diligence and considered all the competing interests. The onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community. Although the situation around the plant called for a special treatment of those living within the zone, the State did not offer the applicant any effective solution to help her move from the dangerous area. Furthermore, although the polluting enterprise at issue operated in breach of domestic environmental standards, there was no information that the State designed or applied effective measures which would consider the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels.

The Court concluded that, despite the wide margin of appreciation left to the respondent State, it had failed to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and her private life. The Court therefore held that there had been a violation of Article 8.

Article 41

The Court awarded the applicant €6,000 for non-pecuniary damage. It awarded €6,500 less €1,732 already paid in legal aid for costs and expenses, and £5,540 (approximately €8,182.80) for costs and expenses incurred by the applicant's British lawyers and advisers.

The lack of a comprehensive environmental study, insufficient public participation, and inadequate environmental management resulted in a breach of Article 8 by the failure to balance individual rights with community interests

JUDGMENT IN THE CASE OF GRIMKOVSKAYA v. UKRAINE

(Application no. 38182/03)
21 July 2011

1. Principal facts

The applicant was born in 1966 and lived in Krasnodon, Ukraine. She owned a house on K. Street living with her parents and minor son.

In 1998, Ukraine reclassified the former USSR road from Chisinau to Volgograd as the M04 motorway. The applicant contends that before 1998, the motorway did not pass-through K. Street but another street, and that K. Street, being residential and ill-equipped (no drainage, pavements, or proper surfacing), was unsuitable for heavy traffic. Since rerouting in 1998, heavy traffic (including hundreds of lorries) had led to severe house vibrations, noise, increased air pollution, and road damage. Substandard repairs using materials from nearby coal-mines worsened conditions with heavy-metal pollution.

In 2002, the regional sanitary department found pollution levels on K. Street to be substantially above safety standards, with dust containing dangerous levels of copper and lead. An assessment in 2002 by a group consisting of a city council deputy, the head of a local residents' association, and a private individual, confirmed the applicant's house had structural damage (cracked basement, coal dust on walls) attributed to traffic and poor-quality road repairs. The road's poor condition exacerbated the vibrations and resultant damage to houses.

Medical certificates from 2001 to 2002 showed the applicant's family suffered multiple health problems likely linked to environmental conditions. The applicant's father was diagnosed with multiple chronic diseases and declared moderately disabled, the mother had various chronic illnesses, and the son suffered from multiple conditions more directly attributed to environmental toxins such as chronic poisoning from heavy metals. In 2003, due to severe environmental conditions, a recommendation was made to relocate the applicant's son for health reasons.

Complaints were lodged to various authorities, including the President of Ukraine and local health and legal offices, about the pollution and nuisance, including similar complaints lodged by other residents of K. Street. Following pollution assessments, the Lugansk Regional Chief Sanitary Officer ordered the Krasnodon Mayor to consider halting through traffic on K. Street and to repair the road, citing the Clean Air Act and noting the health risks from air pollution. The Krasnodon Prosecutors' Office rejected the applicant's demand for a criminal investigation, acknowledging pollution but finding no unlawful actions in the use of K. Street for transit. K. Street was blocked to automobile traffic in June 2002, however in November 2010, the applicant informed the European Court that traffic on K. Street had resumed without the necessary repairs, albeit without presenting supporting evidence.

Following a civil lawsuit from the applicant against the Krasnodon City Council's Executive Committee, the Krasnodon Court rejected her claim, stating she did not prove the Executive Committee's fault in road operation breaches or connect the family's health issues directly to the committee's actions. The applicant's subsequent appeal was dismissed by the Lugansk Regional Court of Appeal confirming the motorway's management under the Highways Agency, not the city council, and noted the lack of evidence for non-pecuniary damage and legal grounds for compensation or resettlement. The Supreme Court of Ukraine denied her further appeal, despite her bringing evidence from the Highways Agency stating that K. Street was managed by the municipality.

2. Decision of the Court

The applicant complained that the municipal authorities had violated her and her family's rights under Article 8, Article 6 § 1, and Article 13 of the Convention.

Article 8

Relying on earlier established case law, the Court stated that environmental issues can breach Article 8 of the Convention if they significantly impair home and family life. Where there is environmental hazard, a viable claim under Article 8 only emerges if the hazard reaches a severity that significantly impairs the applicant's enjoyment of their home, private, or family life. Determining this minimum severity level depends on the specific circumstances of the case, including the intensity and duration of the nuisance and its physical or mental impact on the individual's health or quality of life.

It was found that while there was insufficient evidence to fully substantiate all of the applicant's claims, there were credible indications that her living conditions were adversely affected by the motorway, especially considering the documented high levels of air and soil pollution. The diagnosis of the applicant's son was particularly important in suggesting a direct connection to the motorway's pollution. Additionally, the Ukrainian Government had not provided any evidence to an alternative cause of the son's diagnosis. The Court considered that the cumulative effect of noise, vibration, and air and soil pollution generated by the M04 motorway had significantly deterred the applicant from enjoying her rights guaranteed by Article 8 of the Convention. Next, the Court examined the positive obligations of the Government as to whether it had provided sufficient evidence to justify a situation in which the applicant bore a heavy burden on behalf of the rest of the community.

While K. Street had been closed to traffic following an environmental health investigation, there was uncertainty about the enforcement of this closure and whether traffic was later resumed. The Court recognised the State's significant role in infrastructure management, acknowledging that environmental policy involves complex decisions requiring substantial time and resources. It noted that while Member States are tasked with minimising pollution, Article 8 of the Convention does not mandate that individuals are guaranteed environmentally perfect living conditions. However, concerns were raised about the lack of a preliminary feasibility study before rerouting the M04 motorway through K. Street. This decision, made in 1998, lacked public participation and adequate assessment of environmental impacts, which could have allowed residents to voice their concerns and contributed to a more informed decision-making process. The Court referenced the Aarhus Convention, which had come into effect for Ukraine, particularly the essential role of public participation in environmental governance. Additionally, measures to manage the environmental impact of the motorway on K. Street were only implemented after significant resident complaints, pointing to a reactive rather than proactive approach by the authorities.

The Court critiqued the domestic courts for their limited analysis, particularly their failure to address whether the Executive Committee or another authority was responsible for K. Street. The judgments lacked a thorough consideration of whether the environmental policies in place adequately protected the rights of the residents or if the 1998 decision to reroute the motorway were lawful or justified.

Ultimately, the Court determined that the absence of a thorough environmental feasibility study, poor public involvement in decision-making, and lacking proactive

environmental management failed to balance individual rights under Article 8 of the Convention with community interests, resulting in a breach of Article 8.

Article 6 § 1 and Article 13

The applicant also raised concerns under Articles 6 § 1 and 13 of the Convention, arguing that the civil proceedings in her case were unfair due to insufficient reasoning provided by the courts for dismissing her claims. The Court decided that while the interests protected by Articles 6 and 8 of the Convention may differ and typically warrant separate evaluations, given the findings related to Article 8 – specifically the lack of judicial reasoning – it deemed it unnecessary to re-examine the same facts under Article 6 § 1 and 13.

Article 41

The Court awarded the applicant €10,000 in respect of non-pecuniary damage.

No violation of Article 8, as the authorities struck a fair balance in domestic legislation when adopting noise quotas for airplane overflights near Heathrow airport, however there was a violation of Article 13 due to failure to provide a remedy

GRAND CHAMBER JUDGMENT IN THE CASE OF HATTON AND OTHERS v. THE UNITED KINGDOM

(Application no. 36022/97)
8 July 2003

1. Principal facts

The eight applicants, all British citizens, lived near Heathrow Airport outside of London, United Kingdom, during the relevant period.

Before October 1993, the noise caused by night flying at Heathrow had been controlled through restrictions on the total number of take-offs and landings. After that date, authorities adopted the 1993 scheme, which changed noise regulation to a system of noise quotas; each aircraft type was assigned a "Quota Count" (QC): the noisier the aircraft, the higher the QC. This allowed aircraft operators to select a greater number of quieter airplanes or fewer noisier airplanes, provided that the noise quota was not exceeded. The stated purpose of this change was to reduce overall noise. Additional restrictions applied during the "night quota period" between 11:30 p.m. and 6 a.m.

Following an application for judicial review brought by affected local authorities, the scheme was found to be contrary to a statutory provision which required that a precise number of aircraft, rather than a noise quota, be specified. Therefore, the Government included a limit on the number of aircraft movements allowed at night. A second judicial review found that the Government's consultation exercise concerning the scheme had been conducted unlawfully, and in March and June 1995 the Government issued further consultation papers. On 16 August 1995, the Secretary of State for Transport announced that the new scheme would proceed with the inclusion of the previously announced QCs. The decision was challenged unsuccessfully by the local authorities; the Court of Appeal held that sufficient justification had been given to conclude a reasonable balance was struck. The House of Lords refused leave to appeal.

2. Decision of the Court

The applicants alleged that the 1993 scheme gave rise to a violation of their rights under Article 8 of the Convention and that they were denied an effective domestic remedy for this complaint, contrary to Article 13 of the Convention.

In its Chamber judgment in this case, the European Court held that there had been a violation of Articles 8 and 13. The case was referred to the Grand Chamber under Article 43 at the request of the Government.

Article 8

The first question before the Court was the applicability of Article 8. The Court allowed the State a wide margin of appreciation, and a whole range of material factors were considered. The applicants submitted limited evidence in support of the severity of discomfort suffered from increased noise due to aircraft. However, a 1992 sleep study that sensitivity to noise included a subjective element with some people more susceptible to sleep disturbance convinced the Court that the 1993 scheme was susceptible of adversely affecting applicants' private lives and enjoyment of their homes and thus engaged Article 8.

The disturbances were not caused by State organs but rather private operators, but it was arguable that the 1993 scheme constituted a direct interference. State responsibility in environmental issues can also arise from failure to regulate private industry in a way that violates individuals' Article 8 rights. Regardless, the Court did not need to decide which category the case fell under because the next stage of the analysis under Article 8 § 2 was the same.

Next, the Court turned to the question of whether, in implementing the 1993 policy on night flights at Heathrow airport, the State had struck a fair balance between the competing interests of the individuals affected by the night noise and the community as a whole. It reviewed this question in accordance with its supervisory function. Under Article 8 § 2 of the Convention, restrictions on the right to respect for private and family life are permitted in the interests of the economic well-being of the country and for the protection of the rights and freedoms of others. Therefore, it was legitimate for the Government to have considered the economic interests of the airline operators and other enterprises and the economic interests of the country as a whole.

In previous cases in which environmental issues had given rise to violations of the Convention, the national authorities had failed to comply with some aspect of domestic law. However, in this case the policy on night flights was found to be compatible with domestic law. Environmental protection had to be considered by the Government in acting within their margin of appreciation and by the Court in its review of that margin. However, it would have been inappropriate for the Court to adopt a special approach to environmental protection by referring to a special status of environmental human rights.

Among the other relevant factors in assessing whether a fair balance was struck were the economic interests which were allegedly supported by the scheme. The Court considered it reasonable to assume that the night flights contributed at least to a certain extent to the general economy. It was very difficult to draw a clear line between the interests of the aviation industry and the economic interests of the country as a whole. Another factor was the low availability of measures to mitigate the effects of aircraft noise, many of which had been taken. Additionally, house prices in the relevant areas had not been adversely affected by the night noise, so the applicants could move elsewhere without financial loss. This factor was significant in assessing the scheme's overall reasonableness, since only a limited number of people had been adversely affected (just those two to three percent of people who were more susceptible to sleep disturbance, according to the 1992 sleep study).

Regarding the procedural aspect of the case, the Government had consistently monitored the situation and conducted a series of investigations and studies prior to the 1993 scheme. The Court noted that a government decision making process concerning complex environmental and economic issues must necessarily involve appropriate investigations and studies to strike a fair balance between the conflicting interests at stake. However, this did not mean that decisions may only be taken after comprehensive and measurable data is available in relation to each and every aspect of the matter to be decided. Furthermore, the new measures introduced under the 1993 scheme had been announced to the public by way of a consultation paper published in January 1995, so the applicants could have made any representations they felt appropriate and challenged subsequent decisions. Therefore, the Court found that there were no fundamental procedural flaws in the preparation of the 1993 regulations.

Considering all these factors, the Court found that the authorities had not overstepped their margin of appreciation by failing to strike a fair balance. Thus, there had been no violation of Article 8.

Article 13

The question under Article 13 was whether the applicants had access to a domestic remedy to enforce their Convention rights. It was clear, as noted by the Chamber, that the scope of review by the domestic courts had been limited to examining whether the authorities had acted irrationally, unlawfully or manifestly unreasonably (classic English public law concepts). Prior to the Human Rights Act's entry into force in 1998, English courts were not allowed to consider whether the claimed increase in night flights represented a justifiable limitation on the right to respect for the private and family lives or the homes of nearby residents.

So, there was no domestic remedy for applicants to enforce their Article 8 rights; therefore, the Court held that there had been a violation of Article 13.

Article 41

The Court held that the finding of a violation in itself constituted sufficient just satisfaction for any damage sustained by the applicants. It awarded the applicants €50,000 for costs and expenses.

The State's inadequate response to known risks and lack of timely regulations violated Article 8 by failing to balance community energy needs with the applicants' rights to a healthy environment conducive to enjoying private and family life

JUDGMENT IN THE CASE OF JUGHELI AND OTHERS v. GEORGIA

(Application no. 38342/05)
13 July 2017

1. Principal facts

The applicants were born in 1946, 1947 and 1957 respectively and lived in Tbilisi, Georgia.

The applicants resided in different apartments within a residential building constructed in 1952. The building was situated approximately 4 meters away from the "Tboelectrocentrali" thermal power plant in the city centre. The plant had a history of accidents, including a significant one in 1996, which halted its operations for over thirty days. An expert report identified the lack of major repairs since 1986 as the primary cause of this accident. It was privatised in 2000 and partially stopped operating the next year. Despite requests from City Hall to install chimney filters, the plant never complied.

The applicants and other residents reported nuisances such as air, noise, and electromagnetic pollution, along with water leakage from the nearby plant to the municipal authorities on unspecified dates. Tbilisi City Hall recognised the nuisances reported by the residents in official letters in March and October 2000, and January 2001. They reported to the central government that relocating the plant was not advisable due to an acute energy crisis, and suggested providing free electricity and heat to the affected residents as compensation. In 2000, the applicants and other residents sued the plant for environmental damage. They agreed to a friendly settlement, according to which the claimants would forgo their claims in exchange for the plant's management providing them with free hot water, electricity, and heat. Due to technical issues and lack of cooperation among the relevant authorities, the amicable settlement was not enforced. On 1 October 2001, City Hall responded to the applicants' inquiry by confirming that the plant's activities were categorised under the "first category" as per the Environmental Permits Act. This classification meant that the Ministry of the Environment and Natural Resources was responsible for issuing the necessary environmental permit.

On 25 October 2001, the applicants, along with three other residents, brought an action against the power plant and other respondents, including the City Hall and the Ministry of the Environment, for compensation for health and well-being damages caused by pollution and water leakage from the plant.

In 2002, the domestic court ordered examinations where experts noted significant air pollution due to a lack of a buffer zone, excessive noise levels in some apartments impacting health, and generally acceptable but occasionally inconsistent electromagnetic pollution levels. In 2004, the court dismissed most claims, but awarded compensation for excessive noise pollution in two apartments. It recognised the plant's responsibility for water leakage, but declined to mandate pollution control installations, citing the claimants' focus solely on compensation.

Following appeal, the Supreme Court upheld the lower court's decisions regarding noise pollution compensation and the plant's responsibility for water damage. It rejected claims related to electromagnetic pollution and air pollution as unsubstantiated. The court noted that the applicants had settled near the plant knowing its risks and thus could not claim damages for air pollution, additionally highlighting that the plant had largely ceased operations, further diminishing the relevance of ongoing pollution claims.

2. Decision of the Court

The applicants complained that the State had violated their rights under Article 8 of the Convention.

Article 8

The Court started by clarifying that there is no explicit right to a clean and quiet environment. However, serious direct effects from pollution such as noise may invoke Article 8 considerations. Significant environmental impacts must reach a minimal severity level to fall under Article 8, which considers intensity, duration, and physical or psychological effects of the nuisance.

Due to the difficulty in establishing precise effects of pollution, the Court primarily, though not exclusively, rely on findings from domestic courts and competent authorities. Where there are inconsistent or contradictory domestic decisions, the Court may undertake its own assessment. In the present case, the Court was restricted in only considering the period post-Convention ratification by Georgia, from 1999. The Court determined that even if the air pollution did not

demonstrably harm the applicants' health, it likely increased their susceptibility to various illnesses, and it unquestionably diminished their quality of life at home. Given the proximity of the thermal power plant to the applicants' homes and the duration of exposure to harmful emissions, it considered that this interference with the applicants' rights was severe enough to fall under the scope of Article 8. Despite the plant operating since 1939 and the housing being built in 1952, the Court found it unreasonable to expect that residents could have made an informed choice about living there, especially during Soviet times; therefore, they could not be considered to have voluntarily exposed themselves to such conditions.

The Court considered that the power plant's activities fell under the scope of Article 8, concerning the State's obligation to protect individuals from pollution, regardless of whether the pollution was directly caused by the State or due to a lack of regulation of private industry. It noted the absence of a regulatory framework applicable to the plant until January 1, 2009, pointing out that the plant's activities were classified as potentially having a severe impact on the environment and public health. The expert evaluations confirmed significant risks from the lack of a buffer zone and inadequate emission control at the plant. Despite this classification, the plant operated without necessary environmental safeguards. The Court criticised the lack of a regulatory framework before and after the plant's privatisation, which left the plant's dangerous activities unregulated. This oversight led to significant air pollution that negatively affected the applicants' health and well-being, as confirmed by expert examinations. The Government had failed to enforce regulations that could have mitigated the plant's impact, such as installing necessary purification equipment and conducting environmental impact assessments.

The Court found that the Georgian government did not provide adequate documentation or data to justify its actions, indicating a failure to address a known environmental issue proactively. Moreover, despite the known risks, the government did not take effective steps to mitigate the pollution or its effects on the residents. It was concluded that the State did not strike a fair balance between the operational needs of the power plant and the health and environmental rights of the affected individuals, leading to a violation of Article 8 of the Convention.

Article 41

The Court awarded the applicants €4,500 each in respect of non-pecuniary damage and €3,848 to the second and third applicant for costs and expenses.

Russian authorities put the lives of applicants at risk and damaged their homes and property by causing a flood without warning, with no adequate judicial response, in violation of their positive obligations under Articles 2, 8, and 1 of Protocol No 1

JUDGMENT IN THE CASE OF KOLYADENKO AND OTHERS v. RUSSIA

(Application nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05)
28 February 2012

1. Principal facts

The six Russian applicants lived in Vladivostok and were all affected by a heavy flash flood from the nearby Pionerskaya river and reservoir on 7 August 2001. This flood occurred because, following heavy rainfall and the risk of a dam being breached, the State-owned water company opted to release a large amount of water into the river.

No warning of this action was given to the applicants. The water from the river reached their flats, and swiftly rose up to 1.2-1.8 metres. Three of the applicants were at home and nearly died, including a 63-year-old woman who could not swim. All six applicants suffered damage to their homes and belongings. The flood affected an area with a population of over 5,000 people.

In 2002, the applicants received small sums of money in extra-judicial compensation for the losses sustained as a result of the flood.

Criminal proceedings were brought against the director of the State-owned water company and the applicants were granted victim status. However, in January 2003, the proceedings were discontinued, as the investigating authorities stated that the director had acted in compliance with the relevant regulations when ordering the release of the water.

An expert report of January 2003 explained that the principal cause of the flood was the channel of the Pionerskaya river being overgrown and littered with household waste. Additionally, under the relevant regulations, no construction should have been allowed downstream of the reservoir without protecting the area from floods.

The director of the water company had warned the city authorities of the poor state of the channel of the Pionerskaya river on 7 June 1999, and noted that in heavy rain the company might have to evacuate water from the reservoir, which might cause flooding. On 6 September 1999, the Vladivostok Emergency Commission noted that although cleaning up the river had been raised annually, no measures had been taken. The Commission had called on the city and district administration to clean up and deepen the channel.

The expert report triggered the investigating authorities to bring criminal proceedings against city officials and regional authorities regarding the maintenance of the channel. They faced further criminal proceedings on suspicion of also having, in excess of their power, allocated plots of land for individual housing construction within a water protection zone of the Pionerskaya river.

In July 2004, the proceedings were discontinued. The investigating authorities, while observing several shortcomings by the city and regional officials (including their failure to identify flood-prone areas so that suitable construction restrictions could be implemented), concluded that there had been no evidence of a crime.

The applicants brought civil proceedings against the regional authorities and the water company, seeking damages for their lost property and distress. These were dismissed in 2004. The water company's action was held to have been correct due to the heavy rainfall, and the courts also highlighted the discontinuation of the criminal proceedings.

2. Decision of the Court

The applicants complained that the authorities had put their lives at risk by releasing the water without warning and failing to maintain the channel, and there had been no adequate judicial response, violating their rights under Article 2. They also complained that their homes and property were severely damaged, and that they had no effective remedies in respect of their complaints under Article 8, Article 1 of Protocol No. 1 and Article 13.

Article 2

Substantive Aspects

This complaint was admitted only in relation to the three applicants who were at home during the flood. The Court accepted that the evacuation of water could

not have been avoided given the exceptional weather conditions. However, as a man-made industrial facility conducting dangerous activities, the flood could not only be explained by adverse meteorological conditions. The authorities had been aware that in heavy rain it might be necessary to release water which might cause flooding.

The Court found that that the authorities had a positive obligation under Article 2 to assess all the potential risks inherent in the operation of the reservoir, and to take practical measures to ensure the effective protection of those whose lives might be endangered by those risks.

Although the expert report of January 2003 stated that any urban development was prohibited downstream of the reservoir without flood protection, the authorities had not prevented that area from being inhabited nor taken effective measures to protect it. The Court could only consider events taking place after 5 May 1998 when the Convention entered into force in Russia, however it was clear that the authorities had failed to apply any town planning restrictions after this date or to take the necessary steps to protect people living in the area.

The authorities were aware of the condition of the river channel and its maintenance two years before the flood, yet the recommended measures were not implemented. The authorities could have reasonably been expected to warn the residents of the risks of living in a flood-prone area, but they had never done so. Even after the flood, the authorities failed to act to clear the channel. The Court concluded that the Russian Government had failed in its obligation to protect the applicants' lives, in violation of Article 2.

Procedural Aspects

The Russian Government did not submit a copy of its investigation file against the city and regional authorities, thus the Court's assessment of effectiveness of that investigation was limited. It doubted that the investigation could be regarded as an adequate judicial response, particularly considering that it aimed to establish town planning abuses rather than identify those responsible for poor river channel maintenance.

The decision to discontinue the proceedings stated that the regional authorities and the water company oversaw the safe operation of the reservoir, but no attempt was made to consider if they should be held responsible (or to identify the officials responsible) for the poor state of the channel. The investigators listed

shortcomings by the authorities but still closed the investigation referring to the absence of a crime, and the reason as to why they discontinued was not explained to the Court. The Court was therefore not convinced that the judicial response to the events secured the full accountability of the officials or authorities in charge. There had accordingly been a violation of Article 2 in that respect too.

Article 8 and Article 1 of Protocol No. 1

The Court found that the causal link established under Article 2, between the negligence attributable to the State and the risk to people's lives in the vicinity, also applied to the damage caused to the applicants' homes and property by the flood. The compensation accorded to all flood victims did not constitute an acknowledgment of the authorities' responsibility, and so the applicants retained their victim status. Authorities had failed to do everything in their power to protect the applicants' rights under Article 8 and Article 1 of Protocol No. 1, and there was found to have been a violation of those articles.

Article 13

The Court found no violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1. Russian law provided the applicants with ability to bring civil proceedings for compensation, Russian courts could address the State's liability, and they were empowered to attribute responsibility in the criminal proceedings. That the outcome of domestic proceedings was unfavourable to the applicants did not demonstrate that the available remedies were insufficient for the purpose of Article 13.

Article 41

The Court awarded each of the first, third and sixth applicants €20,000, and the fourth and fifth applicants €10,000 each in respect of non-pecuniary damage. The Court awarded the first applicant €1,500 euros, the third and fourth applicants jointly €11,500 and the fifth applicant €4,700 in respect of pecuniary damage.

No violation of Article 8 found, as the applicants had not provided proof that the noise and dust pollution from nearby industrial buildings had exceeded the severity threshold

JUDGMENT IN THE CASE OF KOŽUL AND OTHERS v. BOSNIA AND HERZEGOVINA

(Application no. 38695/13)
22 October 2019

1. Principal facts

Local authorities ordered a private company, Paškić d.o.o. Široki Brijeg ("Paškić"), to demolish its industrial buildings on 4 February 2002. These buildings had been illegally erected next to the five applicants' homes in Široki Brijeg.

On 13 October 2005, the Constitutional Court found a violation of the applicants' right to a fair trial and ordered the local authorities to enforce the order without further delay. It held that it was not necessary to examine the applicants' complaints under Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

This decision had still not been enforced by 27 May 2006, and local authorities had issued over thirty calls for tenders for a company to demolish the buildings in issue. More than thirty fines had been imposed on Paškić in this time, due to its failure to comply with the demolition order.

The public prosecutor twice investigated the case (as non-enforcement of a decision of the

Constitutional Court could constitute a criminal offence), however decisions were made to not prosecute on 15 May 2007 and 30 January 2017 respectively, due to a lack of evidence of criminal intent. The Constitutional Court's decision remained unenforced on 18 March 2019.

2. Decision of the Court

The applicants complained that the non-enforcement of the Constitutional Court's decision of 13 October 2005 had violated their rights under Articles 6 § 1 and 13 of the Convention. They also complained that the State had failed to protect

their homes from noise and dust arising from the operation of Paškić under Article 8 of the Convention

Articles 6 § 1 and 13

The Court examined whether the measures taken by the domestic authorities with a view to enforcing the decision in the applicants' favour were adequate and sufficient for the respondent State to comply with its positive obligations under Article 6 § 1.

It noted the case was complex, but this could not, in itself, justify the time for which the judgment has remained unenforced; and no delays were attributable to the applicants.

While local authorities had looked for a company to demolish the buildings and fined the debtor, the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay.

The decision remained unenforced for an excessive period of time, and there was therefore found to be a breach of Article 6 § 1 of the Convention.

Article 8

While there is no explicit right in the Convention to a clean and quiet environment, where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8.

Article 8 may apply in environmental cases, whether the pollution is directly caused by the State or whether State responsibility arises from failure to regulate private-sector activities properly. The Court noted the need for a fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case, the State enjoys a certain margin of appreciation.

The interference must directly affect the applicant's home, family or private life, and the adverse effects of the environmental pollution must attain a minimum level of severity. This assessment is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects. There would be no arguable claim under Article 8 if the detriment

complained of was negligible in comparison to the environmental hazards inherent to life in every modern city.

The Court accepted that the applicants and their families might have been affected by the activities carried out by Paškić, but according to the expert report submitted by the Government, the air quality and the noise level in the area in question were within the statutory limits. The applicants provided no proof that noise and air quality in their houses exceeded the norms set by domestic law or by international environmental standards.

It could not therefore be established that the State failed to take reasonable measures to secure the applicants' rights, and the pollution levels complained of were not so serious as to reach the high threshold required under Article 8 of the Convention.

Article 41

The Court did not award any sums in damages, as there was no claim for just satisfaction. It did, however, order that the State must secure the enforcement of the Constitutional Court's decision of 13 October 2005 within three months.

The failure to provide a warning to the applicant's father about the dangers of radiation did not violate the applicant's rights under Article 2 or 3 because there was insufficient evidence to show that he had been dangerously irradiated and there was inconclusive evidence linking radiation exposure of the father to the applicant's disease

JUDGMENT IN THE CASE OF L.C.B. v. THE UNITED KINGDOM

(Application no. 23413/94)
9 June 1998

1. Principal facts

The applicant was born in 1966. Between 1952 and 1967, the United Kingdom conducted atmospheric nuclear tests in the Pacific Ocean and Maralinga, Australia. Service personnel were allegedly ordered to line up in the open, face away from explosions, eyes closed and covered for twenty seconds after the blast, with the alleged purpose of testing the effects of radiation exposure, something which the Government denied. The applicant's father was present on Christmas Island during four nuclear tests in 1957 and 1958 and participated in the post-test clean-up program. The applicant was born in 1966 and diagnosed with leukaemia in 1970, with the radiation exposure of her father being cited as a possible cause in the diagnosis.

The applicant missed half of her primary school education and other normal childhood activities as a result of the treatment for leukaemia. At the time of the Court's judgment, she still needed to undergo medical check-ups and feared having children due to potential genetic predisposition to leukaemia. In December 1992, the applicant learned about a report by the British Nuclear Tests Veterans' Association, which indicated a high incidence of cancers, including leukaemia, among the children of Christmas Island veterans.

2. Decision of the Court

The applicant complained to the European Commission on Human Rights[58] that the United Kingdom had violated her rights under Articles 2 and 3 of the Convention in that she had not been warned of the effects of her father's alleged

[58] Before the entry into force of Protocol 11 in 1998 there was no direct access of individuals to the ECtHR, first the Commission would assess admissibility and render an opinion.

exposure to radiation, which prevented pre- and post-natal monitoring that would have led to earlier diagnosis and treatment of her illness. The Commission declared the application admissible in so far as it related to the complaints about failure to advise and inform the applicant's parents about her father's alleged exposure to radiation. In its report it expressed the unanimous opinion that there had been no violations of Articles 2 and 3 as it did not find evidence that earlier diagnosis and treatment could have altered the nature or alleviated the suffering of the applicant's disease.

Following the Commission's finding the applicant complained to the Court that the United Kingdom had violated her rights under Articles 2, 3, 8 and 13 of the Convention.

Article 2 and 3

The applicant alleged that the United Kingdom authorities avoided monitoring servicemen's radiation exposure to evade liability for the allegation of deliberately exposing servicemen to radiation for experimental purposes, and that earlier health monitoring could have led to timely diagnosis and treatment of her leukaemia, however this complaint was declared inadmissible as it had not been raised before the Commission and events had taken place before the United Kingdom had recognised the Commission's jurisdiction.

The applicant claimed the State's failure to warn and advise her parents or monitor her health before her leukaemia diagnosis in 1970 violated Article 2 and 3. The Court looked to determine whether, given the circumstances, the State took all necessary measures to prevent the applicant's life from being unnecessarily endangered. The Court reviewed extensive evidence from both sides regarding the father's radiation exposure. The applicant's father was a catering assistant on Christmas Island during the nuclear tests but no evidence indicated that he reported symptoms of above-average radiation exposure. Records showed that radiation levels on Christmas Island were not dangerous in areas where ordinary servicemen were stationed. Therefore, the Court considered that the State could have reasonably believed that the applicant's father was not dangerously irradiated between 1966 and 1970.

Additionally, there was conflicting evidence provided as to whether monitoring the applicant's health from birth would have led to an earlier diagnosis and reduced the severity of her disease. The Court acknowledges that if there had been a known risk of the applicant contracting a life-threatening disease due to her

father's presence on Christmas Island, the State might have had a duty to inform her parents. However, the Court found no established causal link between paternal radiation exposure and childhood leukaemia, supported by similar investigations in a previous United Kingdom High Court judgment.

Therefore, there was no violation of Article 2 or 3.

Articles 8 and 13

The applicant argued that the State's failure to measure her father's individual radiation exposure and withholding contemporaneous radiation records from Christmas Island violated Articles 8 and 13. As these complaints were not raised before the Commission, the Court did not have jurisdiction to consider them. The Court noted that, in principle, it could consider the complaint under Article 8 regarding the State's failure to advise the applicant's parents and monitor her health. However, after examining the issue from the standpoint of Article 2, the Court found no relevant separate issue under Article 8.

Authorities' inability to ensure functioning of waste services and failure to protect applicants' rights from pollution caused by landfill site violated the right to respect for private life and home in Article 8 of the Convention

JUDGMENT IN THE CASE OF LOCASCIA AND OTHERS v. ITALY

(Application no. 35648/10)
19 October 2023

1. Principal Facts

The facts of this case concern two parts – the waste management situation in Campania, Italy and in the municipalities of Caserta and San Nicola La Strada, and the 'Lo Uttaro' landfill site. In terms of the first part, from 11 February 1994 to 31 December 2009, a state of emergency was declared in Campania due to serious problems with municipal solid waste disposal. In Caserta and San Nicola La Strada, huge heaps of waste had piled up in the streets, due to interruptions in waste collection. Dioxin had been released from fires lit to burn the waste, and the accumulation of waste had impaired pedestrian and vehicular traffic, producing unbearable odours that spread throughout the municipality. To safeguard public health, all educational activities were postponed, several local markets suspended, and the removal of waste from the streets to temporary storage areas was ordered. From 1 January 2010, several decrees and laws were enacted to address the situation, such as to set out additional measures for the construction and authorisation of new waste treatment and disposal facilities.

On 5 February 2013, a report by a parliamentary commission of inquiry highlighted the unmanageable situation of the waste issue, and the incalculable environmental damage caused. This was supported by a study by the World Health Organisation on the health impact of the waste cycle in Naples and Caserta, which showed that exposure to waste treatment had affected the mortality risk observed in Campania. Separately, on 16 July 2015, a judgment by the Court of Justice of the European Union held that the Italian national authorities had failed to establish an integrated and adequate network of waste disposal facilities in the Campania region.

In terms of the second part of facts, the 'Lo Uttaro' landfill site, in 1994, inspections were carried out on privately owned waste disposal plants to assess the possibility of using them to alleviate the waste management crisis in Campania. A waste disposal plant at the 'Lo Uttaro' area was surveyed, yet per a report by the

head of the technical department in 2001, the area did not comply with regulations on environmental protection and was affected by very serious environmental pollution. In April 2007, the area was adapted as a landfill site for the disposal of non-hazardous waste. In July 2007, civil proceedings were initiated by a group of residents living in Campania to seek an injunction to suspend the operation of the 'Lo Uttaro' waste disposal plant. Although the proceedings were dismissed, it found that the 'Lo Uttaro' area posed a potential danger to environmental and public health. Simultaneously, in 2005, the public prosecutor at the Santa Maria Capua Vetere District Court began investigating the management of the waste disposal plant, and the landfill was preventively seized in 2007.

Following an inspection on the site in 2008, the municipality of Caserta and the Ministry of the Environment signed an operational agreement regarding the measures to secure clean up the "Lo Uttaro" area. Over the next few years, various measures were taken, such as environmental characterisation, and prohibitions on the use of groundwater. Separately, in 2013, a parliamentary commission observed that during the operation of the landfill in 2007, hazardous waste had been disposed of at the plant, in breach of authorisation and environmental regulations, and that the competent authorities had failed to monitor the situation and even certified false information to justify the continued operation of the site.

2. Decision of the Court

The applicants, who are residents in the affected areas, argued on the basis of Articles 2 and 8 of the Convention that the State had failed to take the requisite measures to guarantee the proper functioning of waste collection, treatment and disposal services in the Campania region, and minimise or eliminate the effects of pollution from the 'Lo Uttaro' landfill. As such, it had caused serious damage to the environment, and endangered their lives, health, and that of the local population. Furthermore, they complained that the authorities had failed to inform them of the risks of living in the area surrounding the landfill, and that the accumulation of large quantities of waste along the public roads interfered with their Article 8 rights. All these complaints were examined by the Court under Article 8.

Article 8

First, the Court stated that severe environmental pollution could affect individuals' well-being and prevent them from enjoying their homes in a manner that would adversely affect their private and family life. Furthermore, Article 8 does not only compel States to abstain from arbitrary interference, but may

also entail positive obligations. In the context of dangerous activities, States are obliged to set regulations suited to the special features of the activity, governing the licensing, setting up, operation, security and supervision of the activity, and making it compulsory that all those concerned have to take practical measures to ensure the effective protection of citizens. Meanwhile, the procedural obligations of Article 8 confer particular importance on access to information by the public, to allow them to assess the risks that they are exposed to.

The Court divided its analysis as follows - the application of Article 8 regarding the management of the waste collection, treatment and disposal services in Campania from 11 February 1994 to 31 December 2009, the end of the state of emergency, the application of Article 8 from 1 January 2010, after the end of the state of emergency, the substantive aspect of Article 8 with regards to the 'Lo Uttaro' landfill site, and the procedural aspect of Article 8 regarding the site.

In terms of the management of the waste collection, treatment and disposal services from 11 February 1994 to 31 December 2009, the Court turned its attention to studies on the environmental situation in Naples and Caserta, the risk to human health as recognised by the CJEU, and the report by the parliamentary commission. Drawing on these, it concluded that living in Caserta and San Nicola La Strada made the applicants more vulnerable to various illnesses. Additionally, the Court stated that severe environmental pollution could adversely affect an individual's private life, without seriously endangering one's health. The applicants were forced to live for several months in an environment polluted by waste left in the street and disposed in temporary storage sites, with repeated interruptions in waste collection services. The accumulation of large quantities of waste had also led authorities to include emergency measures, such as the temporary closure of kindergartens, schools and local markets. As such, the applicants had experienced an environmental nuisance during their everyday life, which had adversely affected their private life and to a sufficient extent. Furthermore, considering the protracted inability of the authorities in ensuring the proper functioning of waste collection, treatment and disposal services, they had failed in their positive obligations to take all necessary measures to ensure the effective protection of the applicants' right to respect for their home and private life. Therefore, there was a violation of Article 8 during this period.

Focusing next on the period from 1 January 2010, the Court acknowledged that there were still several shortcomings in the management of waste treatment and disposal services in Campania. However, it stated that the applicants had not demonstrated whether and to what extent the shortcomings in this period had

directly impacted their home and private life. Therefore, being unable to find that the applicants had personally suffered a severe impact of waste pollution from 1 January 2010, the Court held that there was no violation of Article 8.

The Court then considered the substantive aspect of Article 8 with regards to the 'Lo Uttaro' landfill site. It pointed out that serious environmental pollution from the site existed, due to years of illegal waste disposal. The site had operated beyond the limits of its capacity and for the illegal disposal of hazardous waste, and this had been known by the authorities since 2001, and described in the reports of the parliamentary commission and findings of national courts from 2007 onwards. Although the site was no longer in operation following its seizure in 2007, inspections showed that it continued to cause environmental damage to the groundwater and atmosphere. Despite authorities' attempts to secure the area, projects put in place to secure and clean up the area had not been fully implemented yet on the date of the latest observations received by the Court, nor were related works carried out in accordance with a clear time frame. As such, the Court concluded that the mere closure of the site did not prevent the waste from continuing to harm the environment and endanger human health, and that the securing and cleaning up procedures had been inconclusive. The national authorities had therefore failed to take all necessary measures to ensure the effective protection of the right of the applicants to respect for their family life. The balance between their interest in not suffering serious environmental harm that could affect their well-being and private life, and the interest of overall society had been upset, so there was a violation of Article 8 in this aspect.

Turning finally to the procedural aspect of Article 8, the Court stated that the information which would have enabled the applicants to assess the potential risks they exposed themselves to by continuing to live in Caserta and San Nicola could be found in multiple sources. For example, the environmental situation of the 'Lo Uttaro' landfill site was made public by the parliamentary commission in 2013. Hence, the Italian authorities had discharged their duty to inform the people concerned, including the applicants, of the potential risks. As such, there was no violation of Article 8 in this aspect.

Article 41

The Court considered that the finding of violations of the Convention constituted sufficient just satisfaction, but awarded the applicants €5,000 jointly for costs and expenses.

By allowing a waste plant to release gas fumes, noise and smells, without striking a fair balance between the town's economic well-being and the applicant's effective enjoyment of her right to respect for her home and her private and family life, the authorities failed in its obligations and there had been a violation of Article 8

JUDGMENT IN THE CASE OF LÓPEZ OSTRA v. SPAIN

(Application no. 16798/90)
9 December 1994

1. Principal facts

The applicant lived in Lorca, Spain during the relevant period together with her family, including two children, a few hundred metres from the town centre.

SACURSA, a limited liability company, built and operated a plant for the treatment of liquid and solid waste twelve metres away from the applicant's home. The plant began operating in 1988 without a license from municipal authorities as required by domestic regulations. Due to a malfunction, the plant's start-up released gas fumes, pestilential smells and contamination, which caused health problems and nuisance to many nearby residents. The town council rehoused nearby residents free of charge from July to August 1988. The applicant and her family returned to their flat in October 1988 and lived there until February 1992.

On 9 September 1988, in light of reports from health and environmental agencies, the town council ordered cessation of the plant's settling of chemical and organic resides in water tanks. However, the town council allowed the plant's treatment of wastewater contaminated with chromium to continue. Expert opinions and written evidence showed that certain nuisances continued and could have endangered the health of those living nearby to the plant.

2. Decision of the Court

The applicant alleged that the Spanish authorities, in allowing the waste-treatment plant to operate, violated her right to respect for her home and her private and family life under Article 8 of the Convention. She also alleged that the Government's failure to take appropriate measures subjected her to degrading treatment under Article 3.

The Commission declared the application admissible and expressed the view that there had been a violation of Article 8.[59]

Admissibility

The Court dismissed the Government's objection that the applicant had not exhausted domestic remedies. Moreover, it held that the applicant did not cease to be victim merely by abandoning her home nor the waste-treatment plant's temporary closure, and dismissed the Government's objections objection in this regard. Years of harm from living next to the nuisance caused by the waste-treatment plant meant she was still a victim.

Article 8

The Court found that the nuisances in issue impaired the quality of life of those living in the plant's vicinity. Medical reports and expert opinions suggested that emissions from the plant exceeded the permitted limit, could have endangered the health of those living nearby, and could have been the cause of the applicant's daughter's ailments. Furthermore, some severe environmental pollution may prevent individuals from enjoying their homes in such a way as to affect their private and family life under Article 8 adversely without seriously endangering their health.

Under Article 8, a State must strike a fair balance between the competing interests of the individual and of the community as a whole; however, in doing so, the State enjoys a certain margin of appreciation. This principle applies whether the question is analysed as a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under Article 8 § 1, or as an "interference by a public authority" to be justified in according with § 2. Even if analysed under § 1, the aims mentioned in § 2 may be of relevance when striking the required balance.

Applying this balancing test, the Court noted that SACURSA's plant was built to solve a serious pollution problem. Nonetheless, the plant caused nuisance and health problems to many local people. While the Spanish authorities were not directly responsible for the emissions, they allowed and subsidised the plant's construction. Although the town council rehoused residents for a short time, the

[59] Before the entry into force of Protocol 11 in 1998 there was no direct access of individuals to the ECtHR, first the Commission would assess admissibility and render an opinion.

council's members allowed the plant to reopen and must have been aware that the environmental problems continued after the partial shutdown. The regional Environment and Nature Agency's report and expert opinions supported this conclusion.

The Court pointed out that the question of the lawfulness of building and operating the plant had been pending in the domestic Supreme Court since 1991, and that it is primarily for national authorities to interpret and apply domestic law. Nonetheless, even if the municipality did fulfil its domestic obligations, the Court need only establish whether the national authorities took the measures necessary for protecting the applicant's right to respect for her home and for her private and family life under Article 8. The municipality not only failed to take steps necessary for protecting the applicant's right to respect for her home and for her private and family life under Article 8 but also resisted judicial decisions to that effect by appealing a decision by the Murcia High Court ordering a temporary closure of the plant. Other state authorities contributed to prolonging the situation by appealing other decisions to close the plant temporarily.

The Court acknowledged that the Government paid for the applicant's family's temporary relocation. However, the family still had to bear the nuisance caused by the plant for over three years afterwards until having to relocate permanently when the applicant's daughter's paediatrician recommended they do so and it became clear the situation could continue indefinitely. Therefore, the municipality's offer could not afford complete redress for the nuisance and inconveniences for which the applicant and her family had been subjected.

Taking all of this into consideration, and despite the margin of appreciation accorded to the respondent State, the Court held that the State failed in striking a fair balance between the interest of the town's economic well-being – having a waste-treatment plan – and the applicant's effective enjoyment of her right to respect for her home and her private and family life. Thus, there had been a violation of Article 8.

Article 3

The conditions in which the applicant and her family lived for several years did not amount to degrading treatment within the meaning of Article 3 and therefore there had been no violation.

Article 50 (now Article 41)

The Court awarded the applicant 4,000,000 ESP (approximately €24,040) for damage and 1,500,000 ESP, less 9,700 French francs, (approximately €7,536 EUR) for costs and expenses. The damage award was reduced as the Government rehoused the applicant and her family for a year.

Croatian authorities were found to have failed to protect the applicant from excessive noise coming from a bar, in violation of Article 8

JUDGMENT IN THE CASE OF OLUIĆ v. CROATIA

(Application no. 61260/08)
20 May 2010

1. Principal facts

The applicant lived in Rijeka in a house she part owned with her family. Since December 1999, a bar operated in the same house.

In March 2001, the applicant complained to the Rijeka Office for Employment, Health and Social Welfare (the "Sanitary Inspectorate") about the excessive noise from the bar, which was open between 7 a.m. and midnight every day.

Expert measurements in May 2001 found that the level of noise at night exceeded the permitted level in domestic law by up to 8.5 decibels. In June, the Sanitary Inspectorate ordered the bar to reduce the level of noise; however, the bar did not comply.

Following further measurements in February 2002, the Sanitary Inspectorate ordered the bar to add sound insulation to its walls. That order was not complied with either, so the Sanitary Inspectorate ordered its enforcement. Consequently, the bar installed some insulation, but a further measurement on 20 September 2002 showed this was still considered to be insufficient.

The Sanitary Inspectorate discontinued the proceedings in March 2003, as the authorities concluded that the noise levels were not excessive. The applicant challenged this in the Administrative Court.

The applicant complained to the Supreme Court that Administrative Court proceedings were too lengthy. The Supreme Court found in her favour and ordered the Administrative Court to adopt a decision within three months. On 24 April 2007 the Administrative Court quashed the lower bodies' decisions, ordering them to establish whether the noise was still excessive.

Measurements between May 2005 and December 2008 showed noises with excesses of 15.6 dB. The last set of measurements from February 2009 showed no excess level of noise.

The applicant also submitted medical documents showing that her daughter suffered from hearing impairment, so should not be exposed to noise, and that her husband had a weak heart.

2. Decision of the Court

The applicant complained that Croatia had failed to protect her from the disturbance caused by the excessive noise from the bar, violating her rights under Article 8 of the Convention.

The Court considered that both the question of exhaustion of domestic remedies in the administrative proceedings and the issue of applicability of Article 8 should be joined to the merits, as they were closely linked to the substance of the complaint about the alleged failure to protect from excessive noise.

Article 8

There is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise, an issue may arise under Article 8. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. This may involve authorities adopting measures to secure respect for private life even in the sphere of relations between individuals to stop third-party breaches of individual rights.

The Court agreed that the applicant's flat was subject to night-time disturbance, which allegedly unsettled her and her family.

Previous case law by the Court had already established the State's duty to protect from excessive noise in many instances. The assessment of the minimum level of severity is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects.

Measurements of the noise by independent experts over the period of eight years had consistently shown that the night-time noise had been excessive under the applicable domestic laws. This had not been denied by the authorities during the domestic proceedings. The noise levels had also been found to have exceeded international standards.

In light of the noise levels – at night and beyond the permitted degree – and the fact that it continued daily over a number of years, the Court found that the level of disturbance had reached the minimum level of severity, and required Croatia to implement measures in order to protect the applicant from such noise.

In the domestic context, the Court observed that after the initial measurements the local administrative authority had ordered the bar to reduce the level of noise. However, this was not complied with. This was followed by major delays; it was months before the sound insulation was ordered to be installed, and it was almost four years before the Administrative Court issued it decision.

Night noisedisturbance had been allowed to persist for almost eight years before the latest expert decision of February 2009, when the noise had become compatible with the admissible levels. Consequently, the Court held that Croatia had failed to take adequate measures guaranteeing the applicant's rights in violation of Article 8.

Article 41

The Court awarded the applicant €15,000 in respect of non-pecuniary damage, and €3,700 for costs and expenses.

A positive obligation to protect the right to life under Article 2, and the de facto State permission and encouragement of slum dwelling next to a refuse tip where a methane explosion occurred also produced positive obligations for the protection of property under Article 1 of Protocol No. 1

GRAND CHAMBER JUDGMENT IN THE CASE OF ÖNERYILDIZ v. TURKEY

(Application no. 48939/99)
30 November 2004

1. Principal facts

The applicant was born in 1955. At the material time he was living with 12 close relatives in the slum quarter of Kazım Karabekir in Istanbul, Turkey.

Since the early 1970s, a household-refuse tip used by four district councils operated near Kazım Karabekir. An expert report drawn up on 7 May 1991 at the request of District Court, to which the matter had been referred by District Council, drew the authorities' attention to the fact that the rubbish tip did not conform to technical requirements and the Environment Act, it posed dangers for slum inhabitants, and no measures were taken to prevent gas explosions from decomposing refuse. The District Council sought a court order to prohibit other local councils from using the site. However, before any of the proceedings had been concluded, a methane explosion occurred at the tip on 28 April 1993 causing a landslide that engulfed more than ten houses situated below it, including the one belonging to the applicant. 39 people died in the accident, including nine close relatives of the applicant.

Immediately after the accident, two municipal police officers investigated and reported that thirteen dwellings were destroyed. A crisis unit from the Istanbul Governor's Office confirmed the landslide was caused by a methane explosion. Criminal proceedings were initiated against the mayors of Ümraniye and Istanbul, for failing to order the destruction of the illegal dwellings surrounding the rubbish tip, and for failing to renovate the tip or order its closure, in spite of the conclusions of the expert report of 7 May 1991. Both were found guilty of "negligence in the performance of their duties", fined 160,000 Turkish liras (TRL) and sentenced to the minimum three-month term of imprisonment provided for in Article 230 of the Criminal Code. Their sentences were subsequently commuted to fines, the enforcement of which was suspended.

The applicant filed for damages in the Administrative Court for the death of his relatives and the loss of his property. In 1996 the court found a direct causal link between the accident and the authorities' negligence. After nearly five years of proceedings, the applicant and his children were awarded TRL 100,000,000 for non-pecuniary damage (approximately €2,077 at the time), TRL 10,000,000 for pecuniary damage (approximately €208 at the time). However, at the time of the proceedings before the European Court of Human Rights, these amounts had not been paid. The domestic court refused to consider awarding damages for the destruction of the house because the applicant acquired subsidised housing on favourable terms after the accident. Additionally, compensation for electrical appliances was also denied as the house was not supposed to have water or electricity.

2. Decision of the Court

The applicant claimed that there had been a violation of Articles 2, 6 § 1, 8, and 13 of the Convention and a violation of Article 1 of Protocol No.1.

In a Chamber judgment of 18 June 2002, the Court held that there had been violations of Article 2 of the Convention and of Article 1 of Protocol No. 1. The case was referred to the Grand Chamber under Article 43 at the request of the Government.

Article 2

The Court considered that Article 2 was applicable by reiterating that the Convention's provisions must be interpreted to mean a positive obligation on State to ensure there are practical and effective safeguards including the public's right to information to protect the right to life.

Since the authorities refused to address operational risks highlighted in a 1991 expert report, or discourage living near the rubbish tip or inform inhabitants of risks, they had an obligation under Article 2 of the Convention to implement preventive operational measures necessary and sufficient to protect those individuals. This obligation was especially pertinent as the authorities had established the site and authorised its operation, creating the risk in question. However, Istanbul City Council had failed to take necessary urgent measures.

The Government had argued that the applicant had acted illegally by settling in an unauthorised dwelling near the rubbish tip, however the Court observed

that in spite of the statutory prohibitions in the field of town planning, the State's consistent policy on slum areas had in fact implicitly permitted the development of such areas. From 1988 until the accident, the applicant and his close relatives had lived entirely undisturbed in their house. It also appeared that the authorities had levied council tax on the applicant and other inhabitants of the slums and had provided them with public services, for which they were charged. Accordingly, the Government could not maintain that they were absolved of responsibility on account of the victims' negligence or lack of foresight. Additionally, the Government had not provided information to inhabitants informing them of the risks that they faced by living there.

The Court considered that the regulatory framework applicable in the present case had proved defective as the rubbish tip was allowed to operate without a coherent supervisory system. Consequently, the Court held that there had been a violation of the substantive aspect of Article 2.

The Court then went on to assess the effectiveness of the investigation following the accident. States must ensure an adequate response, judicial or otherwise, to enforce the framework protecting life and punish breaches. Article 2 requires an independent and impartial investigation that meets minimum effectiveness standards. This investigation must be capable of applying criminal penalties if justified by its findings. Authorities must act diligently and quickly to investigate the circumstances and identify any involved state officials. Article 2 does not guarantee the right to have third parties prosecuted or sentenced or that all prosecutions will result in conviction. Yet, national courts must not allow life-endangering offenses to go unpunished to maintain public confidence, ensure the rule of law, and prevent any appearance of tolerance or collusion in unlawful acts. The European Court's role is to ensure that the national courts have thoroughly examined the case to uphold the deterrent effect of the judicial system and prevent violations of the right to life.

The sole purpose of the criminal proceedings in the present case had been to establish whether the authorities could be held liable for "negligence in the performance of their duties" under Article 230 of the Criminal Code, a provision that did not in any way relate to life-endangering acts or to the protection of the right to life within the meaning of Article 2. Additionally, the mayors were sentenced to minimal fines, ignoring the deaths' seriousness. The judgment of 1996 had left in abeyance any question of the authorities' possible responsibility for the death of the applicant's close relatives.

Accordingly, the judicial response did not ensure accountability or deter future life-endangering conduct. The Court therefore held that there had also been a violation of the procedural aspect of Article 2 concerning the inadequate investigation into the deaths of the applicant's close relatives.

Article 1 of Protocol No. 1 to the Convention

The Court clarified that the term 'possessions' in Article 1 of Protocol No. 1 has its own meaning that is not limited to owning physical items and not dependent on definition from domestic law. The concept of "possessions" can also include assets or claims if the applicant can reasonably expect to enjoy a property right.

The applicant's dwelling was erected in breach of town-planning regulations on land belonging to the Treasury. Disagreement existed on whether the applicant had a "possession" under Article 1 of Protocol No. 1. The applicant claimed he could have taken steps to acquire ownership of the land, but the Court found this argument speculative as there was no detailed information on whether the area was included in a slum-rehabilitation plan or whether the applicant met formal requirements for land transfer. The applicant admitted not taking administrative steps to acquire the land, and hence the Court concluded the applicant's hope, in itself, of land transfer did not constitute a sufficiently established claim enforceable in courts.

However, the State authorities' tolerance of the applicant's actions suggested a de facto acknowledgment of the applicant's proprietary interest in the dwelling and movable goods. The relevant authorities had been aware of irregularities for almost five years. The uncertainty regarding the implementation of laws to curb illegal settlements likely did not lead the applicant to foresee a sudden change in his dwelling's status. Therefore, the applicant's proprietary interest in his dwelling was sufficiently recognised to constitute a substantive interest and thus a "possession" within the meaning of Article 1 of Protocol No. 1, making the provision applicable to his claim.

The Court reaffirmed that under Article 1 of Protocol No. 1, the right to enjoy possessions included the positive obligations of the State to protect this right. The State's gross negligence, which led to loss of life and also caused the destruction of the applicant's house, amounting to not only an interference but a failure in fulfilling the positive obligation to protect.

The Court rejected the Government's argument that the authorities had refrained on humanitarian grounds from destroying the applicant's house,

seemingly arguing a "legitimate aim" under paragraph 2 of Article 1 of Protocol No. 1. As with the violation of Article 2, the positive obligation on the authorities under Article 1 of Protocol No. 1 had required the State to take practical steps to avoid the destruction of the dwelling.

The Government argued the applicant could not claim to be a victim as he received substantial compensation for pecuniary damage and subsidised housing. The Court disagreed, stating that advantageous terms for the flat did not constitute proper compensation for the damage sustained. The applicant retained his victim status as there was no acknowledgment of a violation of his rights by the authorities. The compensation awarded for pecuniary damage had not been paid despite a final judgment, which in itself was an interference with the right to enforcement of an upheld claim, protected by Article 1 of Protocol No. 1.

Consequently, there had been a violation of Article 1 of Protocol No. 1.

Article 13

The Court found that the right to life was inadequately protected by criminal proceedings, despite official investigations establishing facts and identifying those responsible. Additionally, the Court criticised the ineffectiveness of the compensation proceedings as the damages awarded were never paid. The applicant could not be blamed for not enforcing the award, given the prolonged administrative court process and lack of default interest on non-pecuniary damage compensation. Timely payment of compensation was considered essential for a remedy under Article 13. Therefore, there had been a violation of Article 13 regarding the complaint under Article 2.

The applicant obtained compensation for the destruction of household goods, except for electrical appliances. However, the decision on compensation was delayed, and the award was never paid. Consequently, the applicant was denied an effective remedy for the alleged breach of Article 1 of Protocol No. 1, resulting in a violation of Article 13 regarding the complaint under Article 1 of Protocol No. 1.

Article 6 § 1 and Article 8

Having regard to the findings it had already reached, the Court did not consider it necessary to examine the allegations of a violation of Article 6 § 1 and Article 8.

Article 41

The Court decided to award the applicant $2,000 (corresponding to the reimbursement of funeral expenses), €45,250 for pecuniary and non-pecuniary damage and €16,000 for costs and expenses (minus €3,993.84 already received from the Council of Europe in legal aid). The Court also awarded €33,750 to each of the applicant's adult sons for non-pecuniary damage.

Violation of Article 8 due to the State failing to provide an effective and accessible procedure to access information concerning the possible health impact of chemical weapons testing conducted on the applicant

GRAND CHAMBER JUDGMENT IN THE CASE OF ROCHE v. THE UNITED KINGDOM

(Application no. 32555/96)
19 October 2005

1. Principal facts

The applicant was born in 1938 and lived in Lancashire, United Kingdom. In 1953 he joined the British Army and was discharged in 1968 for reasons unrelated to his case before the European Court of Human Rights.

The Chemical and Biological Defence Establishment at Porton Down, established during WWI, conducted research into chemical weapons, including human and animal tests. Servicemen who participated were paid extra wages. The applicant participated in tests at Porton Down, with undisputed attendance in July 1963 but debated attendance in 1962.

The applicant claimed he was invited to Porton Down in spring 1962, underwent a medical examination, entered a sealed, unventilated room multiple times, had mustard gas applied to his skin, and received no proper warning about the health consequences. He returned to his unit without further medical examination.

In 1987 he developed high blood pressure and then suffered from hypertension, chronic obstructive airways disease (bronchitis) and bronchial asthma. He had not worked since 1988 and was registered as an invalid. He maintained that his health problems were the result of his participation in mustard and nerve gas tests conducted in 1962 and 1963.

He supported his claim with a 1989 memorandum and a 2004 Pensions Appeal Tribunal (PAT) conclusion. The Government disputed his 1962 participation, citing lack of records for that year, although records existed for 1963 of which the Government explained that those tests were monitored, properly ventilated, with small, safe dosages and careful planning and control, and his additional test of inhaling a nerve gas was diluted and controlled.

From 1987 the applicant sought access to his service records *via* medical and political channels, with limited success, including engaging in a sit-in hunger strike at Porton Down. In 1991 he submitted a claim for a service pension, but the Secretary of State rejected his pension claim as he had not demonstrated a causal link between the tests and his medical condition, and the applicant did not appeal.

In 1994 he threatened to bring judicial review proceedings alleging, among other things, negligence on the part of the Ministry of Defence. On 3 August 1995 the Secretary of State issued a certificate under section 10 of the Crown Proceedings Act 1947, which effectively blocked any such proceedings concerning events prior to 1987, while allowing the person concerned to apply for a service pension.

In November 1998 the applicant appealed to the PAT. He applied for the disclosure of official information under the PAT Rules to enable the PAT to decide whether his illness was caused or aggravated by the Porton Down gas tests. In February 2001 the PAT ordered the Ministry of Defence to disclose certain categories of records and certain documents were disclosed in 2001 and 2002.

On 14 January 2004 the PAT concluded, relying on an expert report, that there was "no evidence to link [the applicant's] exposure to either gas with his present condition". However, the PAT also considered the "difficulties" experienced by the applicant in obtaining the records which were produced to the PAT to be "disquieting".

On 11 May 2004 the applicant applied for leave to appeal to the High Court. On 8 October 2004 the High Court allowed the appeal and referred the matter back to the PAT for a further hearing, before which the case was still pending at the time of the proceedings before the Court.

Since 1998 a scheme had existed allowing Porton Down test participants to be given a summary of their test records and to see the actual documents at Porton Down. In addition, the Porton Down Volunteers Medical Assessment Programme was established in 2001 to investigate the health concerns of participants. Its report, published in April 2004, concluded that: "on a clinical basis, no evidence was found to support the hypothesis that participation in Porton Down trials produced any long-term adverse health effects or unusual patterns of disease compared to those of the general population of the same age".

In April 2005 the Government disclosed a further 11 documents, eight of which had not been seen before by the applicant.

2. Decision of the Court

The applicant complained that the certificate issued by the Secretary of State under section 10 of the 1947 Act constituted a violation of his right to property under Article 1 of Protocol No.1, and his right of access to court under Article 6 § 1, Article 13 and Article 14. The applicant also complained that he was denied adequate access to information concerning the tests he underwent at Porton Down, in violation of Article 8 and Article 10 of the Convention.

Article 6 § 1

The applicant argued that the section 10 certificate acted as a procedural barrier preventing him from pursuing a right of action he believed he had under the 1947 Act once he suffered significant injury. The Court disagreed, stating that section 10 must be interpreted within its context and legislative intent, aimed at excluding the Crown's liability and facilitating pension grants with the certificate of the Secretary of State serving only to confirm that the injuries were attributable to service and thereby to facilitate access to that scheme. This was designed to create a no-fault pension scheme instead of a right to sue for damages.

Accordingly, the Court found that the applicant had no recognised civil right under domestic law which would attract the application of Article 6 § 1.

Article 1 of Protocol No. 1

A proprietary interest in the nature of a claim is a possession only if it has a sufficient basis in national law, including settled case-law. The applicant argued he had a "possession" on the same grounds as his "civil right" under Article 6 § 1. The Court considered that the applicant had no "possession" within the meaning of Article 1 of Protocol No. 1.

Article 14

The Court concluded that the applicant had no "civil right" or "possession" under Article 6 § 1 and Article 1 of Protocol No. 1., therefore, Article 14 in conjunction with either was also inapplicable.

Article 13

The applicant's complaints under Article 6 § 1 and Article 1 of Protocol No. 1 were directed against section 10 of the 1947 Act. Article 13 did not guarantee a remedy to challenge a State's primary legislation on the ground that it is contrary to the Convention, therefore there was no violation of Article 13.

Article 8

The Court found that the applicant's uncertainty, as to whether or not he had been put at risk through his participation in the tests carried out in Porton Down, could reasonably be accepted to have caused him substantial anxiety and stress. Since access to information about exposure risks was linked to applicant's private life, Article 8 was applicable.

The Court considered that a positive obligation of the state arose to provide an "effective and accessible procedure" enabling the applicant to have access to "all relevant and appropriate information" which would allow him to assess any risk to which he had been exposed during his participation in the tests. However, the various "medical" and "political" means available in the applicant's case had resulted only in partial disclosure.

As to the 1998 Scheme, the Court recalled the difficulties experienced by the authorities, even in a judicial context before the PAT, in providing records under the order of the President of the PAT. Those demonstrated difficulties in making comprehensive and structured disclosure to date undermined any suggestion that an individual's attendance at Porton Down to review records retained there could lead to the provision of all relevant and appropriate information to that person.

Finally, the Porton Down Volunteers Medical Assessment Programme involved only 111 participants and no control group, whereas 3,000 service personnel had participated in nerve gas tests and 6,000 in mustard gas tests, with some having been involved in both types of test. The full-scale epidemiological study did not begin until 2003 and had not yet been completed by the time of the proceedings.

In such circumstances, the Court considered that the United Kingdom had not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests. Therefore, there had been a violation of Article 8.

Article 10

While the applicant had acknowledged that the Court had typically examined such issues under Article 8, he argued that the right to seek access to information was an important and inherent part of the protection of Article 10. The Court concluded that the freedom to receive information prohibits a government from restricting someone from receiving information that others wish to impart. This freedom does not impose a positive obligation on the State to disseminate information of its own motion. Therefore, there had been no interference with the applicant's right to receive information as protected by Article 10.

Article 41

The Court awarded the applicant €8,000 for non-pecuniary damage and €47,000 for costs and expenses.

Romanian authorities did not violate Article 1 of Protocol No. 1 for upholding a fine and confiscation of money for operating a scrap metal firm without authorisation, citing the protection of the environment as being "an increasingly important consideration"

JUDGMENT IN THE CASE OF S.C. FIERCOLECT IMPEX S.R.L. v. ROMANIA

(Application no. 26429/07)
13 December 2016

1. Principal facts

The applicant was a limited liability company, based in Cluj Napoca, which collected and recycled scrap iron.

The applicant was legally required to hold an operating permit and an environmental permit to conduct its operations. In January 2005 it applied for a renewal of its existing permits, which were due to expire on 7 March 2005.

It was informed by the authorities that under new legislation, its activity was considered to have a significant impact on the environment and that it should therefore follow the stipulated authorisation procedure. The applicant therefore submitted additional documents as requested. A new environmental permit was issued on 24 March 2005 and a new operating permit was issued on 14 April 2005.

Throughout the period between the expiry of the operating permit on 7 March and its renewal on 14 April 2005 the applicant company continued to carry on its activities.

On 6 May 2005, following an inspection, the Cluj Financial Inspectorate fined the applicant €694 and ordered the confiscation of €21,347, representing the market value of the scrap iron collected for recycling between 8 March and 14 April 2005.

The applicant consequently brought two sets of proceedings before the domestic courts, complaining about the authorities' delay in issuing the relevant environmental and operating permits, which had resulted in them having to operate for a certain period without a permit.

In the first set of proceedings, against the Financial Inspectorate, the applicant's complaint was dismissed as unfounded in August 2005. In a second set of (administrative) proceedings, the applicant brought an action against the competent environment agency to recover damages incurred due to the delay in it issuing a permit.

Ultimately, in these proceedings the applicant's appeal on points of law was dismissed in February 2007. The administrative authorities found in particular that the applicant, which was considered by the relevant authorities to have a significant impact on the environment, should have suspended its activity until it had obtained the permits required by law and only then brought proceedings seeking to recover any damages.

2. Decision of the Court

The applicant complained that the sum confiscated from it, in addition to the fine, had been excessive, and that the authorities had been responsible for it having to operate without a permit as they had failed to issue the necessary permits in time. This violated its rights under Article 1 of Protocol No. 1 of the Convention.

Article 1 of Protocol No. 1

Article 1 of Protocol No. 1 comprises three distinct rules: the first rule (the first paragraph), is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule (the second sentence of the first paragraph), covers deprivation of possessions and subjects it to certain conditions; the third rule (the second paragraph), recognises that States are entitled to control the use of property in accordance with general public interest.

The three rules are not, however, distinct. There was held to be an indisputable interference with the applicant's right to peaceful enjoyment of its possessions, but it had to be determined whether the measure was covered by the first or second paragraph of that Convention provision. The Court reiterated that a confiscation measure, even that involving the deprivation of possessions, constituted control of the use of property within the meaning of the second paragraph.

The interference with the applicant's right to peaceful enjoyment of its possessions was held to be lawful (i.e. it was prescribed by law) and pursued the legitimate aim of controlling the conditions under which activities with an environmental impact were carried out.

The Court noted that a "fair balance" was required between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The confiscation of the unlawfully obtained revenue as a sanction in addition to the fine was held not to be disproportionate, as it had not imposed an "individual and excessive burden" on the applicant.

Moreover, defence of the environment maintains the sustained interest of the public, and consequently the public authorities. The protection of the environment was noted to be "an increasingly important consideration" in this balance, and it was held that "financial imperatives should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard". The Court explained that public authorities must intervene at the appropriate time to ensure that statutory provisions enacted with the purpose of protecting the environment are not entirely ineffective.

The applicant had continued to conduct its operations without an environmental permit even though that activity was considered to have a significant impact on the environment. It could have asked the authorities what to do and should have suspended its activity until it had obtained the requisite permits and then brought proceedings to recover any damages, as the domestic courts had indicated.

It was noted that the question of whether such conduct should be punished by a financial penalty with a deterrent effect, such as a fine and the confiscation of the unlawfully obtained revenue, fell within the State's wide margin of appreciation in the sphere of environmental protection.

The pecuniary penalties imposed were not excessive: allowing the company to keep the revenue obtained over the relevant period would encourage other commercial companies to carry out their activity without complying with the relevant legal provisions, in particular, those protecting the environment.

Unlike other caselaw, where the cumulative effect of a fine and a confiscation measure had been found to be disproportionate, the legislation in the applicant's case did not provide for confiscation of an amount unrelated to the severity of the crime but instead focused specifically on the profits during the period which it had not held the relevant permits.

The Court therefore unanimously found no violation of Article 1 of Protocol No. 1.

Criminal conviction for defamation of a director of water supply based on statements by him about the quality of the water in the local area and the work of the water inspector, constituted a violation of Article 10

JUDGMENT IN THE CASE OF ŠABANOVIĆ v. MONTENEGRO AND SERBIA

(Application no. 5995/06)
31 May 2011

1. Principal facts

The applicant was a Montenegrin national living in Herceg Novi.

On 6 February 2003 a Montenegrin daily newspaper published an article alleging that the water in the Herceg Novi area was "full of bacteria", based on a report which had been drawn up at the request of the Chief State Water Inspector. The applicant, director of a public water supply company and a member of the opposition political party at the time, immediately held a press conference at which he denied the allegations, maintaining that all tap water was filtered and safe for public consumption. He further stated in particular that the water inspector was favouritising two private water companies in their bid to develop additional water sources and that he was under orders from the Democratic Party of Socialists, the major partner in the ruling coalition Government at the time.

As a result, the water inspector brought defamation proceedings against the applicant, and on 4 September 2003 he was found guilty of making statements which were untrue and harmful to the inspector's honour and reputation. He was sentenced to a three month suspended prison sentence. The domestic courts refused the applicant's request to read the newspaper article in which the allegations of contaminated drinking water were made as they considered that it was not relevant and that such a step would only delay the proceedings. That decision was upheld on appeal in November 2005.

2. Decision of the Court

Relying on Article 10, the applicant complained about his conviction for defamation on account of the statements he had made at the press conference in February 2003.

Article 10

Given that the criminal proceedings against the applicant had been conducted entirely by the Montegrin courts, the Court decided to reject the part of his complaint in respect of Serbia.

The defamation conviction constituted an interference with the applicant's freedom of expression. This was based on the Criminal Code of the Republic of Montenegro, had been "prescribed by law" and pursued "the legitimate aim" of protecting the reputation of others. What remained to be resolved was whether the interference was necessary in a democratic society.

The Court found that it was quite understandable that the applicant, as the director of a public water supply company, had felt that it was his duty to respond to allegations in the press that drinking water in the Herceg Novi area was contaminated, in order to inform the public that the water was filtered and safe to use. His remarks were a robust clarification of a matter of great public interest and were not a gratuitous attack on the water inspector's private life but a criticism of him in his official capacity. Indeed, the domestic courts had taken a rather restrictive approach to the matter, having failed to situate his comments in the broader context of the general debate in the press about the quality of drinking water in the area.

The Court held that there was little scope for such restrictions on debates of public interest and therefore found that the interference with the applicant's freedom of expression had not been necessary in a democratic society, in violation of Article 10. The Court further noted with concern that the applicant had been given a suspended prison sentence for defamation, a sanction which, even if not actually imposed, the Council of Europe has called upon its Member States to abolish without delay.

Article 41

The Court dismissed the applicant's claim for just satisfaction under Article 41 as it had been submitted after the deadline.

Case declared inadmissible under Article 2, as the applicant did not demonstrate a causal link between factory emissions and the cancer she suffered

DECISION IN THE CASE OF SMALTINI v. ITALY

(Application no. 43961/09)
24 March 2015

1. Principal facts

The applicant was born in 1954 and lived in Taranto. She died on 21 December 2012, but her husband and children continued the proceedings that she had initiated.

Ilva, a steel production and processing company, had faced issues surrounding the environmental impact of emissions from its Taranto steel plant. Legal proceedings had been brought again its directors on several occasions, and convictions in some cases had followed.

On 12 September 2006, the applicant was diagnosed with leukaemia. She brought proceedings against a manager of Ilva, alleging that her condition had been caused by the polluted air emissions from the plant. She submitted that the number of deaths from cancers had increased in the Taranto region due to such emissions and highlighted the previous convictions of the directors.

On 10 September 2007, the public prosecutor asked the judge responsible for the preliminary

investigation to discontinue the proceedings, arguing that no causal link had been established between the harmful emissions and the applicant's condition.

On 23 April 2008 the preliminary investigation judge refused the request to discontinue the proceedings and commissioned a haematological report to identify the causes of the applicant's illness and a possible link between the pollution and her condition.

Experts found that incidence of leukaemia in the applicant's age group was no higher in the Taranto region than in other regions of Italy. Accordingly, while noting that the polluting emissions from the Ilva plant did indeed have consequences for health, the experts ruled out the existence of any causal link between the emissions and the applicant's leukaemia, on the basis of the scientific data available.

On 19 January 2009 the investigating judge discontinued the proceedings due to the expert opinions offered. The applicant died on 21 December 2012 as a result of meningitis, which could not be treated on account of an immunodeficiency attributable to her cancer.

2. Decision of the Court

The applicant complained that a proven causal link between the harmful emissions from the Ilva plant and the development of her cancer violated her right to life under Article 2 of the Convention.

Article 2

The Court considered the positive obligation incumbent on States within the meaning of Article 2 in the context of dangerous activities, emphasising the balance to be struck between health and environmental monitoring and economic growth.

The Court noted that the applicant's complaint consisted in alleging, not that the domestic authorities had omitted to take legislative or administrative measures to protect her right to life, but rather that they had not established the existence of a causal link between the polluting emissions from the Ilva plant and her illness.

This was therefore a procedural analysis of the applicant's right to life. The question was whether the national courts subjected the case to the scrupulous examination required by Article 2. It was necessary to assess whether, in the context of the procedure established, the judicial authorities duly classified the case correctly or if, on the contrary, they had sufficient elements proving the existence of the causal link between the harmful emissions produced by the Ilva and the applicant's illness.

The Court observed that, according to the expert reports examined by the domestic courts, the incidence of leukaemia was no higher in the Taranto region than in other regions of Italy. It also affected women uniformly in the entire region, with an increase in certain areas, but not Taranto. Therefore, no causal link could be found. The Court also noted that the applicant had had the benefit of adversarial proceedings in the course of which investigations had been carried out at her request, albeit without success.

In the Court's view, therefore, the applicant had not demonstrated that in the light of the scientific data available at the time of the events, and without prejudice to the findings of future scientific studies, the authorities had failed in their obligation to protect her right to life under the procedural aspect of Article 2.

The application was therefore rejected as being manifestly ill-founded.

The ongoing use of a cemetery was found to be polluting the applicant's land, in breach of domestic health regulations and violation of his rights under Article 8

JUDGMENT IN THE CASE OF SOLYANIK v. RUSSIA

(Application no. 47987/15)
10 May 2022

1. Principal facts

The applicant was born in 1967 and lived in Vladivostok. He owned a house and its adjoining land, which was located near the Lesnoye cemetery. The land contained a well, which was the applicant's only source of drinking water.

The cemetery had been expanding towards the applicant's house since 1991 and, following local complaints, the closure of the cemetery was ordered by decree in 1995. The cemetery was held to be at maximum capacity, and further expansion would breach health regulations.

In 2009, a report on the applicant's land independently commissioned by the Regional Consumer Protection Authority ("CPA") indicated sub-standard drinking water quality and illegal concentrations of chlorides in the soil, with the cemetery being cited as a possible cause of this issue.

In 2010, the applicant complained to the CPA that burials had resumed in 2009 and 2010. The authorities issued the municipal burial service with three reprimands for its failure to produce a proposal for the demarcation of a 500 metre-sanitary protection zone around Lesnoye cemetery. The CPA also brought proceedings against the burial service and city administration under the Code of Administrative Offences.

The applicant submitted three expert reports from 2009, 2012 and 2013 demonstrating that the soil on his land and water in his well were contaminated to an "extremely dangerous degree". Indeed, the 2012 report found that the soil had excessive levels of chemicals, bacteria and parasites, and the 2013 report showed his house was only 77.1 metres away from the cemetery, in breach of the relevant health regulations.

In 2013, the local courts found that burials were being carried out in breach of health regulations and subsequently ordered the city council to create a sanitary

protection zone by 31 December 2014. However, the courts also refused the applicant's request to discontinue burials. In 2015, this ruling was upheld by the Supreme Court. By the time the judgment from the European Court was handed down, the order for creation of the sanitary protection zone had still not been enforced.

2. Decision of the Court

The applicant complained that the ongoing use of the cemetery near his home had led to contamination of the soil and well, violating his rights under Article 8 of the Convention.

He also complained of alleged emotional distress, insomnia and headaches, due to burials being carried out near his house.

Article 8

The Court observed that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without seriously endangering their health. Therefore, it considered whether the risks to the applicant caused by the use of cemetery in close proximity to his house established a sufficiently close link with the applicant's private life and home as to affect his "quality of life".

Although there was no direct evidence of any actual damage to the applicant's health, the Court noted that the cemetery had gradually moved closer to his property (recorded as 34 metres away in 2019) and the property had been located within the limits of the proposed sanitary protection zone since 2013; this was in breach of the relevant domestic regulations. The forensic expert reports submitted also found that the applicant's land was contaminated to a dangerous degree. The Court noted that the 2012 and 2013 reports had been accepted by the domestic courts as evidence of the applicant having been subjected to nuisance.

The Court therefore considered that there had been an interference with the applicant's right to respect for his home and private and family life and that that interference had attained a sufficient degree of seriousness to trigger the application of Article 8.

When assessing whether the interference had been in accordance with law, the Court noted the fact that illegal burials had resumed in 2009, and the lack of a

Government explanation as to how the expansion of the cemetery conformed with the maximum for cemeteries provided by domestic regulations. It also emphasised the reports showing that the cemetery sloped downwards towards the applicant's property and was clearly cited as a possible source of the contamination.

Moreover, the Court observed that, as "polluting undertakings", cemeteries were to be surrounded by a sanitary protection zone; however, the city's burial service had disregarded the reprimands it had been issued with for failing to create such a zone. It also highlighted that in 2014 the Primorsk Regional Court had expressly ordered the municipal burial service and the city administration to prepare a proposal for the sanitary protection zone to ensure compliance, but this was ignored.

Furthermore, the court decision ordering the creation of a sanitary protection zone had still not been enforced at the time of judgment; the proposal process had only entered its very early stages by the end of 2019. The Government gave no explanation for such delay, or any information as to whether alternative measures had been considered, such as relocating the applicant or carrying out decontamination work on his land.

The Court noted that it was mindful of the difficulties and delays typically encountered by authorities in finding relevant resources and funding for public works projects, such as cemeteries. However, in this case it underscored the use of the cemetery in blatant breach of the relevant domestic health regulations and the unexplained delay in enforcement.

The Court therefore concluded that the cemetery was being used in blatant breach of domestic health regulations, depriving the applicant of effective protection of his rights under Article 8.

Article 41

The Court awarded the applicant €7,500 in respect of non-pecuniary damage, and €7,000 for costs and expenses.

The denial of legal aid and the disproportionate damages awarded led to violations of Article 6 § 1 and Article 10, due to the disparity of means and resources of two climate activists compared with a large international corporation

JUDGMENT IN THE CASE OF STEEL AND MORRIS v. THE UNITED KINGDOM

(Application no. 68416/01)
15 February 2005

1. Principal facts

The applicants were Helen Steel and David Morris, born in 1965 and 1954 respectively and who lived in London. During the relevant period, Mr Morris was unemployed and Ms Steel was either unemployed or earning a low wage. Both were associated with London Greenpeace, a small group unconnected with Greenpeace International that primarily campaigned on environmental and social issues.

In the mid-1980s London Greenpeace began an anti-McDonald's campaign. In 1986 a six-page leaflet entitled "What's wrong with McDonald's?" was produced and distributed as part of that campaign containing a number of allegations against McDonald's about social and environmental harm, health risks of the food produced by McDonald's particularly regarding the alleged targeted advertising to children, animal welfare abuses, and poor working conditions.

The publication was reprinted word for word by Veggies Ltd in 1987 and 1988. McDonald's settled libel proceedings against Veggies Ltd after agreeing to rewrite a particular section of the publication. As London Greenpeace was not incorporated, no direct legal action could be taken against it. Therefore, on 20 September 1990, McDonald's Corporation ("US McDonald's") and McDonald's Restaurants Limited ("UK McDonald's") issued a writ against the applicants claiming damages for libel allegedly caused by the alleged publication by the defendants of the leaflet.

The applicants denied publication, denied that the words complained of had the meanings attributed to them by McDonald's and denied that all or some of the meanings were capable of being defamatory. Further, they contended, in the alternative, that the words were substantially true or else were fair comment on matters of fact.

The applicants were refused legal aid and so represented themselves throughout the trial and appeal, with only some help from volunteer lawyers. They submitted that they were severely hampered by lack of resources, not just in the way of legal advice and representation, but also when it came to administration, photocopying, note-taking, and the tracing, preparation and payment of the costs and expenses of expert and factual witnesses. Throughout the proceedings McDonald's were represented by leading and junior counsel, experienced in defamation law and by a one or, at times, two solicitors and other assistants.

The trial before a single judge lasted for 313 court days, over two and a half years, and was the longest trial in English legal history at the time. The judge found in favour of McDonald's and awarded damages. On appeal the Court of Appeal rejected the majority of the applicants' submissions as to general grounds of law and unfairness, but accepted some of the challenges to the trial judge's findings as to the content of the leaflet. Therefore, the damages awarded by the trial judge were reduced from a total of £110,000 to a total of £76,000. Leave to appeal to the House of Lords was refused. McDonald's, who had not applied for costs, did not seek to enforce the award.

2. Decision of the Court

The applicants complained, under Article 6 § 1 of the Convention, that the proceedings were unfair, principally because they were denied legal aid, and, under Article 10, that the proceedings and their outcome constituted a disproportionate interference with their right to freedom of expression.

Article 6 § 1

The Court clarified that the necessity of providing legal aid for a fair hearing depends upon the importance of what was at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively.

While defamation proceedings are not comparable to significant family-law issues, the financial consequences were potentially severe.

The complexity of the proceedings was evident as the trial at first instance lasted 313 court days, the appeal over 23 court days, the factual case required proving involved 40,000 pages of documentary evidence and 130 oral witnesses, and extensive legal and procedural issues had to be resolved before the main issue could be decided.

Despite these difficulties, the applicants demonstrated resourcefulness and were successful in proving truth in several statements in the publication. They received some pro bono assistance from barristers and solicitors, with lawyers drafting their initial pleadings, however, for most proceedings, including hearings on the leaflet's statements, they acted alone. The sporadic help from volunteer lawyers and the judicial assistance provided did not substitute for sustained representation by an experienced libel lawyer.

The denial of legal aid deprived the applicants of the opportunity to present their case effectively, contributing to an unacceptable inequality of arms with McDonald's, resulting in a violation of Article 6 § 1.

Article 10

The Court had to determine whether the interference with the applicants' freedom of expression was "necessary in a democratic society". The Government argued that the applicants, not being journalists, should not receive the high level of protection afforded to the press under Article 10. The Court considered that even small and informal campaign groups like London Greenpeace must be able to carry out their activities effectively in a democratic society as there is a strong public interest in enabling such groups and individuals outside the mainstream to contribute to public debate by disseminating information and ideas on matters of general public interest, such as health and the environment. The Court stipulated that journalists must act in good faith to provide accurate information; the same principle applies to others in public debate. In a campaigning leaflet, a degree of hyperbole is expected, but serious allegations presented as facts must be scrutinised.

In addition to the applicants' argument that they were not the authors, they also argued that the information in the leaflet had entered the public domain, such as the publication by Veggies Ltd of effectively the same claims, and therefore it was not for the applicants to prove the truth of the publication's contents. The Court held that placing the burden of proving the truth of defamatory statements on the defendant in libel proceedings is not incompatible with Article 10. The fact that the plaintiff was a large multinational company did not deprive it of the right to defend itself against defamatory allegations. While large public companies are open to close scrutiny and the limits of acceptable criticism are wider for such entities, there is also a competing interest in protecting their commercial success and viability for the benefit of shareholders, employees, and the wider economic good. The State has a margin of appreciation in providing means under domestic law for a company to challenge and limit the damage of harmful allegations.

However, if a State provides such a remedy to a corporate body, it must ensure procedural fairness and equality of arms to safeguard countervailing interests in free expression and open debate. The broader interest in promoting the free circulation of information and ideas about the activities of powerful commercial entities, as well as the potential "chilling" effect on others, were also important factors to consider in this context.

The Court concluded that given the lack of legal aid rendered the defamation proceedings unfair and subsequent breach of Article 6 § 1, this impacted the proportionality assessment under Article 10. The balance between protecting freedom of expression and the company's rights was found to be not correctly struck, resulting in a lack of procedural fairness and equality that breached Article 10.

Additionally, damages for defamation must be proportionate to the injury to reputation, but the sums awarded (a total of £76,000) were substantial compared to the applicants' modest incomes. The plaintiffs, being large corporate entities, did not establish financial loss from the leaflet, making the award of damages disproportionate to the legitimate aim served. Thus, the lack of procedural fairness and the disproportionate damages constituted a violation of Article 10 of the Convention.

Article 41

The Court awarded €20,000 to the first applicant and €15,000 to the second applicant for non-pecuniary damage, and €47,311.17 for costs and expenses.

Romanian authorities failed to provide the public with access to information on potential risks and to protect the rights of the applicants, who lived in the vicinity of a gold mine, under Article 8

JUDGMENT IN THE CASE OF TATAR v. ROMANIA

(Application no. 67021/01)
27 January 2009

1. Principal facts

The applicants were father and son, born in 1947 and 1979 respectively, who lived in Baia Mare.

An environmental impact study conducted by the Ministry of the Environment in 1993 found that the soil and groundwater in the region were already heavily polluted due to the industrial nature of the area.

In 1998, the company S.C. Aurul Baia Mare S.A. obtained a licence to exploit the Baia Mare gold mine and began operations on 21 December 1999. The company's extraction process involved the use of sodium cyanide, and part of its activity was located close the applicants' home (the extraction point was 100 metres away from the residential area). Article 16 of the operating licence required the protection of the environment, through measures such as adopting adequate technology for water protection and purification.

On 30 January 2000 an environmental accident occurred. A United Nations report (published in March 2000) recorded that a dam had been breached, releasing approximately 100,000m^3 of cyanide-contaminated water into the local environs. A Task Force report (published in December 2000) and the UN report both cited the causes as the inadequate design of the technology for gold extraction (e.g. which lacked an overflow system), the authorisation of such plans, and inadequate monitoring of development of the system. S.C. Aurul Baia Mare S.A. did not cease its operation after the accident. An environmental impact study from 2001 confirmed that pollution thresholds had been exceeded.

After the accident, the applicants filed various administrative complaints (including to *inter alia* the Ministry of the Environment, and the town council) concerning the risks to the family arising from the use of sodium cyanide by the

company in its extraction process. They also questioned compliance with legal standards and the validity of the operating licence.

In 2000, the applicants also brought criminal proceedings against members of the factory management, complaining that the mining process was a health hazard for the inhabitants of Baia Mare, constituted a threat to the environment, and was aggravating the second applicant's asthma.

On 20 November 2001, the Romanian courts discontinued the criminal proceedings relating to the accident, as they held it did not constitute an offence under Romanian criminal law. No judicial decision concerning the other complaints were issued.

In 2003, the Ministry of the Environment notified the applicants that the company's activities did not constitute a public health hazard, was operated safely, and that the extraction technology was used elsewhere in the world.

2. Decision of the Court

The applicants complained that the technological process used by S.C. Aurul S.A. Baia Mare put their lives in danger, and that the authorities had failed to take any action in spite of the numerous complaints filed by the applicants.

Article 8

The Court observed that pollution could interfere with a person's private and family life by harming their well-being, and Article 8 can therefore be applied in environmental matters – whether the pollution is directly caused by the State or the liability arises from the absence of adequate regulation of the activity of the State.

It was held that the State had a duty to ensure the protection of its citizens by regulating the authorisation, establishment, operation, safety and monitoring of industrial activities, especially activities that were dangerous for the environment and human health. The decision-making process for such activity must also include carrying out appropriate investigations and studies, so as to prevent and evaluate in advance the effects of activities that may harm the environment and the rights of individuals, and thus allow the establishment of a fair balance between the various competing interests at stake. The Court emphasised the importance of public access to the conclusions of these studies as well as to information making

it possible to assess the danger to which they are exposed, and individuals must also be able to appeal against any decision before the courts.

The Court observed that the 1993 preliminary impact assessment by the Romanian Ministry of the Environment had highlighted the environmental and health risks, and that the operating conditions had been insufficient to preclude the possibility of serious harm. It also noted from other reports published later that in 2001, other specialists had warned of the exceeding of permitted pollution thresholds.

The Court confirmed that it was indisputable that the cause of the accident originated from the activities of the company (which the Romanian State was also a shareholder in). It confirmed that the pollution detected was in excess of authorised norms near the applicants' home. It therefore concluded that the pollution could cause a deterioration in the quality of life of local residents and, in in particular, affect the well-being of the applicants and deprive them of the enjoyment of their home in such a way as to harm their private and family life, so Article 8 applied due to the ongoing production of pollution in excess of permitted levels.

The Court did not doubt the impact on human health and the appellant's medical condition, the toxicity of sodium cyanide, and the high levels of pollution – all of which were evidenced with medical and scientific proof. However, the Court noted that the applicants had failed to prove the existence of a causal link between exposure to certain doses of sodium cyanide and the worsening of asthma in light of current scientific knowledge. Despite this, it did observe the existence of a serious and material risk for the applicants' health, which entailed a duty on the part of the State to assess the risks, both at the time it granted the operating permit and subsequent to the accident, and to take the appropriate measures.

The Court considered that it did not have the authority to substitute its own point of view for that of local authorities regarding best policy to adopt in environmental and industrial matters: there was ample margin of appreciation for States in difficult social and technical fields such as this. It noted that the town was already very polluted, and the technology in issue was new in Romania, whose consequences for the environment were unknown. Therefore, it held that the preventive measures required were those which fell within the powers conferred on the authorities and which could reasonably be considered capable of mitigating the risks brought to their attention.

The Court noted that the company had been able to continue its industrial operations after the accident, in breach of the precautionary principle established in international law and found inter alia in the Maastricht Treaty, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the State in adopting effective and proportionate measures aimed at preventing a risk of serious and irreversible damage to the environment.

In addition, the Court recalled the importance of public access to the conclusions of preliminary environmental studies as well as to information enabling the assessment of the danger to which it is exposed. It emphasised that the failure of the Romanian Government to inform the public, in particular by not publicising the 1993 impact assessment on the basis of which the operating licence had been granted, had made it impossible for members of the public to challenge the results of that assessment. The Court further noted that this lack of information had continued after the accident, despite the likely anguish and uncertainty of the local people – particularly the fear of contamination and the possible reproduction, in the future, of the same accident.

The Court concluded that the Romanian authorities had failed in their duty to satisfactorily assess the risks of the company's activity, and to take suitable measures to protect the rights of those concerned for their private lives and homes, within the meaning of Article 8, and more generally their right to enjoy a healthy and protected environment.

Article 41

The Court dismissed the applicants' claims for just satisfaction, as it did not find a causal link. The Court awarded the applicants €6,266 for costs and expenses.

Swiss authorities were found to have been taking insufficient action to mitigate the effects of climate change and to have denied the applicant association access to court, in violation of Articles 6 and 8 of the European Convention on Human Rights

GRAND CHAMBER JUDGMENT IN THE CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND

(Application no. 53600/20)
9 April 2024

1. Principal facts

The applicants were Verein KlimaSeniorinnen Schweiz (a Swiss association established to promote and implement effective climate protection on behalf of its members, comprising more than 2,000 older women), and four women (all members of the association) aged over 80, who complained of health problems affecting their lives, exacerbated during heatwaves.

On 25 November 2016, the applicants submitted a request to the Federal Council and other Swiss environmental authorities under section 25a of the Federal Law on administrative procedure, pointing to a number of failings in the area of climate protection and seeking a decision on actions to be taken. They also called on the authorities to take the necessary measures to meet the 2030 goal set by the Paris Climate Agreement in 2015.

The Federal Department of the Environment, Transport, Energy and Communications (DETEC) declared the request inadmissible in a decision on 25 April 2017, finding that the applicants were pursuing general-public interests and were not directly affected in terms of their rights and could therefore not be regarded as victims. Further, in the DETEC's view, the general purpose of the applicants' request was to achieve a reduction in CO2 emissions worldwide and not only in their immediate surroundings.

On 27 November 2018 the Federal Administrative Court dismissed an appeal by the applicants, finding that women over 75 were not the only population group affected by climate change. It considered that they had not shown that their rights had been affected in a different way to those of the general population.

The Federal Supreme Court also dismissed an appeal in a judgment of 5 May 2020, finding that the individual applicants were not sufficiently and directly affected by the alleged failings in terms of their right to life under Article 10§1 of the Constitution, or their right to respect for private and family life, including respect for their home, in order to assert an interest worthy of protection within the meaning of section 25a of the Federal Law on administrative procedure. As regards the applicant association, the Federal Supreme Court, given its finding with respect to the individual applicants, left open whether it had standing to lodge the appeal at all.

2. Decision of the Court

The applicants complained that the Swiss Confederation had failed to fulfil its duties under the Convention to protect life effectively under Article 2 and to ensure respect for their private and family life, including their home, under Article 8. In this context they complained that the State had failed to introduce suitable measures to attain the targets for combating climate change, in line with international commitments.

The applicants further complained that they had not had access to a court within the meaning of Article 6§1 of the Convention, alleging that the domestic courts had not properly responded to their requests and had given arbitrary decisions affecting their civil rights regarding the necessary action to tackle the adverse effects of climate change.

The applicants also complained of a violation of Article 13, arguing that no effective domestic remedy had been available to them for the purpose of submitting their complaints under Articles 2 and 8.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

Scope of the Case and Victim Status

The Court noted it could only deal with the issues arising from climate change within its competence under Article 19 (Establishment of the Court), but also observed that inadequate State action to combat climate change exacerbated the risks of harmful consequences for the enjoyment of human rights.

It was found to be a matter of fact that there were sufficiently reliable indications that anthropogenic climate change exists, constitutes a serious threat to the

enjoyment of Convention rights, that States are aware of this, and global mitigation efforts are insufficient to meet that target.

It also noted that, while the legal obligations arising for States under the Convention extended to those individuals currently alive, future generations were likely to bear an increasingly severe burden of the consequences of present failures to combat climate change.

The Court then proceeded to outline the requirements needed to claim victim status under Article 34 of the Convention in the context of climate change. The question for the Court was how allegations of harm linked to State actions in the context of climate change affecting individuals' Convention rights, could be examined without undermining the exclusion of ***actio popularis*** and without ignoring the nature of the Court's reactive judicial function. It was ultimately held that individual applicants needed to show that they were personally and directly affected by governmental action or inaction. This depended on two criteria:

1. high intensity of exposure of the applicant to the adverse effects of climate change; and
2. a pressing need to ensure the applicant's individual protection.

The Court noted that this was a high threshold, and found that the four individual applicants did not fulfil the victim status criteria under Article 34. While the Court accepted that heatwaves affected the applicants' quality of life, it was not apparent that they were exposed to the adverse effects of climate change, or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection. The applicants were also not suffering from any critical medical condition whose possible aggravation linked to heatwaves could not be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation. Victim status in relation to future risk was only exceptionally admitted by the Court and the individual applicants had failed to demonstrate that such exceptional circumstances existed in their regard.

On the standing of associations, the Court held that climate change as a common concern of humankind and intergenerational burden-sharing allowed special recourse to legal action by associations. For an association to act on behalf of individuals and to lodge an application regarding the alleged failure of a State to take adequate measures to protect from the harmful effects of climate change, it had to comply with three conditions:

1. To be lawfully established in the jurisdiction concerned or have standing to act there.
2. To demonstrate that it pursued a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against climate change threats.
3. To demonstrate that it could be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who were subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

The Court found that the applicant association fulfilled the relevant criteria.

Article 8

The Court noted that it would be inappropriate to directly transpose existing environmental caselaw to the context of climate change; it drew from the principles therein, but the Court sought to develop a more appropriate approach as regards the various climate change Convention issues.

This was because existing caselaw concerned situations where there was a nexus between a source of harm and those affected by the harm, and the requisite mitigation measures could be identifiable at the source of harm. In the context of climate change, the circumstances were significantly different:

- There is no single or specific source of harm; greenhouse gas ("GHG") emissions arise from a multitude of sources.
- CO2 – the primary GHG – is not toxic *per se* at ordinary concentrations, and consequences arise as a result of a complex chain of effects.
- The chain of effects is complex in terms of both time and place; aggregate levels of CO2 give rise to global warming and climate change, which in turn cause incidents of extreme weather; these in turn cause various harmful phenomena such as excessive heatwaves.
- Sources of GHG emissions are not limited to specific activities or areas that could be labelled as dangerous, consequently, mitigation measures cannot generally be localised or limited.
- Combating climate change, and halting it, does not depend on the adoption of specific localised or singlesector measures. Climate change is a polycentric issue.

A contracting State's main duty is to adopt, and to apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights. Article 8 is capable of being engaged because of adverse effects on individuals' wellbeing and quality of life, as well as sufficiently severe risks of such effects. The Court already established that Article 8 may apply in environmental cases, and issues of causation must always be regarded in light of the factual nature of the alleged violation and the nature and scope of the legal obligations at issue. Further, it was already established that in order to fall within the scope of Article 8, complaints relating to environmental nuisances have to show, first, an "actual interference" with the applicant's enjoyment of private or family life, and, secondly, that a certain level of severity was attained. However, in this context, the question of "actual interference" or sufficiently serious risk essentially depended on the assessment of similar criteria to the victim status of individuals or the standing of associations. These criteria were therefore determinative for establishing whether Article 8 rights were at stake and whether this provision applied. In each case, these were matters that remained to be examined on the facts of a particular case and on the basis of the available evidence.

The Court stressed again that it was only competent to interpret the provisions of the Convention and its Protocols. However, it noted that, in line with their international commitments, States need to put in place necessary regulations aimed at preventing an increase in GHG concentrations in the earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights under Article 8. Further, States need to put in place relevant targets and timelines, which must form an integral part of the domestic regulatory framework, as a basis for mitigation measures. A shortcoming in one particular respect alone would not necessarily mean that the State had overstepped its relevant margin of appreciation.

The availability of procedural safeguards was found to be material in determining whether the State had remained within its margin of appreciation. The following types of procedural safeguards were to be accounted for in the State's climate change decision-making process:

1. The information held by public authorities of importance for implementing the relevant regulations to tackle climate change being made available to the public, especially to those persons who might be affected by the measures.

2. Procedures being available whereby the views of the public, especially of those affected (or at risk of being affected) by the relevant measures, can be accounted for.

In this case, the Court found that there had been critical gaps in the process of implementing the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national GHG emissions limitations. They had also previously failed to meet their past GHG emission reduction targets under relevant domestic assessments, acknowledged by the Swiss government. Finally, Swiss authorities had not acted in time and in an appropriate way to devise and implement the relevant legislation and measures in accordance with their positive obligations pursuant to Article 8 of the Convention, which were of relevance in the context of climate change.

It was ultimately held that Article 8 encompasses a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life. In the present case, the Court found that the margin of appreciation had been exceeded, and there had been a violation of Article 8.

Article 2

In view of its finding that Article 8 applied to the applicant association's complaint, the Court decided not to examine the case from the angle of Article 2.

Article 6

The Court held that Article 6§1 of the Convention applied to the applicant association's complaint, to the extent it concerned effective implementation of the mitigation measures under existing law, reiterating the particular relevance of collective action in the context of climate change. The Court considered it essential to emphasise the key role which domestic courts play in climate change litigation, and indeed, the Court held that the domestic courts had not engaged seriously or at all with the action, especially as they had not provided convincing reasons as to why they considered it unnecessary to examine the merits of the complaints.

The Court found that the rejection of the applicant association's legal action, first by an administrative authority, DETEC, and then by the national courts at two levels of jurisdiction, amounted to an interference with their right of access to a court.

National courts had failed to account for the compelling scientific evidence concerning climate change and had not taken the association's complaints seriously. As there had been no further legal avenues available to the applicant association, or individual applicants/members of the association, the Court found that there had been a violation of Article 6§1 of the Convention.

Article 13

Given its findings under Article 6§1 of the Convention, the Court did not find it necessary to examine the applicant association's complaint separately under Article 13.

Article 46

In light of the complexity and the nature of the issues involved, the Court found that it could not be detailed or prescriptive in relation to the measures which needed to be implemented in order to effectively comply with the judgment. Given the discretion accorded the State in this area, it considered that the Swiss Confederation, with the assistance of the Committee of Ministers, was better placed to assess the specific measures to be taken.

Article 41

The Court held that Switzerland was to pay the applicant association €80,000 in respect of costs and expenses. As no claim had been submitted for damages, no sum was awarded on that account.

Swedish authorities violated Article 6 by failing to provide applicants with access to court to review a government determination regarding a permit which potentially affected the quality of drinking water by waste treatment plant

JUDGMENT IN THE CASE OF ZANDER v. SWEDEN

(Application no. 14282/88)
25 November 1993

1. Principal facts

The applicants, husband and wife, were Swedish citizens who lived in Gryta, Sweden during the relevant period.

The applicants owned a property in Gryta adjacent to land on which a company called Västmanlands Avfallsaktiebolag (VAFAB) treated waste. VAFAB was authorised to engage in this activity in 1983 by the National Licensing Board for Protection of the Environment ("the Licensing Board") under the authority given to it by the 1969 Environment Protection Act ("the 1969 Act").

In 1979, a refuse containing cyanide had been found in the dump on the property. Analyses of drinking-water from a nearby well showed excessive levels of cyanide in the water, so the Health Care Board of Västerås prohibited use of the water. Other analyses in October 1983 also showed excessive cyanide levels. However, in June 1984, the National Food Agency raised the maximum permitted level of cyanide from 0.01 mg/L to 0.1 mg/L. As a result of the change, the water was classified as safe for use.

In March 1987, the Licensing Board granted VAFAB's request to renew its permit and to allow it to expand its activities on the dump notwithstanding the applicants and other nearby landowners opposing this because of the risk of further pollution to their water. However, the Board did attach a few conditions to the permit, including requiring all well water to be analysed at regular intervals and disclosing results to the well owners. If these analyses gave reason to suspect the dump was polluting the water, then VAFAB would be under an obligation to supply the owners with water.

The applicants unsuccessfully appealed to the Government. At the time of applicants' appeal, under the 1969 Act, the Government's decisions were not subject to judicial appeal. In June 1988, the Act on Judicial Review of certain

Administrative Decisions entered into force, however it did not have retroactive force so applicants could not avail themselves of judicial review.

Section 34 of the 1969 Act allowed a claim relating to an environmentally hazardous activity to be filed with the Real Estate Court. This court was established by the 1986 Environmental Damage Act ("the 1986 Act"), which allowed a person who had suffered injury as a result of pollution of groundwater to lodge a claim for compensation with the court. To receive compensation, there had to be substantial probability of a causal link between the activity and the injury and the fact that the activity was authorised by the 1969 Act was no bar to liability. Decisions by the Real Estate Court could be appealed to higher courts, however the holder of a permit granted under the 1969 Act could not be ordered to discontinue the activity in question or to take precautionary measures other than those specified in the permit.

2. Decision of the Court

The applicants alleged, under Article 6 of the Convention, that the lack of access to a court during the material time to challenge the granting of a refuse-dumping permit to a company on neighbouring land was a violation of their rights. The European Commission expressed an opinion that there had been a violation of Article 6 para. 1.[60]

Article 6

The first question for the Court was to ascertain whether there existed a dispute over a "right" which could be said, at least on arguable grounds, to be recognised under domestic law so that Article 6 became applicable. This dispute had to be genuine and serious, could relate to the scope and manner of the right's exercise, and the result of the proceedings had to be directly decisive for the right.

The Government maintained that the case differed from other cases in which disputes over civil rights were found to have existed. Furthermore, they pointed out that applicants did not avail themselves of the judicial review available to them because they failed to file a claim under the 1986 Act, which permitted judicial review. The applicants could have but did not file a claim for compensation in the Real Estate Court under the 1986 Act, and this procedure did allow judicial review.

[60] Before the entry into force of Protocol 11 in 1998 there was no direct access of individuals to the ECtHR, first the Commission would assess admissibility and render an opinion.

Instead, the applicants asked the Licensing Board, under the 1969 Act, to make VAFAB's license conditional upon precautionary measures, which was not subject to judicial review. Furthermore, the Government argued that applicants could not maintain, on arguable grounds, an entitlement under Swedish law to protection from the kind of risk in issue.

The Court observed that section 5 of the 1969 Act created an obligation on persons engaging in environmentally hazardous activity without identifying beneficiaries to this obligation. However, under Swedish law, landowners had standing under section 5 to ask the Licensing Board to require VAFAB to take certain precautionary measures and had the right to appeal the Licensing Board's decision. The applicants could arguably maintain that they were entitled to protection against water in their well being polluted as a result of the company's activities on the refuse dump. Thus, there was disagreement between the applicants and the Licensing Board capable of going to the lawfulness of conditions attached to the permit granted. The outcome of this dispute was directly decisive for the applicants' entitlement. Therefore, the applicants' appeal to the Government against Licensing Board's decision to grant the permit involved a "determination" of one of their "rights"."

The Court found that the applicants' claim was directly concerned with their ability to use water in their well for drinking purposes. Moreover, such an ability was one facet of the right of property. The right of is clearly a "civil right". Thus, Article 6 applies.

The Court found that under Swedish law, it was not possible at the material time for applicants to have the relevant decision reviewed by a court, which the Government admitted. Therefore, the Court held that there had been a violation of Article 6 para. 1.

Article 50 (now Article 41)

The Court awarded each applicant 30,000 Swedish kroner (€2,555 Euros) for non-pecuniary damage. It awarded 145,860 Swedish kroner less legal aid (€9,889 total), as partial reimbursement for costs and expenses.

The AIRE Centre

The AIRE Centre is a specialist non-governmental organisation that promotes the implementation of European Law and supports the victims of human rights violations. Its team of international lawyers provides expertise and practical advice on European Union and Council of Europe legal standards and has particular experience in litigation before the European Court of Human Rights in Strasbourg, where it has participated in over 150 cases.

For twenty years now, the AIRE Centre has built an unparalleled reputation in the Western Balkans, operating at all levels of the region's justice systems. It works in close cooperation with ministries of justice, judicial training centres and constitutional and supreme courts to lead, support and assist long term rule of law development and reform projects. The AIRE Centre also cooperates with the NGO sector across the region to help foster legal reform and respect for fundamental rights. The foundation of all its work has always been to ensure that everyone can practically and effectively enjoy their legal rights. In practice this has meant promoting and facilitating the proper implementation of the European Convention on Human Rights, assisting the process of European integration by strengthening the rule of law and ensuring the full recognition of human rights, and encouraging cooperation amongst judges and legal professionals across the region.

Sustineri Partners

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