April 2022
This factsheet is not exhaustive and does not bind the Court

Environment and the European Convention on Human Rights

Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case-law in environmental matters on account of the fact that the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.

Right to life (Article 2 of the Convention)

Dangerous industrial activities

Öneryıldız v. Turkey

30 November 2004 (Grand Chamber)

The applicant's dwelling was built without authorisation on land surrounding a rubbish tip used jointly by four district councils. A methane explosion occurred at the tip in April 1993 and the refuse erupting from the pile of waste engulfed more than ten houses situated below it, including the one belonging to the applicant who lost nine close relatives. The applicant complained in particular that no measures had been taken to prevent an explosion despite an expert report having drawn the authorities' attention to the need to act preventively as such an explosion was not unlikely.

The European Court of Human Rights held that there had been a **violation of Article 2** of the Convention under its substantive limb, on account of the lack of appropriate steps to prevent the accidental death of nine of the applicant's close relatives. It also held that there had been a **violation of Article 2** of the Convention under its procedural limb, on account of the lack of adequate protection by law safeguarding the right to life. The Court observed in particular that the Turkish Government had not provided the slum inhabitants with information about the risks they ran by living there. Even if it had, it remained responsible as it had not taken the necessary practical measures to avoid the risks to people's lives. The regulatory framework had proved defective as the tip had been allowed to open and operate without a coherent supervisory system. The town-planning policy had likewise been inadequate and had undoubtedly played a part in the sequence of events leading to the accident.

In this case the Court also held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, a **violation of Article 13** (right to an effective remedy) of the Convention as regards the complaint under the substantive head of Article 2 and a **violation of Article 13** as regards the complaint under Article 1 of Protocol No. 1.

Dumping of toxic waste

Pending applications

Di Caprio and Others v. Italy (no. 39742/14) and three other applications

Application communicated to the Italian Government on 5 February 2019

This case concerns the "Terra dei Fuochi phenomenon" in Campania and, in particular, in the Province of Naples and in the Province of Caserta.

The Court gave notice of the application to the Italian Government and put questions to the parties under Articles 2 (right to life), 8 (right to respect for private and family life) and 35 (admissibility criteria) of the Convention.

Exposure to nuclear radiation

L.C.B. v. the United Kingdom (application no. 23413/94)

9 June 1998

The applicant's father was exposed to radiation whilst serving as a catering assistant in the Royal Air Force at Christmas Island (Pacific Ocean) during nuclear tests in the 1950s. The applicant was born in 1966. In or about 1970 she was diagnosed as having leukaemia. The applicant claimed in particular that the British authorities' failure to warn her parents of the possible risk to her health caused by her father's participation in the nuclear tests had given rise to a violation of Article 2 (right to life) of the Convention.

The Court held that there had been **no violation of Article 2** of the Convention concerning the applicant's complaint about the United Kingdom's failure to warn and advise her parents or monitor her health prior to her diagnosis with leukaemia. It did not find it established that, given the information available to the British authorities at the relevant time concerning the likelihood of the applicant's father having been exposed to dangerous levels of radiation and of this having created a risk to her health, they could have been expected to act of their own motion to notify the applicant's parents of these matters or to take any other special action in relation to her.

Greenhouse gas emissions

Pending applications

Duarte Agostinho and Others v. Portugal and 32 Other States (no. 39371/20)

Application communicated to the defending governments on 13 November 2020

This case concerns the greenhouse gas emissions from 33 Contracting States, which, in the applicants' submission, contribute to global warming and result, inter alia, in heatwaves which are affecting the applicants' living conditions and health of the applicants, Portuguese nationals aged 21, 17, 8, 20, 15 and 12 respectively.

The Court gave notice of the application to the defending governments and put questions to the parties under Article 1 (jurisdiction of States), Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to private and family life and home), Article 14 (prohibition of discrimination) and Article 34 (individual applications) of the Convention, and Article 1 (protection of property) of Protocol No. 1 to the Convention.

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20)

Application communicated to the Swiss Government in March 2021 – Referral to the Grand Chamber in April 2022

The applicants are, on the one hand, an association under Swiss law for the prevention of climate change and of which hundreds of elderly women are members, and on the other, four elderly women (between 78 and 89) who complain of health problems which undermine their living conditions during heatwaves.

In March 2021 the Court gave notice of the application to the Swiss Government and put questions to the parties under the head of the positive obligations arising from Articles 2 (right to life) and 8 (right to respect for private and family life and the home) of the

Convention and Articles 6 (right to a fair trial – access to a court) and 13 (right to an effective remedy) of the Convention – with questions about their applicability and the victim status of the applicants, a legal entity and a number of individuals.
The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 26 April 2022.

Industrial emissions and health

Smaltini v. Italy

24 March 2015 (decision on the admissibility)

This case concerned the effect of environmental nuisance, caused by the activity of a steelworks, on the health of the first applicant, who died from leukaemia. Her husband and children, who have pursued the application, alleged in particular that the existence of a causal link between the harmful emissions from the plant and the development of her cancer had been demonstrated.
The Court declared the application **inadmissible** as being manifestly ill-founded. Examining the first applicant's complaint under the procedural aspect of Article 2 of the Convention, the Court held in particular that she had had the benefit of adversarial proceedings in the course of which investigations had been carried out at her request. In the Court's view, the first applicant had not demonstrated that, in the light of the scientific data available at the time of the events, there had been a breach of the procedural aspect of her right to life.

Pending application

Locascia and Others v. Italy (no. 35648/10)

Application communicated to the Italian Government on 5 March 2013

See below, under "Right to respect for private and family life and home (Article 8 of the Convention)".

Natural disasters

Murillo Saldias and Others v. Spain

28 November 2006 (decision on the admissibility)

The applicants were survivors of the disaster which struck the Biescas campsite (Spanish Pyrenees) in August 1996 when 87 people were killed in severe flooding following torrential rain. The first applicant lost his parents and brother and sister in the catastrophe while the other applicants all received injuries. The applicants complained in particular that Spain had not taken all the preventive measures that were necessary to protect users of the Biescas campsite. They alleged that the authorities had granted permission to use the land as a campsite despite being aware of the potential dangers.
The Court declared the application **inadmissible**. Noting that, in December 2005, the *Audiencia Nacional* had awarded the first applicant compensation in an amount that could not be regarded as unreasonable and would probably be confirmed or even increased by the Supreme Court when it examined the applicant's appeal on points of law, it considered that, after the decision of the *Audiencia Nacional*, he could no longer claim to be a victim of a violation of rights set forth in the Convention within the meaning of Article 34 (right of individual petition). As regards the remaining applicants, they had merely joined the criminal proceedings as civil parties and had declined to bring administrative proceedings against the authorities before lodging their application with the Court. They had therefore failed to exhaust domestic remedies.

Budayeva and Others v. Russia

20 March 2008

In July 2000 the town of Tyrnauz, situated in the mountain district adjacent to Mount Elbrus in the Republic of Kabardino-Balkariya (Russia), was devastated by a mudslide. Eight people were killed, including the first applicant's husband. As a result of the

disaster, the applicants sustained injuries and psychological trauma and lost their homes. The applicants alleged in particular that the Russian authorities had failed to mitigate the consequences of the mudslide and to carry out a judicial enquiry into the disaster.
The Court held that there had been a **violation of Article 2** of the Convention under its substantial limb, on account of the Russian authorities' failure to protect the life of the first applicant's husband, and, the applicants and the residents of Tyrnauz from mudslides which devastated their town in July 2000. There had indeed been no justification for the authorities' failure to implement land-planning and emergency relief policies in the hazardous area of Tyrnauz concerning the foreseeable risk to the lives of its residents. The Court also held that there had been a **violation of Article 2** of the Convention under its procedural limb, on account of the lack of an adequate judicial enquiry into the disaster. The question of Russia's responsibility for the accident in Tyrnauz had indeed never as such been investigated or examined by any judicial or administrative authority.

Kolyadenko and Others v. Russia

28 February 2012
See below, under "Right to an effective remedy (Article 13 of the Convention)".

Viviani and Others v. Italy

24 March 2015 (decision on the admissibility)
This case concerned the risks attached to a potential eruption of Vesuvius and the measures taken by the authorities to combat those risks. The applicants, who live in various municipalities located near the volcano, alleged that in omitting to put in place an appropriate regulatory and administrative framework to deal with the risks, the Government had failed in their obligation to protect their right to life. They also complained that the lack of adequate information on the risks they faced was in breach of their right to respect for their private and family life.
The Court declared the application **inadmissible** for failure to exhaust domestic remedies, in accordance with Article 35 § 1 (admissibility criteria) of the Convention. It noted in particular that the applicants had had several domestic remedies available to them which they had not exhausted, in particular before the administrative courts or in the form of a class action. However, they had merely asserted that the remedies in question were ineffective.

Özel and Others v. Turkey

17 November 2015
This case concerned the deaths of the applicants' family members, who were buried alive under buildings that collapsed in the town of Çınarcık – located in a region classified as "major risk zone" on the map of seismic activity – in an earthquake on 17 August 1999, one of the deadliest earthquakes ever recorded in Turkey.
The Court held that there had been a **violation of Article 2** of the Convention under its procedural head, finding in particular that the Turkish authorities had not acted promptly in determining the responsibilities and circumstances of the collapse of the buildings which had caused the deaths. Indeed, the importance of the investigation should have made the authorities deal with it promptly in order to determine the responsibilities and the circumstances in which the buildings collapsed, and thus to avoid any appearance of tolerance of illegal acts or of collusion in such acts.

Petroleum activities

Pending application

Greenpeace Nordic and Others v. Norway (no. 34068/21)

Application communicated to the Government of Norway on 16 December 2021
See below, under "Right to respect for private and family life and home (Article 8 of the Convention)".

Prohibition of inhuman or degrading treatment (Article 3 of the Convention)

Passive smoking in detention

Florea v. Romania

14 September 2010

In 2002 the applicant, who suffered from chronic hepatitis and arterial hypertension, was imprisoned. For approximately nine months he shared a cell with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. The applicant complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital.

The Court observed in particular that the applicant had spent in detention approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. As to the fact that he had to share a cell and a hospital ward with prisoners who smoked, the Court noted that the applicant had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice. However, a law in force since June 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non-smokers should be detained separately. It followed that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by **Article 3** of the Convention, in **violation** of this provision.

Elefteriadis v. Romania

25 January 2011

The applicant, who suffered from chronic pulmonary disease, was serving a sentence of life imprisonment. Between February and November 2005 he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he had been summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked.

The Court held that there had been a **violation of Article 3** of the Convention, observing in particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons.

Right to liberty and security (Article 5 of the Convention)

Mangouras v. Spain

28 September 2010 (Grand Chamber)

The applicant was formerly the captain of the ship *Prestige*, which in November 2002, while sailing off the Spanish coast, discharged the 70,000 tonnes of fuel oil it was carrying into the Atlantic Ocean when its hull sprang a leak. The oil spill caused an ecological disaster whose effects on marine flora and fauna lasted for several months and spread as far as the French coast. A criminal investigation was opened and the applicant was remanded in custody with the possibility of release on bail of three million euros. He was detained for 83 days and granted provisional release when his bail was paid by the shipowner's insurers. The applicant complained in particular that the amount of bail required had been excessively high and had been fixed without regard for his personal situation.

The Court held that there had been **no violation of Article 5 § 3** of the Convention, finding that the Spanish courts had taken sufficient account of the applicant's personal situation, and in particular his status as an employee of the ship's owner, his

professional relationship with the persons who were to provide the security, his nationality and place of permanent residence and also his lack of ties in Spain and his age. The Court was of the view that the increasingly high standard being required in the area of human rights protection correspondingly required greater firmness in assessing breaches of the fundamental values of democratic societies. Hence, it could not be ruled out that the professional environment which formed the setting for the activity in question should be taken into consideration in determining the amount of bail, in order to ensure that the measure was effective. Given the exceptional nature of the present case and the huge environmental damage caused by marine pollution on a seldom-seen scale, it was hardly surprising that the judicial authorities should have adjusted the amount required by way of bail in line with the level of liability incurred, so as to ensure that those responsible had no incentive to evade justice and forfeit the security. It was by no means certain that a level of bail set solely by reference to the applicant's assets would have been sufficient to ensure his attendance at the hearing.

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

Access to court

Athanassoglou and Others v. Switzerland

6 April 2000 (Grand Chamber)

The applicants lived in villages situated in zone 1 in the vicinity of unit II of a nuclear power plant in Beznau (Canton of Aargau). They complained in particular that they had been denied access to a court in respect of the decision of the Federal Council to grant the nuclear power plant an extension of its operating licence and that the procedure followed by the Federal Council had not been fair. They also complained that they had no effective remedy enabling them to complain of a violation of their right to life and their right to respect for physical integrity.

The Court held that **Article 6 § 1** of the Convention was **not applicable** in the present case. It found that the connection between the Federal Council's decision and the domestic-law rights invoked by the applicants (life, physical integrity, property) had been too tenuous and remote and was not sufficient to bring Article 6 § 1 into play. Indeed, the applicants in their pleadings before the Court appeared to accept that they were alleging not so much a specific and imminent danger in their personal regard as a general danger in relation to all nuclear power plants; and many of the grounds they relied on related to safety, environmental and technical features inherent in the use of nuclear energy. As to the fact that the applicants were seeking to derive from Article 6 § 1 a remedy to contest the very principle of the use of nuclear energy, or at the least a means for transferring from the government to the courts the responsibility for taking, on the basis of the technical evidence, the ultimate decision on the operation of individual nuclear power stations, the Court considered that how best to regulate the use of nuclear power is a policy decision for each Contracting State to take according to its democratic processes. The Court also found **Article 13** of the Convention to be **inapplicable** in this case.

See also: ***Balmer-Schafroth and Others v. Switzerland***, judgment of 26 August 1997; ***Balmer-Schafroth and Others v. Switzerland***, decision on the admissibility of 13 September 2001.

Gorraiz Lizarraga and Others v. Spain

27 April 2004

The five first applicants and an association of which they were members brought proceedings against plans to build a dam that would result in three nature reserves and a number of small villages being flooded. They submitted in particular that they had not had a fair hearing in that they had been prevented from taking part in the proceedings

concerning the reference of the preliminary question, whereas the Spanish State and State Counsel's Office had been able to submit observations to the Constitutional Court.
Having regard to the particular circumstances of the case, and especially the fact that the applicant association had been set up for the specific purpose of defending its members' interests before the courts and that those members were directly concerned by the dam project, the Court considered that the first five **applicants could claim to be victims, within the meaning of Article 34** (right to individual application) of the Convention, of the alleged violations, and that they had exhausted domestic remedies with regard to the complaints under Article 6 § 1 of the Convention. In the present case, the Court held that there had been **no violation of Article 6 § 1** of the Convention, as to both the alleged breach of the principle of equality of arms and the alleged interference by the legislature with the outcome of the dispute.

L'Érablière asbl v. Belgium

24 February 2009

The applicant, a non-profit association campaigning for the protection of the environment, complained against the granting of planning permission to expand a waste collection site. The claim was not allowed by the *Conseil d'État* on procedural grounds, as it found that that it did not include a statement of the facts explaining the background to the dispute. The applicant association alleged that the inadmissibility decision of the *Conseil d'État* amounted to a violation of its right of access to a court
The Court reiterated that for Article 6 of the Convention to be applicable there must be a dispute with a sufficient link to a civil right and that, in order to exclude applications concerning the mere existence of a law or a court decision affecting third parties, the Court did not allow an *actio popularis*. It has, however, previously held that this Article was applicable in cases brought by an association that, whilst of general interest, also defended the specific interest of the members. In the present case it considered that increasing the capacity of the waste collection site could directly affect the private life of the members of the applicant association, and stressed that the aim of the association was limited to the protection of the environment in Marche-Nassogne (Province of Luxembourg). Consequently, the Court found that the applicant association's action could not be regarded as an *actio popularis* and held that **Article 6** of the Convention was therefore **applicable**. In this case, the Court held that there had been a **violation of Article 6 § 1**, finding that the limitation on the right of access to a court imposed on the applicant association had been disproportionate to the requirements of legal certainty and the proper administration of justice.

Howald Moor and Others v. Switzerland

11 March 2014

This case concerned a worker who was diagnosed in May 2004 with malignant pleural mesothelioma (a highly aggressive malignant tumour) caused by his exposure to asbestos in the course of his work in the 1960s and 1970s. He died in 2005. The applicants, his wife and two daughters, complained mainly that their right of access to a court had been breached, as the Swiss courts had dismissed their claims for damages against the deceased's employer and the national authorities, on the grounds that they were time-barred.
In view of the exceptional circumstances in the present case the Court considered that the application of the limitation periods had restricted the applicants' access to a court to the point of **breaching Article 6 § 1** of the Convention. While it was satisfied that the legal rule on limitation periods pursued a legitimate aim, namely legal certainty, it observed however that the systematic application of the rule to persons suffering from diseases which could not be diagnosed until many years after the triggering events deprived those persons of the chance to assert their rights before the courts. The Court therefore considered that in cases where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into account in calculating the limitation period.

Karin Andersson and Others v. Sweden

25 September 2014

The applicants all owned property close to Umeå in northern Sweden. In June 2003 the Swedish Government had issued a decision permitting the construction of a 10 km long railway on or close to their properties. The applicants complained in particular that they had been refused a full legal review of the Government's decision to permit the construction of the railway in question.

The Court held that there had been a **violation of Article 6 § 1** of the Convention, finding that the applicants had not been able, at any time of the domestic proceedings, to obtain a full judicial review of the authorities' decisions, including the question whether the location of the railway infringed their rights as property owners. Thus, notwithstanding that the applicants had been accepted as parties before the Supreme Administrative Court in 2008, they did not have access to a court for the determination of their civil rights in the case.

Stichting Landgoed Steenbergen and Others v. the Netherlands

16 February 2021

The applicants' premises and land were located in close proximity to a motocross track. The Provincial Executive had published a notification of a draft decision and decision to extend the opening hours of the track on its website, which the applicants had not seen in time. The applicants had subsequently lodged an appeal against the decision, after the fixed time-limit for doing so had expired, which had been declared inadmissible. They complained that giving notice of the draft decision and the decision online only had impinged on their right of access to a court, as they had been unaware of both the draft decision and the decision.

The Court held that there had been **no violation of Article 6 § 1** of the Convention in the present case, finding, in light of all the circumstances and the safeguards identified, that the national authorities had not exceeded the margin of appreciation afforded to the State and that the applicants had not suffered a disproportionate restriction of their right of access to court. It noted, in particular, that the system of electronic publication used by the Provincial Executive had constituted a coherent system that had struck a fair balance between the interests of the community as a whole in having a more modern and efficient administration and the applicants. In the Court's view, there was no indication that the applicants had not been afforded a clear, practical and effective opportunity to comment on the draft decision and to challenge the decision given by the Provincial Executive.

Failure to enforce final judicial decisions

Kyrtatos v. Greece

22 May 2003

See below, under "Right to respect for private and family life and home (Article 8 of the Convention)".

Apanasewicz v. Poland

3 May 2011

In 1988 the owner of a plot of land adjacent to that of the applicant built a concrete works on it without planning permission. It was immediately operational and has been gradually enlarged. In 1989 the applicant brought proceedings to put an end to the environmental harm that she alleged to have sustained (pollution, various health problems, inedible harvest, etc.). In 2001 a civil court ordered the closure of the factory. In spite of two sets of enforcement proceedings – one civil, the other administrative – the factory had still not been closed at the time of the judgment of the European Court of Human Rights. The applicant complained in particular of a failure to enforce the judgment of 2001 ordering the factory's proprietor to shut it down.

The Court found a **violation of Article 6 § 1** of the Convention. It held that, particularly in the light of the overall duration of the proceedings, the lack of diligence on the part of

the authorities and the insufficient use by the latter of the coercive measures available, that the applicant had not had effective judicial protection. The Polish authorities had, in the present case, deprived the provisions of Article 6 § 1 of any practical effect. It then examined to what extent the Polish authorities had 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, finding that while the authorities had taken certain measures for that purpose (essentially on the applicant's initiative), they had remained entirely ineffective. It therefore also found a **violation of Article 8** (right to respect for private and family life and one's home) of the Convention.

Bursa Barosu Başkanlığı and Others v. Turkey

19 June 2018

The applicants (the Bursa Bar Association and the Association for the Protection of Nature and the Environment, together with 21 individuals) complained of the failure to enforce numerous judicial rulings setting aside administrative decisions authorising the construction and operation of a starch factory on farmland in Orhangazi (a district of Bursa) by a US company (Cargill) and the length of the proceedings.

The Court firstly noted that the application was admissible in respect of only six of the applicants, namely those who had participated actively in the domestic proceedings seeking the annulment of the impugned administrative decisions and who could therefore claim to be victims, within the meaning of Article 34 (right of individual application) of the Convention, of the alleged violations of the Convention. In respect of these six applicants, the Court held that there had been a **violation of Article 6 § 1** of the Convention, finding in particular that, by refraining for several years from taking the necessary measures to comply with a number of final and enforceable judicial decisions, the national authorities had deprived them of effective judicial protection. The Court further declared the application **inadmissible** in so far as the other applicants were concerned.

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

Dam construction threatening archaeological site

Ahunbay and Others v. Turkey

29 January 2019 (decision on the admissibility)

In this case, five applicants complained that the planned construction of the Ilısu dam threatened the Hasankeyf archaeological site, a place of archaeological and cultural interest dating back more than 12,000 years.

The Court declared the application inadmissible as being incompatible *ratione materiae* with the provisions of the Convention (Article 35 §§ 3 (a) and 4). It noted in particular that there was to date no European consensus, or even a trend among the member States of the Council of Europe, which would have made it possible to infer from the Convention's provisions that there existed a universal individual right to the protection of one or another part of the cultural heritage, as requested in the application.

Environmental risks and access to information

Guerra and Others v. Italy

19 February 1998

The applicants all lived about a kilometre away from a chemical factory producing fertilisers. Accidents due to malfunctioning had already occurred in the past, the most serious one in 1976 when the scrubbing tower for the ammonia synthesis gases exploded, allowing several tonnes of potassium carbonate and bicarbonate solution, containing arsenic trioxide, to escape. One hundred and fifty people were admitted to

hospital with acute arsenic poisoning. The applicants alleged in particular that the lack of practical measures, in particular to reduce pollution levels and major-accident hazards arising out of the factory's operation, had infringed their right to respect for their lives and physical integrity. They also complained that the relevant authorities' failure to inform the public about the hazards and about the procedures to be followed in the event of a major accident had infringed their right to freedom of information.
The Court held that there had been a **violation of Article 8** of the Convention, finding that the Italian State had not fulfilled its obligation to secure the applicants' right to respect for their private and family life. It reiterated in particular 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. In the instant case the applicants had waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live in a town particularly exposed to danger in the event of an accident at the factory. Having regard to its conclusion that there had been a violation of Article 8, the Court further found it unnecessary to consider the case under Article 2 (right to life) of the Convention also.

McGinley et Egan c. Royaume-Uni

9 June 1998
Between 1952 and 1967 the United Kingdom carried out a number of atmospheric tests of nuclear weapons in the Pacific Ocean and at Maralinga, Australia, involving over 20,000 servicemen. Among these tests were six detonations at Christmas Island, in the Pacific Ocean, of weapons many times more powerful than those discharged at Hiroshima and Nagasaki. The applicant were soldiers who were both present on Christmas Island during that period. They complained in particular about the withholding of documents which would have assisted them in ascertaining whether there was any link between their health problems and exposure to radiation.
The Court noted in particular that, where a Government engages in hazardous activities which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 of the Convention requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information. In the instant case, the Court observed that the United Kingdom had provided a procedure which would have enabled the applicants to have requested documents relating to the Minister of Defence's assertion that they had not been dangerously exposed to radiation, and that there was no evidence before it to suggest that this procedure would not have been effective in securing disclosure of the documents sought. However, neither of the applicants had chosen to avail themselves of this procedure or, according to the evidence presented to the Court, to request from the competent authorities at any other time the production of the documents in question. In these circumstances, the Court found that the United Kingdom had fulfilled its positive obligation under **Article 8** in relation to the applicants. It therefore held that there had been **no violation** of this provision. The Court further held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention as regards the applicants' complaint that they had been denied effective access to a court.

Roche v. the United Kingdom

19 October 2005 (Grand Chamber)
The applicant was discharged from the British Army in the late 1960s. In the 1980s he developed high blood pressure and later suffered from hypertension, bronchitis and bronchial asthma. He was registered as an invalid and maintained that his health problems were the result of his participation in mustard and nerve gas tests conducted under the auspices of the British Armed Forces at Porton Down Barracks (England) in the 1960s. The applicant complained in particular that he had not had access to all relevant and appropriate information that would have allowed him to assess any risk to which he had been exposed during his participation in those tests.

The Court held that there had been a **violation of Article 8** of the Convention, finding that, in the overall circumstances, 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. The Court observed in particular that an individual, such as the applicant, who had consistently pursued such disclosure independently of any litigation, should not be required to litigate to obtain disclosure. In addition, information services and health studies had only been started almost 10 years after the applicant had begun his search for records and after he had lodged his application with the Court. In this case the Court further held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 6 and Article 1 of Protocol No. 1**, **no violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 6 and Article 1 of Protocol No. 1**, and **no violation of Article 10** (freedom of expression) of the Convention.

Vilnes and Others v. Norway

5 December 2013

This case concerned complaints by former divers that they were disabled as a result of diving in the North Sea for oil companies during the pioneer period of oil exploration (from 1965 to 1990). All the applicants complained that Norway had failed to take appropriate steps to protect deep sea divers' health and lives when working in the North Sea and, as concerned three of the applicants, at testing facilities. They all also alleged that the State had failed to provide them with adequate information about the risks involved in both deep sea diving and test diving.

The Court held that there had been a **violation of Article 8** of the Convention, on account of the failure of the Norwegian authorities to ensure that the applicants received essential information enabling them to assess the risks to their health and lives resulting from the use of rapid decompression tables. In the light of the authorities' role in authorising diving operations and protecting divers' safety, and of the uncertainty and lack of scientific consensus at the time regarding the long-term effects of decompression sickness, the Court found in particular that a very cautious approach had been called for. It would have been reasonable for the authorities to take the precaution of ensuring that companies observed full transparency about the diving tables and that divers received the information on the differences between the tables and on the concerns for their safety and health they required to enable them to assess the risks and give informed consent. The fact that these steps were not taken meant that Norway had not fulfilled its obligation to secure the applicants' right to respect for their private life. The Court further held that there had been **no violation of Article 2** (right to life) or **Article 8** of the Convention as regards the remainder of the applicants' complaints about the authorities' failure to prevent their health and lives from being put in jeopardy, and that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Brincat and Others v. Malta

24 July 2014

This case concerned ship-yard repair workers who were exposed to asbestos for a number of decades beginning in the 1950s to the early 2000s which led to them suffering from asbestos related conditions. The applicants complained in particular about their or their deceased relative's exposure to asbestos and the Maltese Government's failure to protect them from its fatal consequences.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention in respect of the applicants whose relative had died, and a **violation of Article 8** of the Convention in respect of the remainder of the applicants. It found in particular that, in view of the seriousness of the threat posed by asbestos, and despite

the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations under the Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. Indeed, at least from the early 1970s, the Maltese Government had been aware or should have been aware that the ship-yard workers could suffer from consequences resulting from the exposure to asbestos, yet they had taken no positive steps to counter that risk until 2003.

Greenhouse gas emissions

Pending applications

Duarte Agostinho and Others v. Portugal and 32 Other States (no. 39371/20)

Application communicated to the defending governments on 13 November 2020
See above, under "Right to life (Article 2 of the Convention)".

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20)

Application communicated to the Swiss Government on 17 March 2021
See above, under "Right to life (Article 2 of the Convention)".

High-voltage power line

Calancea and Others v. the Republic of Moldova

6 February 2018 (decision on the admissibility)
This case concerns the presence of a high-voltage power line crossing the land of the applicants, a married couple and their neighbour.
The Court declared the application **inadmissible** as being manifestly ill-founded. It considered in particular that it had not been demonstrated that the strength of the electromagnetic field created by the high-voltage line had attained a level capable of having a harmful effect on the applicants' private and family sphere. It held that in the present case the minimum threshold of severity required in order to find a violation of Article 8 of the Convention had not been attained.

Pending applications

Thibaut v. France (nos. 41892/19 and 41893/19)

Applications communicated to the French Government on 10 February 2020
This case concerns the installation of an extra-high voltage power line in the neighbourhood of dwellings.
The Court gave notice of the applications to the French Government and put questions to the parties under Article 8 (right to respect for private and family life and home) of the Convention.

Industrial pollution

Lopez Ostra v. Spain

9 December 1994
The town the applicant lived in had a heavy concentration of leather industries. She complained in particular of the municipal authorities' inactivity in respect of the nuisance (smells, noise and polluting fumes) caused by a waste-treatment plant situated a few metres away from her home. She held the Spanish authorities responsible, alleging that they had adopted a passive attitude. The applicant also submitted that these matters were of such seriousness and had caused her such distress that they could reasonably be regarded as amounting to degrading treatment.
The Court held that there had been a **violation of Article 8** of the Convention, finding that the Spanish State had not succeeded in striking a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the

applicant's effective enjoyment of her right to respect for her home and her private and family life. The Court noted in particular that the applicant and her family had to bear the nuisance caused by the plant for over three years before moving house with all the attendant inconveniences. They moved only when it became apparent that the situation could continue indefinitely and when the applicant's daughter's paediatrician recommended that they do so. Under these circumstances, the municipality's offer could not afford complete redress for the nuisance and inconveniences to which they had been subjected. The Court further held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the conditions in which the applicant and her family had lived for a number of years were certainly very difficult but did not amount to degrading treatment.

See also: ***Băcilă c. Roumanie***, judgment of 30 March 2010.

Taşkın and Others v. Turkey

10 November 2004

This case concerned the granting of permits to operate a goldmine in Ovacık, in the district of Bergama (Izmir). The applicants were living in Bergama or the surrounding villages. They alleged in particular that both the granting by the national authorities of a permit to operate a goldmine using the cyanidation process and the related decision-making process had infringed their rights under Article 8 of the Convention.

The Court held that there had been a **violation of Article 8** of the Convention, finding that Turkey had failed to discharge its obligation to guarantee the applicants' right to respect for their private and family life. The Court noted in particular that the authorities' decision to issue an operating permit for the gold mine had in May 1997 been annulled by the Supreme Administrative Court, which, after weighing the competing interests in the present case against each other, based its decision on the applicants' effective enjoyment of the right to life and the right to a healthy environment and concluded that the permit did not serve the public interest. However, the gold mine was not ordered to close until February 1998, that is, ten months after the delivery of that judgment and four months after it had been served on the authorities. Moreover, notwithstanding the procedural guarantees afforded by Turkish legislation and the implementation of those guarantees by judicial decisions, the Council of Ministers, by a decision of March 2002 which was not made public, authorised the continuation of production at the gold mine, which had already begun to operate in April 2001. The Court found that, in so doing, the authorities had deprived the procedural guarantees available to the applicants of any useful effect. In this case the Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention.

See also: ***Öçkan and Others v. Turkey***, judgment of 28 Match 2006; ***Lemke v. Turkey***, judgment of 5 June 2007.

Fadeyeva v. Russia

9 June 2005

The applicant lived in a major steel-producing centre situated around 300 km north-east of Moscow. She complained in particular that the operation of a steel plant in close proximity to her home endangered her health and well-being.

The Court held that there had been a **violation of Article 8** of the Convention, finding that Russia 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 noted in particular that the Russian authorities had authorised the operation of a polluting enterprise in the middle of a densely populated town. Since the toxic emissions from that enterprise exceeded the safe limits established by domestic legislation and might have endangered the health of those living nearby, the authorities had established that a certain territory around the plant should be free of any dwelling. However, those legislative measures had not been implemented in practice. It would be going too far, the Court noted, to state that the State or the polluting enterprise were under an obligation to provide the applicant with free housing, and, in any event, it was

not the Court's role to dictate precise measures which should be adopted by the Contracting States in order to comply with their positive duties under Article 8 of the Convention. In the applicant's case, however, 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 take into account the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels.

See also: ***Ledyayeva and Others v. Russia***, judgment of 26 October 2006.

Giacomelli v. Italy

2 November 2006

Since 1950 the applicant had lived in a house located 30 metres away from a plant for the storage and treatment of "special waste" classified as either hazardous or non-hazardous, which had begun operating in 1982. The company which operated the plant had subsequently obtained permission to increase the quantity of waste that is processed and to carry out "detoxification" of dangerous waste, a process which entails the use of chemical products to treat special industrial waste. The applicant 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 there had been a **violation of Article 8** of the Convention, finding that 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. It noted in particular that the company which operated the plant was not asked to undertake a prior environmental-impact assessment ("EIA") until 1996, seven years after commencing its activities involving the detoxification of industrial waste. Moreover, during the EIA procedure the Ministry of the Environment had found 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. Therefore, even supposing that, following the EIA decree issued by the Ministry of the Environment in 2004 – in which the Ministry had expressed an opinion in favour of the company's continued operation of the plant provided that it complied with the requirements laid down by the Regional Council in order to improve the conditions for operating and monitoring it –, the necessary steps had been taken to protect the applicant's rights, the fact remained that for several years her right to respect for her home had been seriously impaired by the dangerous activities carried out at the plant built thirty metres away from her house.

Tătar v. Romania

27 January 2009

The applicants, father and son, alleged in particular that the technological process (involving the use of sodium cyanide in the open air) used by a company in their gold mining activity put their lives in danger. Part of the company's activity was located in the vicinity of the applicants' home. In January 2000 an environmental accident had occurred at the site. A United Nations study reported that a dam had breached, releasing about 100,000 m^3 of cyanide-contaminated tailings water into the environment. The applicants also complained of inaction on the part of the authorities regarding the numerous complaints lodged by the first applicant about the threat to their lives, to the environment and to his asthmatic son's health.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Romanian authorities had failed in their duty to assess, to a satisfactory degree, the risks that the activity of the company operating the mine might entail, and to take suitable measures in order to protect the rights of those concerned to respect for their private lives and homes, and more generally their right to enjoy a healthy and protected environment. In this case the Court recalled in particular that pollution could interfere

with a person's private and family life by harming his or her well-being, and that the State had a duty to ensure the protection of its citizens by regulating the authorising, setting-up, operating, safety and monitoring of industrial activities, especially activities that were dangerous for the environment and human health. It further noted that, in the light of what was currently known about the subject, the applicants had failed to prove the existence of a causal link between exposure to sodium cyanide and asthma. It observed, however, that the company had been able to continue its industrial operations after the January 2000 accident, in breach of the precautionary principle, 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. The Court also pointed out that authorities had to ensure public access to the conclusions of investigations and studies, reiterating that the State had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues.

Dubetska and Others v. Ukraine

10 February 2011

In this case the applicants complained that their health had suffered and their house and living environment had been damaged as a result of a State-owned coal mine operating near their houses. They also submitted that the Ukrainian authorities had done nothing to remedy the situation.

The Court held that there had been a **violation of Article 8** of the Convention. It observed in particular that the Ukrainian authorities had been aware of the adverse environmental effects of the mine and factory but had neither resettled the applicants, nor found a different solution to diminish the pollution to levels that were not harmful to people living in the vicinity of the industrial facilities. Moreover, despite attempts to penalise the factory director and to order and bring about the applicants' resettlement, and notwithstanding that a centralised aqueduct was built by 2009 ensuring sufficient supply of fresh drinking water to the applicants, for 12 years the authorities had not found an effective solution to the applicants' situation. The Court also held that by finding of a violation of Article 8 of the Convention it established the Ukrainian Government's obligation to take appropriate measures to remedy the applicants' situation.

Apanasewicz v. Poland

3 May 2011

See above, under "Right to a fair trial (Article 6 of the Convention)".

Compare and contrast with, for instance: ***Koceniak v. Poland***, decision on the admissibility of 17 June 2014.

Cordella and Others v. Italy

24 January 2019

In this case, the 180 applicants – who lived or had lived in the municipality of Taranto or in neighbouring areas – complained about the effects of toxic emissions from the Ilva steelworks in Taranto on the environment and on their health. They submitted in particular that the State had not adopted legal and statutory measures to protect their health and the environment, and that it had failed to provide them with information concerning the pollution and the attendant risks for their health. They also complained about the ineffectiveness of the domestic remedies.

The Court considered that 19 applicants did not have victim status, since they did not live in one of the towns classified as being at high environmental risk (Taranto, Crispiano, Massafra, Montemesola and Statte) and they had not shown that they were personally affected by the situation complained of. In respect of the other applicants, the Court held that there had been a **violation of Article 8** (right to respect for private life) and a **violation of Article 13** (right to an effective remedy) of the Convention. It found, in particular, that the persistence of a situation of environmental pollution endangered the health of the applicants and, more generally, that of the entire

population living in the areas at risk. It also held that the national authorities had failed to take all the necessary measures to provide effective protection of the applicants' right to respect for their private life. Lastly, the Court considered that these applicants had not had available an effective remedy enabling them to raise with the national authorities their complaints concerning the fact that it was impossible to obtain measures to secure decontamination of the relevant areas. Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, that Court reiterated that it was for the Committee of Ministers of the Council of Europe to indicate to the Italian Government the measures that were to be taken to ensure that its judgment was enforced, while specifying that the work to clean up the factory and the region affected by the environmental pollution was essential and urgent, and that the environmental plan approved by the national authorities, which set out the necessary measures and actions to ensure environmental and health protection for the population, ought to be implemented as rapidly as possible.

Pending application

Greenpeace Nordic and Others v. Norway (no. 34068/21)

Application communicated to the Norwegian Government on 16 December 2021

This case concerns a decision to issue licences to search for petroleum on parts of the Norwegian continental shelf.

The Court gave notice of the application to the Norwegian Government and put questions to the parties under Article 34 (right of individual application), Article 2 (right to life), Article 8 (right to respect for private and family life and the home), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the Convention.

Mobile phone antennas

Luginbühl v. Switzerland

17 January 2006 (decision on the admissibility)

The applicant argued, as a person particularly sensitive to emissions caused by the phenomenon of electromagnetic radiation, that she was the victim of damage to her health caused by the planned installation, in the place where she was living, of a mobile telephone mast.

The Court declared the application **inadmissible** as manifestly ill-founded. Having regard in particular to the extended margin of appreciation enjoyed by the State in such matters, and the interest in modern society of a comprehensive mobile telephone network, it took the view that an obligation to take further measures to protect the applicant's rights could not be regarded as reasonable or appropriate. The Court found that the Swiss authorities had struck a fair balance between the competing interests. Efforts had been made by the competent authorities to monitor scientific developments in such matters and to periodically examine the applicable thresholds. In addition, as the Federal Environmental Protection Act provided that the Federal Council had to take account of the effect of the emissions on categories of particularly sensitive individuals, the Court observed that this statutory basis would allow, if mobile telephone masts were one day found to really constitute a risk for public health, for appropriate measures to be taken in order to protect the most vulnerable individuals more specifically from the phenomenon of electromagnetic radiation.

Noise pollution

Air traffic and aircraft noise

Powell and Rayner v. the United Kingdom

21 February 1990

The applicants, who lived in the vicinity of Heathrow airport, considered the authorised noise level there unacceptable and the measures pursued by the government to minimise the noise to be insufficient.

The Court observed that in each case, albeit to greatly differing degrees, the quality of the applicant's private life and the scope for enjoying the amenities of his home had been adversely affected by the noise generated by aircraft using Heathrow Airport. However, it also pointed out that the existence of large international airports, even in densely populated urban areas, and the increasing use of jet aircraft had become necessary in the interests of a country's economic well-being. A number of measures had further been introduced by the responsible authorities to control, abate and compensate for aircraft noise at and around Heathrow Airport. In the applicants' case, the Court found that that the United Kingdom Government could not arguably be said to have exceeded the margin of appreciation afforded to them or upset the fair balance required to be struck under Article 8 of the Convention. It therefore held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **in respect of the claims** of either applicant **under Article 8** since no arguable claim of violation of Article 8 and no entitlement to a remedy under Article 13 had been made out in relation to either applicant.

Hatton and Others v. the United Kingdom

8 July 2003 (Grand Chamber)

The applicants, all of whom lived or had lived close to Heathrow airport, submitted that United Kingdom Government policy on night flights at Heathrow airport had given rise to a violation of their rights under Article 8 of the Convention. They alleged in particular that their health had suffered as a result of regular sleep interruptions caused by night-time planes. They also claimed that they had been denied an effective domestic remedy for this complaint.

In this case the Court observed that the State's responsibility in environmental cases may also arise from a failure to regulate private industry in a manner securing proper respect for the rights enshrined in Article 8 of the Convention. However, departing from the Chamber's approach[1], the Grand Chamber held that there had been **no violation of Article 8** of the Convention, finding in particular that the United Kingdom had not overstepped their margin of appreciation by failing to strike a fair balance between the right of the individuals affected by those regulations to respect for their private life and home and the conflicting interests of others and of the community as a whole. While the Court could not reach a conclusion about whether the 1993 policy on night flights at Heathrow airport had actually led to an increase in night noise, it found that there was an economic interest in maintaining a full service of night flights, that only a small percentage of people had suffered by the noise, that the housing prices had not dropped, and that the applicants could move elsewhere without financial loss. As further regards the question whether the applicants had had a remedy at national level to enforce their Convention rights, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention. It was indeed clear that the scope of review by the domestic courts had been limited at the material time to examining whether the authorities had acted irrationally, unlawfully or manifestly unreasonably (classic English public-law concepts) and, prior to the entry into force of the Human Rights Act 1998, the courts had not been able 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 those who lived near Heathrow Airport.

Flamenbaum and Others v. France

13 December 2012

The applicants were owners or joint owners of homes located in or near the Saint-Gatien forest, which is not far from the seaside resorts on the Normandy coast and is classed as a natural area, which is of particular interest in terms of ecology, fauna and flora. These

[1] *Hatton and Others v. the United Kingdom*, judgment (Chamber) of 2 October 2001. On 19 December 2001, the United Kingdom Government requested, in accordance with Article 43 (referral to the Grand Chamber) of the Convention, that the case be referred to the Grand Chamber. The Grand Chamber Panel accepted that request on 27 March 2002.

homes were all at a distance of between 500 and 2,500 metres from the Deauville Airport's main runway. They complained in particular about the noise disturbance caused by the extension of the airport's main runway and of shortcomings in the related decision-making process. They also complained of the decline in market value of their properties as a result of the runway extension, and about the insulation costs that they had had to bear.
The Court noted in particular that the domestic courts had recognised the public-interest nature of the project and that the French Government had established a legitimate aim – the region's economic well-being. In the applicants' case, it held that there had been **no violation of Article 8** of the Convention. Having regard to the measures taken by the authorities to limit the impact of the noise disturbance on local residents, it found that they had struck a fair balance between the competing interests. It further saw no flaw in the decision-making process. The Court also held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, as the applicants had failed to establish the existence of an infringement of their right to peaceful enjoyment of their possessions.

Neighbouring noise

Moreno Gómez v. Spain

16 November 2004
The applicant complained of noise and of being disturbed at night by nightclubs near her home. She alleged that the Spanish authorities were responsible and that the resulting noise pollution constituted a violation of her right to respect for her homes.
In view of the volume of the noise, at night and beyond permitted levels, and the fact that it had continued over a number of years, the Court found that there had been a breach of the rights protected by Article 8 of the Convention. Although the City Council had used its powers in this sphere to adopt measures (such as a bylaw concerning noise and vibrations) which should in principle have been adequate to secure respect for the guaranteed rights, it had tolerated, and thus contributed to, the repeated flouting of the rules which it itself had established during the period concerned. In these circumstances, finding that the applicant had suffered a serious infringement of her right to respect for her home as a result of the authorities' failure to take action to deal with the night-time disturbances, the Court held that Spain had failed to discharge its positive obligation to guarantee her right to respect for her home and her private life, in **breach of Article 8** of the Convention.

See also: ***Cuenca Zarzoso v. Spain***, judgment of 16 January 2018.

Mileva and Others v. Bulgaria

25 November 2010
This case concerned the noise and nuisance caused by the running of a computer club in the building in which the applicants lived. The applicants complained in particular about the authorities' failure to do everything possible to stop the noise and nuisance.
The Court held that there had been a **violation of Article 8** of the Convention, finding that Bulgaria had failed to approach the matter with due diligence and thus to discharge its positive obligation to ensure the applicants' respect for their homes and their private and family lives. In particular, despite receiving many complaints and being aware that the club was operating without the necessary license, the police and the municipal authorities had failed to take action to protect the well-being of the applicants in their homes. For instance, although the building-control authorities had in July 2002 prohibited the use of the flat as a computer club, their decision had never been enforced, partly as a result of two court decisions to suspend its enforcement and the inordinate protraction of those proceedings. In addition, it was not until November 2003, some two and a half years after the club had started functioning, that the municipality had imposed a condition requiring the club's managers to have clients enter the club through a rear door. That condition had been completely disregarded by the club and

the applicants submitted that it could not, in any event, have been met given the building's layout.

Zammit Maempel and Others v. Malta

22 November 2011

The applicant family submitted that the issuing of permits for firework displays, which took place twice a year, every year, in the vicinity of their house, breached their rights protected under Article 8 of the Convention and endangered their life and property.

The Court observed that the noise produced by the fireworks had affected the physical and psychological state of the applicants who had been exposed to it and, consequently, their right to respect for their private lives and home had been disturbed sufficiently to make their complaint admissible under Article 8 of the Convention. It held, however, that there had been **no violation of Article 8** in the applicants' case. The Court noted in particular that the noise levels could have impaired the hearing of at least one of the applicants. At the same time, there had not been a real and immediate risk to the applicants' life or personal integrity. The letting off of fireworks had also damaged the applicants' property, although the damage had been minimal and reversible. In addition, the Maltese authorities had been aware of the dangers of fireworks and had put in place a system whereby people and properties were protected to a certain degree. Finally, the applicants had acquired the property while aware of the situation of which they were complaining.

Chiş v. Romania

9 September 2014 (decision on the admissibility)

The applicant complained in particular about his right to respect for his private and family life, following the opening of a number of bars in his building.

The Court declared the application **inadmissible**, finding that it had not been established that the minimum threshold of seriousness required to engage Article 8 of the Convention had been reached in the present case. Even assuming that the threshold had been reached, it observed that the Romanian authorities had discharged their obligation to protect the applicant's right to respect for his private and family life against the interference caused by the bars in his building. Thus, following the repeated complaints by the applicant and the owners' association, technical measurements of the noise level had been carried out by the competent municipal department and by a private laboratory and, according to the results obtained, the noise level did not significantly affect the quality of life of the building's inhabitants.

See also: ***Frankowski and Others v. Poland***, decision of 20 September 2011.

Yevgeniy Dmitriyev v. Russia

1 December 2020

The applicant's apartment was situated above a basement occupied by the local police station and by temporary detention cells. The applicant had complained to various bodies about the noise and other nuisances emanating from the station and cells, before selling and moving out of the property in 2008. He alleged in particular that the noise and other nuisances from the police station for more than 13 years had interfered with his right to respect for private life and home.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the Russian State had not succeeded in striking a fair balance between the interest of the local community in benefiting from the protection of public peace and security and the effective implementation of laws by the police force, and the applicant's effective enjoyment of his right to respect for his private life and his home. The Court noted, in particular, that, as far back as 1996 the applicant had alerted the authorities to the problems in his residential building caused by the activities of the police station. However, even though the head of the local police department had admitted that the police station was housed in a building "not designated for such purpose", no further action in this connection had been taken, the applicant having been informed that the relocation of the police station was not in fact possible. The Court also observed that,

even if in 2006 the State authorities had been made aware by one of their own organs that they were in violation of the sanitary norms and regulations applicable at the time; yet no real action had been taken in order to reduce the nuisances from which the applicant suffered, and the process of relocation of the police station mandated by a domestic court as a solution had been unduly protracted until 2008. Moreover, this situation had continued for thirteen years in respect of the applicant and had resulted in the applicant's having considered himself obliged to sell his flat and move to another flat which he had bought with his own finances.

Road traffic noise

Deés v. Hungary

9 November 2010

This case concerned nuisance caused to a resident by heavy traffic in his street, situated near a motorway operating a toll. The applicant complained that, because of the noise, pollution and smell caused by the heavy traffic in his street, his home had become almost uninhabitable. He further complained that the length of the court proceedings he had brought on the matter had been excessive.

In the applicant's case, the Hungarian authorities had been called on to strike a balance between the interests of the road-users and of local inhabitants. While recognising the complexity of the authorities' tasks in handling infrastructure issues potentially involving considerable time and resources, the Court considered that the measures taken by the authorities had consistently proved insufficient, so exposing the applicant to excessive noise disturbance over a substantial period and imposing a disproportionate individual burden on him. Although the vibration or noise caused by the traffic had not been substantial enough to cause damage to the applicant's house, the noise had, according to the expert measurements, exceeded the statutory level by between 12% and 15%. There had thus existed a direct and serious nuisance which affected the street in which the applicant lived and had prevented him from enjoying his home. The Court therefore held that there had been a **violation of Article 8** of the Convention, finding that Hungary had failed to discharge its positive obligation to guarantee the applicant's right to respect for his home and private life. The Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention on account of the length of the proceedings.

Grimkovskaya v. Ukraine

21 July 2011

The applicant complained in particular about the re-routing in 1998 of a motorway via her street, six-metres wide and in a residential area and entirely unsuitable for heavy traffic. She also submitted that the municipal authorities had subsequently failed to ensure regular monitoring of the street to keep in check pollution and other nuisances.

The Court held that there had been a **violation of Article 8** of the Convention. Having noted that handling infrastructural issues was a difficult task requiring considerable time and resources from States and that Governments could not be held responsible for merely allowing heavy traffic to pass through populated residential town areas, it observed in particular that the Ukrainian Government had not carried out an environmental feasibility study before turning the street in question into a motorway, nor had they made sufficient efforts to mitigate the motorway's harmful effects. In addition, the applicant had not had any meaningful opportunity to challenge in court the State's policy concerning that motorway, as her civil claim had been dismissed with scant reasoning, the courts not having engaged with her arguments.

Kapa and Others v. Poland

14 October 2021

This case concerned the rerouting of traffic by the applicants' house during the construction of a motorway, and the applicants' attempts to rectify the situation via the authorities. The traffic increase allegedly led to noise and other forms of pollution.

The Court held that there had been a **violation of Article 8** of the Convention. It found in particular that the authorities had knowingly ignored the problem from 1996 and had continued developing the motorway project with total disregard for the well-being of local residents. Overall, the Court found that the diverting of traffic by the applicants' house and the lack of an adequate response by the authorities had harmed their peaceful enjoyment of their home.

Wind turbines and wind energy farms

Fägerskiöld v. Sweden

26 February 2008 (decision on the admissibility)

In 1998 a wind turbine was erected approximately 400 metres from the applicants' house. The applicants complained in particular that the continuous, pulsating noise from the wind turbine and the light reflections from its rotor blades interfered with their peaceful enjoyment of their property and made it impossible for them to enjoy their private and family life.

The Court declared the application **inadmissible**. As regards their complaint under Article 8 of the Convention, the applicants had in particular not furnished the Court, or the national authorities, with any medical certificates to substantiate that their health had been adversely affected by the noise or the light reflections. Hence, the noise levels and light reflections in the present case were not so serious as to reach the high threshold established in cases dealing with environmental issues. It followed that this complaint was manifestly ill-founded.

See also, recently: ***Vecbaštika and Others v. Latvia***, decision (Committee) on the admissibility of 19 November 2019.

Industrial noise pollution

Borysiewicz v. Poland

1 July 2008

The applicant, who lived in a semi-detached house in a residential area, complained that the authorities had failed to protect her home from the noise emanating from a tailoring workshop located in an adjacent building. She had brought proceedings against her neighbour to have the workshop closed or to have measures taken to reduce the level of noise. The proceedings were still pending before a regional administrative court.

The Court declared **inadmissible** (manifestly ill-founded) the applicants' complaint under Article 8 of the Convention, finding that it had not been established that the noise levels complained of were serious enough to reach the high threshold established in cases dealing with environmental issues. In particular, the applicant never submitted to the Court the results of noise tests which would have allowed the noise levels in her house to be ascertained and for it to be determined whether they exceeded the norms set either by domestic law or by applicable international environmental standards. She had, furthermore, failed to submit any documents to show that her health or that of her family had been negatively affected by the noise. In the absence of such findings it could not be established that the Polish authorities had failed to take reasonable measures to secure her rights under Article 8 of the Convention. In this case the Court further found a **violation** of the applicant's right to a hearing within a reasonable time under **Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention.

See also: ***Leon and Agnieszka Kania v. Poland***, judgment of 21 July 2009.

Martinez Martinez and María Pino Manzano v. Spain

3 July 2012

This case concerned a couple living in the vicinity of an active stone quarry. The applicants complained in particular of psychological disorders brought on by the noise from the quarry, and that they had received no compensation for the damage caused by the noise and dust.

The Court noted in particular that the applicants were living in an industrial zone that was not meant for residential use, as shown by various official documents produced by the Spanish Government. The domestic courts had carefully considered the complaints and commissioned an expert report that had found that the noise and pollution levels were equal to or slightly above the norm, but were tolerable. In the applicants' case, the Court held that there had been **no violation of Article 8** of the Convention: bearing in mind that they had settled in an area where residential buildings were prohibited, and considering the levels of disturbance recorded, it found that there had been no violation of their right to respect for their home or their family life.

Rail traffic

Bor v. Hungary

18 June 2013

The applicant, whose house was situated across the street from a railway station, complained in particular of the extreme noise disturbance caused by the trains ever since steam engines had been replaced by diesel engines in 1988, and of the authorities' failure to enforce, in an effective and timely manner, the railway company's obligation to keep the noise level under control. In particular, even though the applicant had brought proceedings in 1991 to oblige the company to construct a noise barrier, the first noise-reduction measures were only actually implemented in 2010.

The Court held that there had been a **violation of Article 8** of the Convention, finding that Hungary had failed to discharge its positive obligation to guarantee the applicant's right to respect for his home. It emphasised in particular that the existence of a sanction system is not enough if it is not applied in a timely and effective manner. In this respect the Court drew attention to the fact that the Hungarian courts had failed to determine any enforceable measures in order to assure that the applicant would not suffer any disproportionate individual burden for some 16 years. The Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention on account of the length of the proceedings.

Emissions from diesel vehicles

Greenpeace e.V. and Others v. Germany

12 May 2009 (decision on the admissibility)

The applicant association had its business premises and the other four applicants their houses close to busy roads and intersections in Hamburg. They complained in particular about the German authorities' refusal to take specific measures relating to environmental issues in order to reduce respirable emissions from diesel vehicles.

The Court declared the application **inadmissible** as being manifestly ill-founded. It was in particular uncontested in the instant case that the German State had taken certain measures to curb emissions by diesel vehicles. Moreover, the choice of means as to how to deal with environmental issues fell within the State's margin of appreciation and the applicants had failed to show that in refusing to take the specific measures they had requested, the State had exceeded its discretionary power by failing to strike a fair balance between the interests of the individuals and that of the community as a whole.

Urban development

Kyrtatos v. Greece

22 May 2003

The applicants owned property in the south-eastern part of the Greek island of Tinos, including a swamp by the coast. They submitted in particular that urban development had led to the destruction of their physical environment and had negatively affected their private life. They also complained about the authorities' failure to enforce the Council of State's decisions annulling two permits for the construction of buildings near their property.

The Court held that there had been **no violation of Article 8** of the Convention. On the one hand, it could not accept that the interference with the conditions of animal life in the swamp constituted an attack on the private or family life of the applicants. Even assuming that the environment had been damaged by the urban development of the area, the applicants had not shown that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under Article 8. On the other hand, the Court was of the opinion that the disturbances coming from the applicants' neighbourhood as a result of the urban development of the area (noises, night-lights, etc.) had not reached a sufficient degree of seriousness to be taken into account for the purposes of Article 8 of the Convention. The Court further held that, by failing to enforce two final judicial decisions for more than seven years, the Greek authorities had deprived **Article 6 § 1** of the Convention of all useful effect and that there had accordingly been a **violation** of that provision. The Court also held that there had been a **violation of Article 6 § 1** of the Convention on account of the authorities' failure to deal with the applicants' complaints within a reasonable time.

Waste collection, management, treatment and disposal

Brânduse v. Romania

7 April 2009

The applicant complained in particular about the offensive smells created by a former refuse tip situated about 20 metres away from the prison where he was detained and affecting his quality of life and well-being.

The Court held that there had been a **violation of Article 8** of the Convention on account of the Romanian authorities' failure to take the necessary measures to deal with the problem of offensive smells coming from the tip in question. The file showed in particular that the tip was in operation effectively from 1998 until 2003, and that the growing volume of waste accumulated proved that it had even been used thereafter by private individuals, as the authorities had not taken measures to ensure the effective closure of the site. However, throughout that period the tip had no proper authorisation either for its operation or its closure. Furthermore, although it was incumbent on the authorities to carry out preliminary studies to measure the effects of pollution, it was only after the event, in 2003 and after a fierce fire on the site in 2006, that they did so. The studies concluded that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the standards established and that persons living nearby had to put up with significant levels of nuisance caused by offensive smells.

Di Sarno and Others v. Italy

10 January 2012

This case concerned the state of emergency (from 11 February 1994 to 31 December 2009) in relation to waste collection, treatment and disposal in the Campania region of Italy where the applicants lived and/or worked, including a period of five months in which rubbish piled up in the streets. The applicants complained in particular that, by omitting to take the necessary measures to ensure the proper functioning of the public waste collection service and by implementing inappropriate legislative and administrative policies, the State had caused serious damage to the environment in their region and placed their lives and health in jeopardy. They also criticised the authorities for not informing those concerned of the risks entailed in living in a polluted area.

The Court observed that the collection, treatment and disposal of waste were hazardous activities; as such, the State had been under a duty to adopt reasonable and appropriate measures capable of safeguarding the right of those concerned to a healthy and protected environment. In this case, the Court held that there had been a **violation of Article 8** of the Convention in its substantive aspect: even if one took the view that the acute phase of the crisis had lasted only five months – from the end of 2007 until May

2008 – and in spite of the margin of appreciation left to the Italian State, the fact remained that the Italian authorities had for a lengthy period been unable to ensure the proper functioning of the waste collection, treatment and disposal service, resulting in an infringement of the applicants' right to respect for their private lives and their homes. The Court further held that there had been **no violation of Article 8** in its procedural aspect: the studies commissioned by the civil emergency planning department had been published by the Italian authorities in 2005 and 2008, in compliance with their obligation to inform the people concerned, including the applicants, of the potential risks to which they exposed themselves by continuing to live in Campania. Lastly, the Court held that there had been a violation of Article 13 (right to an effective remedy) of the Convention in so far as the complaint related to the absence of effective remedies in the Italian legal system by which to obtain redress for the damage sustained was concerned.

Pending applications

Locascia and Others v. Italy (no. 35648/10)

Application communicated to the Italian Government on 5 March 2013

The 19 applicants live in the municipalities of Caserta and San Nicola La Strada (Campania). They complain in particular 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 authorities to secure, clean-up and reclaim the area after the closure of the plant.

The Court gave notice of the application to the Italian Government and put questions to the parties under Articles 2 (right to life), 8 (right to respect for private and family life) and 35 (admissibility criteria) of the Convention.

Di Caprio and Others v. Italy (no. 39742/14) and three other applications

Application communicated to the Italian Government on 5 February 2019

See above, under "Right to life (Article 2 of the Convention)".

Water supply contamination

Dzemyuk v. Ukraine

4 September 2014

The applicant alleged that the construction of a cemetery near his house had led to the contamination of his water supply – both for drinking and gardening purposes – leaving his home virtually uninhabitable and his land unusable. He also complained about the disturbance from the burial ceremonies. He further complained about the authorities' failure to enforce the final and binding judgment declaring the cemetery illegal, submitting that nothing had been done to close the cemetery, discontinue the burials or, despite his requests, offer him a detailed and specific proposal for his resettlement.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the interference with the applicant's right to respect for his home and private and family life had not been "in accordance with the law" within the meaning of that provision. It noted in particular that the Ukrainian Government had not disputed that the cemetery had been built and used in breach of the domestic regulations. The conclusions of the environmental authorities had also been disregarded. Final and binding judicial decisions ordering in particular to close the cemetery had never been enforced and the health and environment dangers inherent in water pollution had not been acted upon.

Freedom of expression / Freedom to receive and impart information (Article 10 of the Convention)

Steel and Morris v. the United Kingdom

15 February 2005

The applicants were associated with a small organisation which campaigned principally

on environmental and social issues. The organisation launched an anti-McDonald's campaign in the mid-1980s. In 1986 a six-page leaflet entitled "What's wrong with McDonald's?" was produced and distributed as part of that campaign. McDonald's brought proceedings against the applicants claiming damages for libel. The applicants denied publication of the leaflet or that the meanings in it were defamatory. They were subsequently held liable for publication of the leaflet and leave to appeal to the House of Lords was refused. The applicants complained in particular that the proceedings and their outcome had constituted a disproportionate interference with their right to freedom of expression.

Given the lack of procedural fairness and the disproportionate award of damages, the Court held that there had been a **violation of Article 10** of the Convention in the applicants' case. The central issue which fell to be determined under Article 10 was whether the interference with the applicants' freedom of expression had been "necessary in a democratic society". The United Kingdom Government had contended that, as the applicants were not journalists, they should not attract the high level of protection afforded to the press under Article 10. The Court considered, however, that in a democratic society even small and informal campaign groups had to be able to carry on their activities effectively. There existed a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment. In this case the Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the court and had contributed to an unacceptable inequality of arms with McDonald's.

Vides Aizsardzības Klubs v. Latvia

27 May 2004

The applicant was a non-governmental organisation for the protection of the environment. In November 1997 it had adopted a resolution addressed to the competent authorities expressing its concerns about the conservation of coastal dunes on a stretch of coast in the Gulf of Riga. The resolution, which was published in a regional newspaper, contained, *inter alia*, allegations that the local mayor had facilitated illegal construction work in the coastal area. The mayor brought an action for damages against the applicant, claiming that the statements in the resolution were defamatory. The Latvian courts found that the applicant had not proved the truth of its statements and ordered it to publish an official apology and pay damages to the mayor for publishing defamatory allegations. The applicant complained that the order against it had infringed its right to freedom of expression, and, in particular, its right to impart information.

The Court held that there had been a **violation of Article 10** of the Convention, finding that, despite the discretion afforded to the national authorities, there had not been a reasonable relationship of proportionality between the restrictions imposed on the applicant organisation's freedom of expression and the legitimate aim pursued, which was the protection of the reputation and rights of others. The Court noted in particular that the main aim of the impugned resolution had been to draw the public authorities' attention to a sensitive issue of public interest, namely malfunctions in an important sector managed by the local authorities. As a non-governmental organisation specialised in the relevant area, the applicant organisation had thus exercised its role of "watchdog" under the Environmental Protection Act. That kind of participation by an association was essential in a democratic society. Consequently, in order to perform its task effectively an association had to be able to impart facts of interest to the public, give them its assessment and thus contribute to the transparency of public authorities' activities.

Association Burestop 55 and Others v. France

1 July 2021

This case concerned environmental protection associations opposed to the planned industrial geological storage centre known as "Cigéo" on the Bure site, in the

Grand Est administrative region, designed for the storage in deep geological repositories of high-level and long-life radioactive waste. The applicant associations had unsuccessfully lodged with the civil courts an action for damages against the National Agency for the Management of Radioactive Waste (ANDRA), which they alleged had, in the framework of its communications on the Cigéo project, failed in its legal obligation to provide the public with information on the mode of management of the radioactive waste in question.
As regards the right of access to information which could, under certain circumstances, arise under Article 10 of the Convention, the Court held, for the first time, that that right would be rendered nugatory if the information provided were dishonest, inaccurate or insufficient. It deduced that respect for that right required the information provided to be reliable, particularly where the right stemmed from a legal obligation on the State, and that in the event of a dispute ("contestation") in that regard, those concerned should have a remedy providing for review of the content and quality of the information provided, in the framework of adversarial proceedings. In the present case the Court noted that five of the six applicant associations had been able to lodge with the domestic courts an action which had permitted, under fully adversarial proceedings, the effective review of ANDRA's compliance with its legal obligation to provide the general public with information on the management of radioactive waste, and of the content and quality of the information communicated by the agency concerning the geothermal potential of the Bure site. While noting that the Court of Appeal should have more fully substantiated their response to the applicant associations' challenge to the reliability of specific items of information in ANDRA's consolidated report concerning the low level of the geothermal resources in the area in question, the Court considered that the five associations had had access to a remedy fulfilling the requirements of Article 10 of the Convention. There had therefore been **no violation of Article 10** in the present case.

Rovshan Hajiyev v. Azerbaijan

9 December 2021

The applicant, a journalist, complained, in particular, of the authorities' refusal to give him access to information of public interest on the environmental and health impact of a former Soviet military radar station. He submitted that the court judgments in this connection had not been adequately reasoned.
In this case, the Court was satisfied, in particular, that the information requested by the applicant, which had been ready and available, constituted a matter of public interest. Access to this information had been instrumental for the applicant, as a journalist, to exercise his right to receive and impart information In the present case, the Court held that there had been a **violation of Article 10** of the Convention, finding that the interference with the applicant's rights was not "prescribed by law".

Pending applications

Bryan and Others v. Russia (no. 22515/14)

Application communicated to the Russian Government on 6 December 2017

The applicants are 28 Greenpeace activists and two freelance journalists. The journalist applicants allege, in particular, a violation of their right to collect and disseminate information concerning a protest against oil production in the Arctic.
The Court gave notice of the application to the Russian Government and put questions to the parties under Article 1 (obligation to respect human rights), Article 5 § 1 (right to liberty and security) and Article 10 (freedom of expression) of the Convention.

Freedom of assembly and association (Article 11 of the Convention)

Costel Popa v. Romania

26 April 2016

The applicant, founder of an environmental association, complained in particular about the Romanian courts' refusal to register the association in question, without giving him time to rectify any irregularities in the articles of association – as had been provided for by national law – before ending the registration process.

The Court held that there had been a **violation of Article 11** of the Convention, finding that the reasons invoked by the Romanian authorities for refusing registration of the association were not guided by any pressing social need, nor were they convincing and compelling. Consequently, a measure as radical as the refusal to register the association, taken even before the association had started operating, appeared disproportionate to the aim pursued.

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

Hatton and Others v. the United Kingdom

8 July 2003 (Grand Chamber)

See above, under "Right to respect for private and family life and home (Article 8 of the Convention)".

Kolyadenko and Others v. Russia

28 February 2012

The applicants lived in Vladivostok near the Pionerskaya river and water reservoir. They were all affected by a heavy flash flood in Vladivostok in August 2001. The applicants submitted in particular that the authorities had put their lives at risk by releasing the water without any prior warning and by having failed to maintain the river channel, and that there had been no adequate judicial response in that respect. They also complained that their homes and property had been severely damaged, and that they had had no effective remedies in respect of their complaints.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention in its substantive aspect, finding that the Russian Government had failed in its positive obligation to protect the relevant applicants' lives. It further held that there had been a violation of Article 2 in its procedural aspect, as it was not convinced that the judicial response to the events of August 2001 had secured the full accountability of the officials or authorities in charge. The Court also held that there had been a **violation of Articles 8** (right to respect of private and family life and home) of the Convention and **1** (protection of property) **of Protocol No. 1** to the Convention, finding that the responsible officials and authorities had failed to do everything in their power to protect the applicants' rights under these provisions. Lastly, the Court held that there had been **no violation of Article 13** of the Convention **in conjunction with Article 8 and Article 1 of Protocol No. 1**. It found in particular that Russian law provided the applicants with the possibility of bringing civil proceedings to claim compensation. The Russian courts had had at their disposal the necessary material to be able in principle to address in the civil proceedings the State's liability and they had in principle been empowered to attribute responsibility for the events in the criminal proceedings. The fact alone that the outcome of the proceedings had been unfavourable to the applicants, as their claims had finally been rejected, could not be said to have demonstrated that the available remedies had been insufficient for the purpose of Article 13.

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

Fredin (no. 1) v. Sweden

18 February 1991

This case concerned the revocation of a licence to operate a gravel pit situated on the applicants' land on the basis of the Nature Conservation Act. According to the applicants the revocation of their exploitation permit had amounted to a deprivation of property.

In this case the Court recognised that in today's society the protection of the environment was an increasingly important consideration. In the circumstances of the case, and having regard to the legitimate aim pursued by the 1964 Act, i.e. the protection of the environment, it found that it could not be said that the revocation decision complained of by the applicants had been inappropriate or disproportionate and it therefore held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention. It was true that the applicants had suffered substantial losses having regard to the potential of the gravel pit if it had been exploited in accordance with the 1963 permit. The Court however noted that, when embarking on their investments, they could have relied only on the authorities' obligation, when taking decisions relating to nature conservation, to take due account of their interests, as prescribed in the 1964 Act. This obligation could not, at the time they had made their investments, reasonably have founded any legitimate expectations on their part of being able to continue exploitation for a long period of time. In addition, the applicants had been granted a three-year closing-down period, and the authorities had shown a certain flexibility as this period had subsequently been extended by eleven months at the applicants' request.

Pine Valley Developments Ltd and Others v. Ireland

29 November 1991

This case concerned the withdrawal of permission to build on land purchased for construction. The applicants were a couple of companies which had as their principal business the purchase and development of land and the managing director of the second company and its sole beneficial shareholder. They complained in particular about the Irish Supreme Court's decision holding the outline planning permission for industrial warehouse and office development on the site, which had been granted to the then owner, to be invalid.

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention, finding that the annulment of the building permission could not be considered disproportionate to the legitimate aim of preservation of the environment. It noted in particular that the interference in question had been designed and served to ensure that the relevant planning legislation was correctly applied by the Minister for Local Government not simply in the applicants' case but across the board. The decision of the Supreme Court, the result of which had been to prevent building in an area zoned for the further development of agriculture so as to preserve a green belt, was therefore to be regarded as a proper way – if not the only way – of achieving that aim. Furthermore, the applicants were engaged on a commercial venture which, by its very nature, involved an element of risk, and they were aware not only of the zoning plan but also of the opposition of the local authority, to any departure from it.

See also: ***Kapsalis and Nima-Kapsali v. Greece***, decision on the admissibility of 23 September 2004.

Papastavrou and Others v. Greece

10 April 2003

In this case the 25 applicants and the authorities were in dispute over the ownership of a plot of land. In 1994 the prefect of Athens had decided that an area including the disputed plot of land, should be reafforested. The applicants challenged that decision before the Council of State. Their appeal was dismissed on the ground that the prefect's

decision had merely confirmed an earlier decision made by the Minister for Agriculture in 1934. However, in 1999 the Athens Forest Inspection concluded that only part of the area concerned had been forest in the past and could therefore be reforested. The applicants submitted in particular that their property had effectively been expropriated without their being paid any compensation and argued that no public interest could justify such a drastic limitation of their property rights, taking into account that any reafforestation of the land was impossible because of the type and quality of the soil.
The Court held that there had been a **violation of Article 1 of Protocol No. 1** to the Convention, finding that a reasonable balance had not been struck between the public interest and the requirements of the protection of the applicants' rights. It considered in particular that the authorities were wrong to have ordered the reforestation measure without first assessing how the situation had evolved since 1934. In dismissing the applicants' appeal on the sole ground that the prefect's decision had merely confirmed an earlier decision, the Council of State had failed to protect the property owners' rights adequately, especially as there had been no possibility of obtaining compensation under Greek law.

Öneryıldız v. Turkey

30 November 2004 (Grand Chamber)
See above, under "Right to life (Article 2 of the Convention)".

N.A. and Others v. Turkey (no. 37451/97)

11 October 2005
In 1986 the applicants obtained a tourist-investment certificate from the authorities for the construction of a hotel on a plot of land they had inherited, located on the coast. On an appeal from the Public Treasury, a Court of First Instance annulled the registration of the property in the land register and ordered the demolition of the hotel that was being built, on the ground that the plot of land in question was located on the seashore and could not be privately acquired. The Court of Cassation upheld that judgment. The applicants were unsuccessful in bringing proceedings to claim damages for the loss of their property rights and for the demolition of the existing construction. Before the Court, they complained that they had not been compensated for the loss sustained as a result of the demolition of the hotel that was being built and the annulment of the registration of their property in the land register.
The Court held that there had been a **violation of Article 1 of Protocol No. 1** to the Convention. It found that the applicants had acquired the disputed plot of land in good faith. Until the title was annulled in favour of the State, they had been the owners and had paid taxes in respect of the property. They had enjoyed peaceful possession of their property and had begun to have a hotel complex built on the land, as lawful owners, after obtaining a building permit for that purpose. But they were subsequently deprived of their property by a judicial decision, which the Court did not find in any way arbitrary. The deprivation of ownership of the land, which was located on the shoreline and was thus part of the beach, a public area open to all, fulfilled a legitimate purpose. However, the applicants had not received any compensation for the transfer of their property to the Public Treasury or for the demolition of the hotel, notwithstanding the proceedings they had brought to that end before the Turkish courts, and without any justification by the Turkish Government for the total lack of compensation.

Valico S.R.L. v. Italy

21 March 2006 (decision on the admissibility)
In this case a fine had been imposed on the applicant company for having constructed a building in breach of rules on the construction of buildings designed to protect the landscape and the environment. The applicant company submitted in particular that the fine in question had infringed Article 1 of Protocol No. 1 to the Convention.
The Court observed that the disputed measure had been in accordance with the law and had pursued the legitimate aim of preserving the landscape and ensuring rational and environmentally sound planning, all of which was in accordance with the general

interest. Finding that the Italian authorities had struck a fair balance between, on the one hand, the general interest and, on the other, respect for the applicant company's right of property, and that the interference did not, therefore, impose an excessive burden on the applicant such as to make the measure complained of disproportionate to the legitimate aim pursued, the Court declared the complaint under Article 1 of Protocol No. 1 **inadmissible** (manifestly ill-founded).

Hamer v. Belgium

27 November 2007

This case related to the demolition, pursuant to an enforcement order, of a holiday home, built in 1967 by the applicant's parents without a building permit. In 1994 the police had drawn up two reports, one concerning the felling of trees on the property in violation of forestry regulations, and one for building a house without planning permission in a woodland area where no planning permission could be granted. The applicant had been ordered to restore the site to its original state. She complained in particular of a violation of her property rights.

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention in the applicant's case, finding that she had not suffered disproportionate interference with her property rights. In this case the Court however reiterated that while none of the Articles of the European Convention on Human Rights is specifically designed to provide general protection of the environment as such, in today's society the protection of the environment is an increasingly important consideration. It further noted that the environment is a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard. The public authorities therefore assume a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment are not entirely ineffective.

Turgut and Others v. Turkey

8 July 2008

The case concerned land of more than 100,000 square metres, which the applicants claimed has been owned by their families for more than three generations. The applicants complained about a decision of the Turkish courts to register the land in the name of the Public Treasury on the ground that the land was public forest, without their being paid any compensation.

The Court held that there had been a **violation of Article 1 of Protocol No. 1** to the Convention. Recalling in particular that the protection of nature and forests, and of the environment in general, was a matter of considerable and constant concern to public opinion and consequently to the public authorities, and that economic imperatives and even certain fundamental rights, including the right of property, should not be placed before considerations relating to environmental protection, in particular when there was legislation on the subject, the Court also noted, however, that the taking of property without payment of an amount reasonably related to its value normally constituted a disproportionate interference, and a total lack of compensation could be considered justifiable only in exceptional circumstances. In the present case, the applicants had not received any compensation for the transfer of their property to the Treasury. No exceptional circumstance had further been raised by the Turkish Government in order to justify the lack of compensation. The Court therefore found that the failure to award the applicants any compensation had upset, to their detriment, the fair balance that had to be struck between the demands of the general interest of the community and the requirements of the protection of individual rights.

Depalle v. France and Brosset-Triboulet and Others v. France

29 March 2010 (Grand Chamber)

These cases concerned the obligation on owners to demolish, at their own expense and without compensation, house they had lawfully purchased on maritime public land. The applicants submitted in particular that this obligation was not compatible with their rights under Article 1 of Protocol No. 1 to the Convention.

In both cases the Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention, finding that the applicants would not bear an individual and excessive burden in the event of demolition of their houses with no compensation and that, accordingly, the balance between the interests of the community and those of the applicants would not be upset. The Court recalled in particular that, in a case concerning regional planning and environmental conservation policies, the community's general interest was pre-eminent. Furthermore, while it went without saying that after such a long period of time demolition would amount to a radical interference with the applicants' "possessions", however (and the applicants had, moreover, not disproved this), this was part and parcel of a consistent and rigorous application of the law given the growing need to protect coastal areas and their use by the public, and also to ensure compliance with planning regulations.

See also: ***Malfatto and Mieille v. France***, judgment of 6 October 2016.

Kristiana Ltd. v. Lithuania

6 February 2018

This case concerned the applicant company's allegation of unlawful and unreasonable restriction of its property rights, following its purchase of privatised former military buildings situated in a protected area. In particular, the company alleged that it had been denied the opportunity to repair and renovate its premises, and that despite its buildings being earmarked for demolition, no compensation had been made available, and no time-limits had been set.

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention, finding that a fair balance had been struck between the general interest and the applicant company's individual property right. It noted in particular that the company should have foreseen both the denial of planning permission and the ultimate requirement to demolish the buildings, which was provided for under a development plan of 1994 and remained unchanged. In addition, the Lithuanian authorities' aim had been legitimate, namely the protection of cultural heritage and the honouring of rigorous international obligations to UNESCO. Finally, given the public law context, the authorities' actions were deemed proportionate. The Court also held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention.

O'Sullivan McCarthy Mussel Development Ltd v. Ireland

7 June 2018

The applicant company fishes for immature mussels (mussel seed), and then cultivates and sells them when they are developed, a process which takes two years. The case concerned its complaint that the Irish Government had caused it financial losses by the way it had complied with European Union environmental legislation[2].

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention. It observed in particular that that the protection of the environment and compliance with the respondent State's obligations under EU law were both legitimate objectives. As a commercial operator the company should have been aware that the need to comply with EU rules was likely to impact its business. Overall, the Court thus found that the company had not suffered a disproportionate burden due to the Irish Government's actions and that Ireland had ensured a fair balance between the general

[2]. The Irish Government had temporarily prohibited mussel seed fishing in 2008 in the harbour where the company operated after the Court of Justice of the European Union found Ireland had failed to fulfil its obligations under two EU environmental directives. The company thus had no mature mussels to sell in 2010, causing a loss of profit.

interests of the community and the protection of individual rights. There had therefore been no violation of the company's property rights. The Court also held that there had been **no violation of Article 6** (right to a fair trial within a reasonable time) of the Convention in the present case.

Dimitar Yordanov v. Bulgaria

6 September 2018

This case concerned the applicant's complaint about damage to his property caused by a nearby coalmine. At the end of the 1980s or the beginning of the 1990s, the State decided to create an opencast coalmine near to the village in which he owned a plot of land. A number of properties, including his one, were expropriated. He waited for two years without receiving another plot of land in compensation. He therefore cancelled the procedure with the local authorities and remained in the house, while the mine started operating and gradually expanded. At its closest, the mine operated within 160-180 metres from his house, with coal being extracted by blasting. Cracks appeared on the walls of the house and his barn and animal pen collapsed. He eventually moved out of his house in 1997, judging it too dangerous to stay. In 2001 the applicant brought a tort action against the mining company, seeking compensation for the damage caused to his property. The courts heard witnesses 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 courts concluded in 2007 that there was no proof of a link between the mining activities and the damage.

The Court held that there had been a **violation of Article 1 of Protocol No. 1**. It noted in particular that 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, namely the daily detonations in close proximity to the applicant's home. That situation, which had led the applicant to abandon his property, amounted to State interference with the peaceful enjoyment of his possessions. Moreover, 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 for the purposes of the analysis under Article 1 of Protocol No. 1. The Court held, however, that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that 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.

Pop and Others v. Romania

2 April 2019 (decision on the admissibility)

The applicants, who had all three purchased second-hand vehicles within the European Union (EU), complained that they had been required to pay a pollution tax in order to register their vehicles in Romania, in application of an emergency ordinance (OUG no. 50/2008) which had been held to be incompatible with EU law by the Court of Justice of the European Union.

The Court declared the applications **inadmissible** for failure to exhaust domestic remedies. In the case of two applicants, it noted in particular that the remedy introduced by another emergency ordinance (OUG no. 52/2017), in force since 7 August 2017, afforded them an opportunity to obtain reimbursement of the pollution tax and payment of the corresponding interest. It also set out clear and foreseeable procedural rules, with binding time limits and the possibility of an effective judicial review. The remedy provided by OUG no. 52/2017 thus represented an effective remedy for the purposes of Article 35 (admissibility criteria) of the Convention. As to the third applicant, he had acknowledged that he had not taken any steps at national level to recover the interest he was claiming (the pollution tax and some of the interest had been refunded following

a final ruling by a national court) and did not put forward any argument showing that such an approach would have been ineffective.

Yaşar v. Romania

26 November 2019

This case concerned the confiscation of the applicant's vessel because it had been used for illegal fishing in the Black Sea. The applicant alleged that the confiscation had been unlawful and disproportionate.

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention. Noting in particular that the confiscation had amounted to a deprivation of property as the vessel had ultimately been sold to a private party and the money from the sale collected by the State, it found, however, that the Turkish courts had carefully balanced the rights at stake and had found that the demands of the general interest to prevent activities which posed a serious threat to the biological resources in the Black Sea had outweighed the applicant's property rights. The Court also pointed out that the confiscation had not imposed an excessive burden on the applicant.

National Movement Ekoglasnost v. Bulgaria

15 December 2020

The applicant association, a non-profit legal person working to solve environmental problems in Bulgaria, had been ordered to pay legal costs to a nuclear power plant in the amount of 6,000 euros in proceedings for the reopening of a civil trial. It submitted that these costs had been excessive.

The Court held that there had been a **violation of Article 1 of Protocol No. 1**, finding that the Supreme Administrative Court, which had ordered the applicant association to pay the legal fees of the nuclear power plant, had failed to give sufficient reasoning as to why it had made such a large order, and had failed to balance the general interest with the rights of the applicant, leaving it to bear an excessive individual burden.

See also, recently:

Beinarovič and Others v. Lithuania

12 June 2018

Further readings

See in particular:

- **Guide to the Case-Law of the European Court of Human Rights – Environment** (*in French*), European Court of Human Rights, 2021.
- Council of Europe **webpage** "Protecting the environment using human rights law".

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