

# THE EUROPEAN COURT OF HUMAN RIGHTS AND ITS CASE-LAW ON ENVIRONMENTAL MATTERS

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## Abstract

Only recently the environmental protection has become a real concern of the international community. Despite the fact that no human rights treaties, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, contain a right to the environment explicitly, they have been interpreted as including environmental protection obligations for the Contracting States. Very often we hear about environmental degradation. The purpose of this article is to provide the most relevant examples from the European Court of Human Rights case-law in this field in order to strengthen the environmental protection at the national level.

**Keywords:** environment, European Court of Human Rights, Convention, case law, health.

## 1. Introductory Remarks

The main purpose of this article is to increase the understanding between the protection of human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the “Convention”) and the environment. We consider that this is necessary in order to strengthen the environmental protection at the national level, having in mind that the European Court for Human Rights (hereinafter the “ECHR” or the “Court”) represents the most developed regional jurisdiction on human rights<sup>1</sup>. To achieve this purpose, the present paper seeks to provide examples from the European Court of Human Rights case-law in this field.

Although the European Convention on Human Rights does not expressly guarantee a right to a healthy, quiet and sound environment, very often the European Court of Human Rights has been called to judge if the Contracting States have violated certain individual<sup>2</sup> rights in cases with impact on environmental issues. As it is stated in the European Court for Human Rights’s (hereinafter the “ECHR” or the “Court”) case-law and it is widely recognized, the European Convention on Human Rights is “a living

instrument (...) which must be interpreted in the light of present-day conditions”<sup>3</sup>. Therefore the Convention indirectly offers a certain protection degree for environmental matters as it may be discovered from a research of the Court’s evolving case-law.

As it is stated in the legal doctrine, “the human being is the central area of interest for the lawmaker”<sup>4</sup>.

Through time, individuals have filed complaints against the Contracting States arguing that a breach of the Convention rights has resulted from adverse environmental factors.

As stated in the legal doctrine “human rights concern the universal identity of the human being and are underlying on the principle of equality of all human beings”<sup>5</sup>, therefore all individuals have the right to complain if the domestic authorities<sup>6</sup>, natural or legal persons violate their rights under the Convention in certain conditions.

Through time, individuals have filed complaints against the Contracting States<sup>7</sup> of the Convention, arguing that a breach of the Convention rights has resulted from adverse environmental factors, among others. This thing is due to the fact that each individual has the right to enjoy a healthy environment<sup>8</sup>.

Among the topics that we have discovered in the ECHR’s case-law, we mention the following, without

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<sup>1</sup> For general information on the European system of human rights protection instituted by the Council of Europe, please see Raluca Miga-Besteliu, *Drept international public*, 1<sup>st</sup> volume, 3<sup>rd</sup> edition, C.H. Beck Publishing House, Bucharest, 2014, p. 184-185, and Bogdan Aurescu, *Sistemul juridictiilor internationale*, 2<sup>nd</sup> edition, C.H. Beck Publishing House, Bucharest, 2013, p. 211 and following.

<sup>2</sup> Please see Nicolae Popa coordinator, Elena Anghel, Cornelia Beatrice Gabriela Ene-Dinu, Laura-Cristiana Spataru-Negura, *Teoria generala a dreptului. Caiet de seminar*, 2<sup>nd</sup> edition, revised and enlarged, C.H. Beck Publishing House, Bucharest, 2014, p. 129-130.

<sup>3</sup> *Tyrer v. The United Kingdom*, application no. 5856/72, judgment 25.04.1978, para. 31, available at <http://hudoc.echr.coe.int/eng?i=001-57587>.

<sup>4</sup> Elena Anghel, *The notions of “given” and “constructed” in the field of the law*, in the Proceedings of CKS eBook, 2016, Pro Universitaria Publishing House, Bucharest, 2016, p. 341.

<sup>5</sup> Augustin Fuerea, *Introducere in problematica dreptului international al drepturilor omului – note de curs*, Editura ERA, Bucuresti, 2000, p.4.

<sup>6</sup> The domestic authorities can breach individual rights through juridical acts, material and juridical facts, material and technical operations or political acts; in this respect, please see Marta Claudia Cliza, *Drept administrativ*, Partea a 2-a, Pro Universitaria Publishing House, Bucuresti, 2011, p. 14 and following, and Marta Claudia Cliza, *Revocation of administrative act*, in the Proceedings of CKS eBook, 2012, Pro Universitaria Publishing House, Bucharest, 2012, p. 627.

<sup>7</sup> For an interesting study on the European Union law infringements that caused damages to individuals, please see Roxana-Mariana Popescu, *Case-law aspects concerning the regulation of states obligation to make good the damage caused to individuals, by infringements of European Union law*, in the Proceedings of CKS eBook, 2012, Pro Universitaria Publishing House, Bucharest, 2012, p. 999-1008.

<sup>8</sup> Bogdan Aurescu, *Sistemul juridictiilor internationale*, 2<sup>nd</sup> edition, C.H. Beck Publishing House, Bucharest, 2013, p. 213.

being exhaustive: dangerous industrial activities, exposure to nuclear radiation, industrial emissions, natural disasters, environmental risks, industrial pollution, noise pollution<sup>9</sup>, urban development, waste collection, management, treatment and disposal, water supply contamination, mobile phone antennas, passive smoking in detention. The most invoked articles of the Convention in this respect are: the right to life (Article 2), the prohibition of inhuman or degrading treatment (Article 3), the right to liberty and security (Article 5), the right to a fair trial (Article 6), the right to respect for private and family life and home (Article 8), the freedom of expression (Article 10), the freedom of assembly and association (Article 11), the right to an effective remedy (Article 13), the protection of property (Article 1 of Protocol No. 1 to the Convention).

## 2. The ECHR and the Environmental Matters

It is obvious that the Contracting States have the obligation to protect the victims from adverse environmental factors, otherwise their legal responsibility may be invoked<sup>10</sup>. The ECHR's case-law on environmental matters is quite significant and for the purposes of this paper we have chosen certain matters to exemplify the position of the Court. In order to investigate this, we will proceed to a category analysis of the most relevant cases dealt by the Court. We are aware that our analysis is not exhaustive.

### 2.1. Waste collection, management, treatment and disposal

The waste is an important issue in our daily life. Our current society undeniably produces more trash than any other to date. But sometimes waste collection, management and disposal can give rise to human rights violation.

A first case that we mention in this regard is a case against Romania, the *Branduse*<sup>11</sup> case. The applicant, Mr. Branduse complained among others about the offensive smells created by a former refuse tip situated about 20 metres away from the prison he was incarcerated, arguing that its quality of life and its well-being were affected by the respective smells. Although at the beginning not many specialists believed that Mr Branduse will win this case, the Court held that there had been a violation of Article 8 of the Convention because the Romanian authorities failed to take the adequate measures to solve the problem. From the file investigation, it was revealed that the tip was operated effectively between 1998 and 2003, and that after 2003

it was used by private individuals because the Romanian authorities did not ensure the effective closure of the respective site. It is important to retain that it had been operated without proper authorization, and closed without the necessary closing authorization. Additionally, although the authorities should have carried out preliminary studies to measure the pollution effects, this was done only in 2006 after a fire on the site. According to the studies, the high level of pollution exceeded the standards established and the persons living near the site had to put up with considerable levels of nuisance caused by offensive smells, therefore the activity was incompatible with the environmental requirements.

In a case against Italy, *Di Sarno and Others*<sup>12</sup>, the Court had to rule again on the collection, treatment and disposal of waste. The case regarded the state of emergency during 15 years in relation to waste collection, treatment and disposal in Campania, an Italian region, where the applicants lived and worked, including a five months period in which rubbish piled up in the streets. The applicants complained that the Italian State had caused serious damage to their environment and jeopardized their lives and health because it did not take the necessary and adequate measures to ensure the waste management and it did not implement the appropriate legislation and administrative policies. Considering that these waste activities were hazardous, the Court established that the Italian State had a duty to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a healthy and protected environment. In the absence of such measures, the Court found that Article 8 of the Convention was violated in its substantive aspect, especially because for a very long period of time the authorities were unable to ensure the proper functioning of the waste collection, treatment and disposal service, fact that resulted in the breach of the right to respect the private lives and homes of the applicants. It is also interesting that the Court held that the Article 8 in its procedural aspect had not been violated because the studies made by the authorities had been published, therefore the information obligation has been respected, the people concerned being able to learn about the potential risks to which they were exposed in continuing to live there. Because the applicants did not have access to an effective remedy in the Italian legal system, by which to obtain redress for the damage incurred, the Court also retained that Article 13 of the Convention was breached.

<sup>9</sup> About noise pollution, more precisely on air traffic and aircraft noise pollution, I have written a recent paper which will be published shortly in the *Aviation and Space Journal*, available at <http://www.aviationspacejournal.com/archive/>.

<sup>10</sup> For general information on the legal responsibility of states, please see Raluca Miga-Besteliiu, *Drept international public*, 2<sup>nd</sup> volume, 3<sup>rd</sup> edition, C.H. Beck Publishing House, Bucharest, 2014, p. 29-56.

<sup>11</sup> *Branduse v. Romania*, application no. 6586/03, judgment dated 7.04.2009, available at <http://hudoc.echr.coe.int/eng?i=001-92073>.

<sup>12</sup> *Di Sarno and Others v. Italy*, application no. 30765/08, judgment dated 10.01.2012, available at <http://hudoc.echr.coe.int/eng?i=001-108480>.

There is a pending application that arouses our curiosity, *Locascia and Others v. Italy*<sup>13</sup>. This case was brought by 19 applicants who lived in the same province as above, Campania. They complained about the danger to their health and the interference with their private life and home caused by the operation of a private waste disposal plant and by the failure of the Italian authorities to secure, clean-up and reclaim the area after its closure. We look forward to the Court's judgment in this case.

## 2.2. Water supply contamination

In the case of *Dzemyuk v. Ukraine*<sup>14</sup>, the applicant argued that the construction of a cemetery near his house had led to the water supply contamination, which left his home virtually uninhabitable and his land unusable. He further alleged that the burial ceremonies were quite disturbing and that the authorities failed to enforce the final and binding judgment declaring the cemetery illegal. The Court considered that the interference with the applicant's right to respect for his private and family life and for his home had not been lawful and therefore Article 8 of the Convention was breached. At the analysis of the submissions of the Ukrainian Government, it resulted that it did not even dispute the fact that it was built and used in breach of the domestic regulations; moreover the Court underlined that the conclusions of the environmental authorities had also been disregarded, and the final and binding judicial decisions ordering to close the cemetery had never been enforced.

## 2.3. Industrial pollution

A very well known environmental case dealt by the Court is *Lopez Ostra v. Spain*<sup>15</sup>, in which the applicant, who lived in a heavy concentration leather industry city, complained of the municipal authorities inactivity in respect of the nuisance caused by a waste-treatment plant situated a few metres away from her home (that she beard for three years, before moving away). She considered the national authorities as being responsible because they adopted a passive attitude regarding this matter. The Court held that Article 8 of the Convention was violated in her respect because the State had not succeeded in striking a fair balance between the economic well-being of the town and the applicant's effective enjoyment of her right to respect for her home and her private and family life. In the end, they decided to move out from their home at the advice of the applicant's daughter's paediatrician and when they realized that the situation could continue indefinitely. Although the applicant tried to construe an argument that the situation amounted to degrading treatment, the Court firmly rejected this perspective, by

holding that no violation of Article 3 of the Convention had been in the case.

In a case against Russia, *Fadeyeva v. Russia*<sup>16</sup>, the applicant complained that the operation of a steel plant in close proximity of her home endangered her health and well-being. The Court held that there had been a violation of Article 8 of the Convention since Russia failed to strike a fair balance between the community's interests and Ms Fadeyeva's effective enjoyment of her right to respect for her home and her private life. The Court underlined that Russia should not have authorized the operation of a polluting enterprise in the middle of a densely populated town, and if it did so, then a certain territory around the plant should be free of any dwelling, since the toxic emissions from that enterprise exceeded the safe limits provided by the domestic legislation. The Court noted that in this case, the Russian State did not offer the applicant any effective solution to help her move from the dangerous area and did not design or apply effective measures which would take into account the interests of the local population.

In *Giacomelli v. Italy*<sup>17</sup>, the applicant (who lived for more than 50 years in a house located 30 metres away from a plant used for the storage and treatment of "special waste" classified as either hazardous or non-hazardous), complained that the persistent noise and harmful emissions coming from the plant represented a serious threat to her environment and a permanent risk to her health and home. The Court held that Article 8 of the Convention was violated in this case because Italy had not succeeded in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant's effective enjoyment of her right to respect for her home and her private and family life. Along the time, the authorities discovered on two occasions that the plant's operation was incompatible with environmental regulations on account of its unsuitable geographical location and that there was a specific risk to the health of the local residents. Thus, for several years, the applicant's right to respect for her home had been seriously impaired by the dangerous activities carried out at the plant built very near her home.

In *Tatar v. Romania*<sup>18</sup>, the applicants alleged that the technological process used by a company in their gold mining activity, in the vicinity of their home, put their lives in danger. In 2010 an environmental accident occurred at the site. A UN study underlined that a dam had breached, releasing into the environment about 100,000 m<sup>3</sup> of dangerous substances, cyanide-contaminated tailings water. Additionally, the applicants also complained that the authorities did not act regarding the numerous complaints lodged by the

<sup>13</sup> *Locascia and Others v. Italy*, application no. 35648/10, communicated to the Italian Government on 05.03.2013.

<sup>14</sup> *Dzemyuk v. Ukraine*, application no. 42488/02, judgment dated 04.09.2014, available at <http://hudoc.echr.coe.int/eng/?i=001-146357>.

<sup>15</sup> *Lopez Ostra v. Spain*, application no. 16798/90, judgment dated 09.12.1994, available at <http://hudoc.echr.coe.int/eng/?i=001-57905>.

<sup>16</sup> *Fadeyeva v. Russia*, application no. 55723/00, judgment dated 09.06.2005, available at <http://hudoc.echr.coe.int/eng/?i=001-69315>.

<sup>17</sup> *Giacomelli v. Italy*, application no. 59909/00, judgment dated 02.11.2006, available at <http://hudoc.echr.coe.int/eng/?i=001-77785>.

<sup>18</sup> *Tatar v. Romania*, application no. 67021/01, judgment dated 27.01.2009, available at <http://hudoc.echr.coe.int/eng/?i=001-90909>.

first applicant about the threat to their lives, to the entire community environment and to his son's health who suffered of asthma. After analyzing the case, the Court held that there had been a violation of Article 8 of the Convention, stating that the Romanian authorities failed in their duty to assess the risks that such activity might entail, as well as to take the adequate measures in order to protect the individual rights of the persons living near the site to respect for their private lives and homes and their right to enjoy a healthy and protected environment. Therefore, the State had a duty to ensure the protection of these persons especially by regulating, authorizing, setting-up, operating, safety and monitoring this industry activity which was dangerous to the human health and to the environment. The Court noted that after the accident in 2000, the company continued to operate in breach of the precautionary principle and it pointed out that the Romanian authorities had to ensure public access to the results of the studies done because Romania had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues.

In *Dubetska and Others v. Ukraine*<sup>19</sup>, the applicants complained that their health had suffered and their house and living environment had been damaged because of a State-owned coal mine operating near their houses. The claimants also complained that the national authorities had done nothing to prevent or to remedy this situation. The Court found that Article 8 of the Convention was breached in this case and it established that the Ukrainian Government had an obligation to take appropriate measures to remedy the applicant's situation. The Court observed in its analysis that the national authorities had been aware of the adverse environmental effects of the mine and factory, but had not found a solution to diminish the level pollution in order not to be harmful for the people living in the vicinity of the facilities. Although the Government took some measures in the 12 years analysed in the case (i.e. penalizing the factory director, order the applicants' resettlement, building up of a centralized aqueduct), the Court considered that Ukraine had not found an effective solution to the applicants' situation.

In a case against Poland, the *Apanasewicz*<sup>20</sup> case, the Court had to deal again on environmental matters. In 1988, the owner of a land plot adjacent to the one of the applicant built a concrete works, without having any building permit. The owner started operating it immediately and enlarged it gradually. In 1989 the applicant brought domestic proceedings in order to put an end to the environmental harm that she had suffered (e.g. pollution, health problems, inedible harvest). The domestic courts ordered in 2001 to close the factory,

but despite the two sets of enforcement proceedings, not even at the moment of the ECHR judgment the factory had not been closed. The applicant also complained of a failure to enforce the 2001 judgment. The Court held that Article 6 paragraph 1 and Article 8 of the Convention were violated (Article 6 because of the overall duration of the proceedings, the State's lack of diligence, the insufficient use of the coercive measures available that conduct to the fact that the applicant did not have effective judicial protection; Article 8 because the authorities had not discharged their obligation to protect the applicant's right to respect for her private and family life against the interference caused by her neighbour's activity).

#### 2.4. Dangerous industrial activities

Environmental cases brought to the ECHR have sometimes raised sensitive problems such as death of the close relatives. Such case is *Öneryildiz v. Turkey*<sup>21</sup>, when a methane explosion which occurred at a rubbish tip used jointly by four district councils, in April 1993, and the refuse erupting from the pile of waste engulfed more than ten houses situated below it (including the applicant's dwelling built without any authorization on the land surrounding it). The applicant lost nine close relatives and he complained in particular that no measures had been taken to prevent an explosion despite the expert report that drawn the authorities' attention to the need to act preventively because the risk to occur such explosion was not unlikely.

The Court found that there had been a violation of both sides of Article 2 of the Convention: under its substantive limb (for the lack of appropriate procedure to prevent the accidental death of the applicant's relatives), and under its procedural limb (for the lack of adequate protection by law safeguarding the right to life). The Turkish authorities did not inform the inhabitants about the risks they ran by living there, and even if they did, they did not take the practical measures to avoid the risks of explosion and the inhabitants' death. Overall, the regulatory framework proved to be defective and inadequate. Additionally, the Court ruled that other articles of the Convention have also been violated: Article 1 of Protocol No. 1 and Article 13.

### 3. Concluding Remarks

From the analysis of the Court's case-law, we can derive three conclusions. *Firstly*, the human rights provided by the Convention can be directly affected by adverse environmental factors (e.g. chemical factories with toxic emissions). *Secondly*, the adverse environmental factors give rise to certain procedural rights for the injured individuals (e.g. the right to be informed by the authorities, the possibility to

<sup>19</sup> *Dubetska and Others v. Ukraine*, application no. 30499/03, judgment dated 10.02.2011, available at <http://hudoc.echr.coe.int/eng?i=001-103273>.

<sup>20</sup> *Apanasewicz v. Poland*, application no. 6854/07, judgment dated 03.05.2011, available at <http://hudoc.echr.coe.int/eng?i=001-104672>.

<sup>21</sup> *Öneryildiz v. Turkey*, application no. 48939/99, Grand Chamber judgment dated 30.11.2004, available at <http://hudoc.echr.coe.int/eng?i=001-67614>.

participate in the decision-making processes, the access to justice). *Thirdly*, the environment protection can be a legitimate aim justifying the State's interference with certain individual human rights (e.g. Article 8 of the Convention can be restricted if it is necessary for environmental protection).

After analyzing the ECHR's relevant case-law, we can underline that although the Convention does not define the term *environment*, the only thing that matters is the impact on the individual, than the environment that the Court is concerned with.

In a nutshell, the extent of each State's obligations depends on factors such as the harmfulness of the dangerous activities and the foreseeability of the risks

to life. Moreover, the States must ensure that the administrative and legislative framework is properly implemented and that violations of the Convention are repressed and punished as appropriate.

Despite the concerted efforts of the national public authorities<sup>22</sup> with the international organizations, in the following years we will still encounter many varieties of environmental adverse factors, and many States that do not act with responsibility<sup>23</sup> towards their nationals or other categories of individuals found on their territory<sup>24</sup>. But the question related to the present study is how will the Court deal those cases? The answer is simple: TIME will answer this question.

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<sup>22</sup> For more details on public authorities, please see Elena Emilia Stefan, *Disputed matters on the concept of public authority*, in the Proceedings of CKS eBook, 2015, Pro Universitaria Publishing House, Bucharest, 2015, p. 535 and following.

<sup>23</sup> For more details regarding the responsibility principle, please see Elena Anghel, *The responsibility principle*, in the Proceedings of CKS eBook, 2015, Pro Universitaria Publishing House, Bucharest, 2015, p. 364 and following. For more details regarding responsibility in general, please see Elena Emilia Stefan, *Raspunderea juridica. Privire speciala asupra raspunderii in Dreptul administrativ*, Pro Universitaria Publishing House, Bucharest, 2013, p. 25-39.

<sup>24</sup> Please see Nicolae Popa coordinator, Elena Anghel, Cornelia Beatrice Gabriela Ene-Dinu, Laura-Cristiana Spataru-Negura, *Teoria generala a dreptului. Caiet de seminar*, 2<sup>nd</sup> edition, revised and enlarged, C.H. Beck Publishing House, Bucharest, 2014, p. 129-130.